



TENDER DOCUMENT

FOR

PROVISION OF INSURANCE SERVICES

Invitation for Tender (IFT) Number:

KEMSA-ONT09-2023/2024

Tender Closing date: Monday 21st August, 2023
Time: 10. 00a.m

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INVITATION TO TENDER NOTICE

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: procure@kemsaco.ke

Contract Name and Description: KEMSA/ONT09/2023-2024 - Provision of Insurance Services

Date 1st August, 2023

1. The Kenya Medical Supplies Authority (KEMSA) has set aside funds for use in the procurement of insurance services during the financial year 2023-2024. It is intended that part of the proceeds of the funds will be used to cover eligible payments under contracts for provision of Group Personal Accident (KEMSA BOARD OF DIRECTORS COVER) NOT LIFE Insurance Services, Group Personal Accident with WIBA cover for staff (GPA-WIBA cover) Insurance services, Employers Liability (Common Law) and International travel policy.
2. Bidding will be conducted through the procedures specified in the Public Procurement and Asset Disposal Act (PPADA) 2015 and open to all eligible bidders.
3. You are hereby invited to submit a bid for the **Provision of Insurance Services** as detailed in this document.
4. Interested eligible bidders may download a complete set of tender documents from the KEMSA Website www.kemsaco.ke and /or PPIP Portal: <https://tenders.go.ke>.

Documents downloaded are free of charge and bidders are advised to register at the Procurement Office or via email at procure@kemsaco.ke. (Refer to registration form in the tender document)

5. Completed serialized/paginated bidding documents **one original and a copy** in plain sealed envelopes clearly marked on top with the Tender Number and Description and accompanied by an original bid security of an amount of **Kes. 180,000.00 (Kenya Shillings One Hundred and Eighty Thousand Only)** or equivalent in a freely convertible currency from Commercial Banks recognized by the Central Bank of Kenya. Electronic tender security is acceptable and shall be authenticated through the use of the QR scanner (*In Accordance to PPRA CIRCULAR NO. 01/2023*). The tender security must be valid for 150 days from the date of tender closing/opening and should be addressed to:

The Chief Executive Officer
Kenya Medical Supplies Authority
13 Commercial Street, Industrial Area
P. O. Box 47715 Nairobi, Kenya
Tel: 254 20 3922000/537670/1/2/3
Email: procure@kemsaco.ke

And **MUST BE DEPOSITED** in the Tender Box No. 1 marked GOK/ World Bank at the Reception on the Ground Floor KEMSA's Commercial Street Office in Nairobi on or before **10.00 am** on **21st August, 2023**.

6. Bids will be opened promptly in public and in the presence of Bidders and their representatives who choose to attend in the opening at **KEMSA bids' opening conference Hall at 10:00am**
7. **Late bids, Electronic Bids, Bids not opened in and not read out in public at the bid opening ceremony shall not be accepted for evaluation irrespective of the circumstances.**

REGISTRATION FORM

Tender No. KEMSA/ONT09/2023-2024 – Provision of Insurance Services

NOTE: Please provide your details below for purposes of communication in case you download this tender document from PPIP or KEMSA website.

Name of the firm:.....

Company KRA PIN:.....

Postal Address:.....

Telephone Contacts:.....

Company email address:.....

Contact Person:.....

Once completed please submit this form to the email below;

procure@kemsaco.ke

PART I - TENDERING PROCEDURES

SECTION I - INSTRUCTIONS TO TENDERERS

A. General

1. Scope of Tender

- 1.1 This tendering document is for the delivery of Insurance services, as specified in *Part II Schedule of Insurance Requirements*. The name of the Procuring Entity, name and identification and number of this tender are specified in the **TDS**.

2. Definitions

- 2.1 Throughout this tendering document:

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

- 2.2 The successful Tenderer will be expected to commence providing the Insurance Services by Date provided **in the TDS**. The insurance duration for each item will be one year or the period specified in the **TDS**.

3. Fraud and Corruption

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

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

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

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

4. Eligible Tenderers

- 4.1 A Tenderer may be a firm that is a private entity, a state-owned enterprise or institution subject to ITT 4.7 or any combination of such entities in the form of a joint venture (JV) under an existing agreement with the intent to enter into such an agreement supported by a letter of intent. Only Insurance service providers registered by Insurance Regulatory Authority are eligible to tender and sign contracts. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the tendering process and, in the event the JV is awarded the Contract,

during contract execution. Members of a joint venture may not also make an individual tender, be a subcontractor in a separate tender or be part of another joint venture for the purposes of the same Tender. The maximum number of JV members shall be specified in the **TDS**.

- 4.2 Public Officers of the Procuring Entity, their spouse, child, parent, brother, sister, child, parent or sister of a spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.
- 4.3 A Tenderer shall not have a conflict of interest. Any Tenderer found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest for the purpose of this Tendering process, if the Tenderer:
 - a) Directly or indirectly controls, is controlled by or is under common control with another Tenderer; or
 - b) Receives or has received any direct or indirect subsidy from another Tenderer; or
 - c) Has the same legal representative as another Tenderer; or
 - d) Has a relationship with another Tenderer, directly or through common third parties, that puts it in a position to influence the Tender of another Tenderer, or influence the decisions of the Procuring Entity regarding this Tendering process; or
 - e) Or any of its affiliates participated as a consultant in the preparation of the Procuring Entity's Requirements (including Schedules of requirements, Performance Specifications, etc.) for the Insurance services that are the subject of this Tender; or
 - f) or any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity for the Contract implementation; or
 - g) would be providing goods, works, or services resulting from or directly related to the insurance services specified in the TDS ITT 1.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or
 - h) has a close business or family relationship with a professional staff of the Procuring Entity who: (i) are directly or indirectly involved in the preparation of the tendering document or specifications of the contract, and/or the Tender evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the procurement process and execution of the Contract.
- 4.4 A firm that is a Tenderer shall not participate in more than one Tender, except for permitted alternative Tenders. Such participation shall result in the disqualification of all Tenders in which the firm is involved.
- 4.5 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT 4.9. A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated, or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed sub-contractors or sub-consultants for any part of the Contract including related Services.
- 4.6 A Tenderer that has been debarred from participating in public procurement shall be ineligible to tender or be awarded a contract. The list of debarred firms and individuals is available from the website of PPRA www.ppra.go.ke.
- 4.7 Tenderers that are state-owned enterprises or institutions in Kenya may be eligible to compete and be awarded a Contract(s) if they can establish that they are registered as insurance businesses.
- 4.8 A tenderer under suspension from tendering as the result of the operation of a Tender-

Securing Declaration or Proposal-Securing Declaration shall not be eligible to tender.

- 4.9 Firms and individuals may be ineligible if (a) as a matter of law or official regulations, Kenya prohibits commercial relations with that country, or (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person, or entity in that country.
- 4.10 The Insurance Act of Kenya (Revised 2017) requires that insurance companies that wish to offer insurance services in Kenya should be registered with the Insurance Regulatory Authority (IRA) of Kenya to allow them undertake insurance business in Kenya. Registration shall not be a condition for tender, but it shall be a condition of contract award and signature. A selected tenderer shall be given opportunity to register before contract award and signature of contract. Details on application for registration with Insurance Regulatory Authority may be accessed from the website www.ira.go.ke
- 4.11 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort, or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Act. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for tender, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website www.ira.go.ke
- 4.12 A Kenyan tenderer shall provide evidence of having fulfilled his/her tax obligations by producing a current tax compliance certificate or tax exemption certificate issued by the Kenya Revenue Authority.

5. Qualification of the Tenderer

- 5.1 If pre-qualification of Tenderers has been undertaken as stated in ITT 18.4, the provisions on qualifications in *Section III, Evaluation and Qualification Criteria* shall involve checking if the Tenderer continues meeting the qualification criteria.

B. Contents of Tendering Document

6. Sections of Tendering Document

- 6.1 The tendering document consists of Parts I, II, and III, which include all the sections indicated below and should be read in conjunction with any Addenda issued in accordance with ITT 9.

Part I: Tendering Procedures

- i) Section I: Instructions to Tenderers
- ii) Section II: Tender Data Sheet
- iii) Section III: Evaluation and Qualification Criteria
- iv) Section IV: Tendering Forms

Part II: Schedule of Insurance Requirements

- v) Section V: Insurance Service Specifications

Part III: Conditions of Contract and Contract Forms

- vi) Section VI: General Conditions of Contract
- vii) Section VII: Special Conditions of Contract
- viii) Section VIII: Contract Forms

- 6.2 The Invitation to Tender (ITT) or the notice to pre-qualify Tenderers, as the case may be, issued by the Procuring Entity is not part of this tendering document.
- 6.3 Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of the tender document, responses to requests for clarification, the Minutes of the pre-Tender meeting (if any), or Addenda to the

tendering document in accordance with ITT 9. In case of any contradiction, documents obtained directly from the Procuring Entity shall prevail.

- 6.4 The Tenderer is expected to examine all instructions, forms, terms of reference, and specifications in the tendering document and to furnish with its Tender all information or documentation as is required by the tendering document.

7. Clarification of Tender Document, Site Visit, Pre-Tender Meeting

- 7.1 A Tenderer requiring any clarification of the Tender Document shall contact the Procuring Entity in writing at the Procuring Entity's address specified in the **TDS** or raise its enquiries during the pre-Tender meeting if provided for in accordance with ITT 7.2. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the **TDS** prior to the deadline for submission of tenders. The Procuring Entity shall forward copies of its response to all tenderers who have acquired the Tender documents in accordance with ITT 7.4, including a description of the inquiry but without identifying its source. If so specified in the **TDS**, the Procuring Entity shall also promptly publish its response at the web page identified in the **TDS**. Should the clarification result in changes to the essential elements of the Tender Documents, the Procuring Entity shall amend the Tender Documents following the procedure under ITT 9 and ITT 23.2.
- 7.2 The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine and inspect the site(s) and items of the required contracts and obtain all information that may be necessary for preparing a tender. The costs of visiting the Sites shall be at the Tenderer's own expense. The Procuring Entity shall specify in the **TDS** if a pre-arranged Site visit and or a pre-tender meeting will be held, when and where. The Tenderer's designated representative is invited to attend a pre-arranged site visit and a pre-tender meeting, as the case may be. The purpose of the site visit and the pre-tender meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 7.3 The Tenderer is requested to submit any questions in writing, to reach the Procuring Entity not later than the period specified in the **TDS** before the meeting.
- 7.4 Minutes of a pre-arranged site visit and those of the pre-tender meeting, if applicable, including the text of the questions asked by Tenderers and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents. Minutes shall not identify the source of the questions asked.
- 7.5 The Procuring Entity shall also promptly publish anonymized (no names) Minutes of the pre-arranged site visit and those of the pre-tender meeting at the web page identified in the **TDS**. Any modification to the Tender Documents that may become necessary as a result of the pre-arranged site visit and those of the pre-tender meeting shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT 9 and not through the minutes of the pre-Tender meeting. Non-attendance at the pre-arranged site visit and the pre-tender meeting will not be a cause for disqualification of a Tenderer.

8. Clarification of Tendering Document

- 8.1 A Tenderer requiring any clarification of the tendering document shall contact the Procuring Entity in writing at the Procuring Entity's address specified **in the TDS**. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received prior to the deadline for submission of Tenders within a period specified **in the TDS**. The Procuring Entity shall forward copies of its response to all Tenderers who have acquired the tendering document in accordance with ITT 6.3, including description of the inquiry but without identifying its source. If so specified **in the TDS**, the Procuring Entity shall also promptly publish its response at the web page identified **in the TDS**. Should the clarification result in changes to the essential elements of the tendering document, the Procuring Entity shall amend the tendering document following the procedure under ITT 9 and ITT 23.2.

9. Amendment of Tendering Document

- 9.1 At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the Tendering document by issuing addenda.
- 9.2 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tendering document from the Procuring Entity in accordance with ITT 6.3. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's web page in accordance with ITT 8.1.
- 9.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity shall extend, as necessary, the deadline for submission of Tenders, in accordance with ITT 23.2.

C. Preparation of Tenders

10. Cost of Tendering

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

11. Language of Tender

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

12. Documents Comprising the Tender

- 12.1 The Tender shall comprise the following:

- a) **Form of Tender** prepared in accordance with ITT 13;
- b) **Schedules:** priced Activity Schedule completed in accordance with ITT 13 and ITT 15;
- c) **Tender Security or Tender-Securing Declaration** in accordance with ITT 20;
- d) **Alternative Tender:** if permissible in accordance with ITT 14;
- e) **Authorization:** written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 21.3;
- f) **Qualifications:** documentary evidence in accordance with ITT 18 establishing the Tenderer's qualifications to perform the Contract if its Tender is accepted;
- g) **Tenderer's Eligibility:** documentary evidence in accordance with ITT 18 establishing the Tenderer's eligibility to Tender;
- h) **Conformity:** documentary evidence in accordance with ITT 17, that the Services conform to the tendering document;
- i) **Sample Insurance Policy** for each type of insurance required, and
- j) Any other document required **in the TDS.**

- 12.2 The Tenderer shall furnish in the Form of Tender on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Tender.

13. Form of Tender and Schedule of Requirements

- 13.1 The Form of Tender and priced Schedule of Requirements shall be prepared using the relevant forms furnished in *Section IV, Tendering Forms*. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITT 21.3. All blank spaces shall be filled in with the information requested. The Tenderer shall chronologically serialize pages of all tender documents

submitted.

14. Alternative Tenders

14.1 Unless otherwise indicated **in the TDS**, alternative Tenders shall not be considered. If alternatives are permitted, only the technical alternatives, if any, of the lowest evaluated Tenderer shall be considered by the Procuring Entity.

15. Tender Prices and Discounts

15.1 The prices (or premiums) and discounts (including any price reduction) quoted by the Tenderer in the Form of Tender and in the Schedule of Requirements shall conform to the requirements specified below.

15.2 The Contract shall be for the Insurance Services of the items described in the Schedule of Requirements submitted by the Tenderer.

15.3 The Tenderer shall quote any discounts in the Form of Tender in accordance with ITT 13.1.

15.4 All duties, taxes, and other levies payable by the Insurance Provider under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of Tenders, shall be included in the total Tender price submitted by the Tenderer.

15.5 If provided for in the **TDS**, prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract in accordance with and the provisions of the General Conditions of Contract and/or Special Conditions of Contract. The Tenderer shall submit with the Tender all the information required under the Special Conditions of Contract and of the General Conditions of Contract.

16. Currencies of Tender and Payment

16.1 The currency of the Tender and the currency of payments shall be Kenya Shillings, unless specified otherwise in the **TDS**.

17. Documents Establishing Conformity of Services

17.1 To establish the conformity of the Insurance Services to the tendering document, the Tenderer shall furnish as part of its Tender the documentary evidence that Services provided conform to the Procurement Entity's requirements specified in *Part II, Schedule of Insurance Requirements*.

17.2 Standards for provision of the Insurance Services are intended to be descriptive only and not restrictive. The Tenderer may offer other standards of quality provided that it demonstrates, to the Procuring Entity's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in *Part II Schedule of Insurance Requirements*.

17.3 Tenderers shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a Service provider or group of service providers qualifies for a margin of preference. Further the information will enable the Procuring Entity to identify any actual or potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between tenderers, and there by help to prevent any corrupt influence in relation to the procurement process or contract management.

17.4 The purpose of the information described in ITT 17.3 overrides any claims to confidentiality which a tenderer may have. There can be no circumstances in which it would be justified for a tenderer to keep information relating to its ownership and control confidential where it is tendering to undertake public sector work and receive public sector funds. Thus, confidentiality will not be accepted by the Procuring Entity as a justification for a Tenderer's failure to disclose, or failure to provide required

information on its ownership and control.

17.5 The Tenderer shall provide further documentary proof, information, or authorizations that the Procuring Entity may request in relation to ownership and control which information on any changes to the information which was provided by the tenderer under ITT 17.3. The obligations to require this information shall continue for the duration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.

17.6 All information provided by the tenderer pursuant to these requirements must be complete, current, and accurate as at the date of provision to the Procuring Entity. In submitting the information required pursuant to these requirements, the Tenderer shall warrant that the information submitted is complete, current, and accurate as at the date of submission to the Procuring Entity.

17.7 If a tenderer fails to submit the information required by these requirements, its tender will be rejected. Similarly, if the Procuring Entity is unable, after taking reasonable steps, to verify to a reasonable degree the information submitted by a tenderer pursuant to these requirements, then the tender will be rejected.

17.8 If information submitted by a tenderer pursuant to these requirements, or obtained by the Procuring Entity (whether through its own enquiries, through notification by the public or otherwise), shows any conflict of interest which could materially and improperly benefit the tenderer in relation to the procurement or contract management process, then:

- (i) If the procurement process is still ongoing, the tenderer will be disqualified from the procurement process,
- (ii) if the contract has been awarded to that tenderer, the contract award will be set aside,
- (iii) the tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other persons have committed any criminal offence.

17.9 If a tenderer submits information pursuant to these requirements that is incomplete, inaccurate, or out-of-date, or attempts to obstruct the verification process, then the consequences ITT 17.8 will ensue unless the tenderer can show to the reasonable satisfaction of the Procuring Entity that any such act was not material or was due to genuine error or which was not attributable to the intentional act, negligence, or recklessness of the tenderer.

18. Documents Establishing the Eligibility and Qualifications of the Tenderer

18.1 To establish Tenderer's their eligibility in accordance with ITT 4, Tenderers shall complete the *Form of Tender* and *Section IV, Tendering Forms*.

18.2 The documentary evidence of the Tenderer's qualifications to perform the Contract if its Tender is accepted shall establish to the Procuring Entity's satisfaction that the Tenderer meets each of the qualification criterion specified in *Section III, Evaluation and Qualification Criteria*.

18.3 In the event that pre-qualification of Tenderers has been undertaken as stated **in the TDS**, only Tenders from pre-qualified Tenderers shall be considered for award of Contract. These qualified Tenderers should submit with their Tenders any information updating their original pre-qualification applications.

18.4 If pre-qualification has *not* taken place before Tendering, the qualification criteria for the Tenderers are specified in Section III, Evaluation and Qualification Criteria shall apply.

19. Period of Validity of Tenders

19.1 Tenders shall remain valid for the Tender Validity period specified **in the TDS**. The Tender Validity period starts from the date fixed for the Tender submission deadline date

(as prescribed by the Procuring Entity in accordance with ITT 23.1). A tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.

19.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 20, it shall also be extended for a corresponding period. A Tenderer may refuse the request without forfeiting its Tender Security. A Tenderer granting the request shall not be required or permitted to modify its Tender.

20. Tender Security

20.1 The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender security, as specified **in the TDS**, in original form and, in the case of a Tender Security, in the amount and currency specified **in the TDS**.

20.2 A Tender Securing Declaration shall use the form included in Section IV, Tendering Forms.

20.3 If a Tender Security is specified pursuant to ITT 20.1, from a reputable source, and an eligible country and shall be in any of the following forms at the Tenderer's option as specified in the **TDS**:

- i) cash;
- ii) a bank guarantee;
- iii) a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Authority; or
- iv) a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya.

20.4 If a Tender Security is specified pursuant to ITT 20.1, any Tender not accompanied by a substantially responsive Tender Security shall be rejected by the Procuring Entity as non-responsive.

20.5 If a Tender Security is specified pursuant to ITT 20.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's signing the contract and furnishing the Performance Security pursuant to ITT 47. The Procuring Entity shall also promptly return the tender security to the tenderers where the procurement proceedings are terminated, all tenders were determined nonresponsive, or a bidder declines to extend tender validity period.

20.6 The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required Performance Security.

20.7 The Tender Security may be forfeited, or the Tender-Securing Declaration executed:

- a) If a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer in the Form of Tender, or any extension thereto provided by the Tenderer; or
- b) If the successful Tenderer fails to:
 - i) Sign the Contract in accordance with ITT 46; or
 - ii) Furnish a performance security in accordance with ITT 47.

20.8 Where tender securing declaration is executed, the Procuring Entity shall recommend to the PPRA that PPRA debar the Tenderer from participating in public procurement as provided in the law.

20.9 A tenderer shall not issue a tender security to guarantee itself.

21. Format and Signing of Tender

- 21.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 12, bound with the volume containing the Form of Tender, and clearly marked “Original.” In addition, the Tenderer shall submit copies of the Tender, in the number specified in the **TDS**, and clearly marked as “Copies.” In the event of discrepancy between them, the original shall prevail.
- 21.2 Tenderers shall mark as “CONFIDENTIAL” information in their Tenders which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.
- 21.3 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the **TDS** and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person signing the Tender.
- 21.4 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

D. Submission and Opening of Tenders

22 Sealing and Marking of Tenders

- 22.1 The Tenderer shall deliver the Tender in a single, sealed envelope. Within the single envelope the Tenderer shall place the following separate, sealed envelopes:
- a) In an envelope marked “ORIGINAL”, all documents comprising the Tender, as described in ITT 12; and
 - b) in an envelope marked “COPIES”, all required copies of the Tender; and
 - c) if alternative Tenders are permitted in accordance with ITT14, and if relevant:
 - i) in an envelope marked “ORIGINAL-ALTERNATIVETENDER”, the alternative Tender; and
 - ii) in the envelope marked “COPIES –ALTERNATIVE TENDER” all required copies of the alternative Tender.
- 22.2 The inner envelopes shall:
- a) Bear the name and address of the Tenderer;
 - b) Be addressed to the Procuring Entity in accordance with ITT 23;
 - c) Bear the specific identification of this Tendering process specified in accordance with **TDS 1.1**; and
 - d) Bear a warning not to open before the time and date for Tender opening.
- 22.3 The outer envelope shall:
- a) Be addressed to the Procuring Entity in accordance with ITT 23.1;
 - b) bear the specific identification of this Tendering process specified in accordance with **TDS 1.1**; and
 - (c) Bear a warning not to open before the time and date for Tender opening.
- 22.4 If all envelopes are not sealed and marked as required, the Procuring Entity will assume no responsibility for the misplacement or premature opening of the Tender. Tenders that were misplaced or opened prematurely will be not be accepted.

23 Deadline for Submission of Tenders

- 23.1 Tenders must be received by the Procuring Entity at the address and no later than the date and time specified **in the TDS**. When so specified **in the TDS**, Tenderers shall

have the option of submitting their Tenders electronically. Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedures specified **in the TDS**.

23.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the tendering document in accordance with ITT 9, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

24. Late Tenders

24.1 The Procuring Entity shall not consider any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT 23. Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

25. Withdrawal, Substitution and Modification of Tenders

25.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization (the power of attorney) in accordance with ITT 21.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:

- a) Prepared and submitted in accordance with ITT 21 and ITT 22 (except that with draw all notices do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL,” “SUBSTITUTION,” or “MODIFICATION;” and
- b) Received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT 23.

25.2 Tenders requested to be withdrawn in accordance with ITT 25.1 shall be returned unopened to the Tenderers.

25.3 No Tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Tenderer on the Form of Tender or any extension thereof.

26. Tender Opening

26.1 Except as in the cases specified in ITT 23 and ITT 25.2, the Procuring Entity shall, at the Tender opening, publicly open and read out all Tenders received by the deadline at the date, time and place specified in the **TDS** in the presence of Tenderers' designated representatives and anyone who choose to attend. Any specific electronic Tender opening procedures required if electronic tendering is permitted in accordance with ITT 23.1, shall be as specified **in the TDS**.

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

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

26.4 Next, envelopes marked “MODIFICATION” shall be opened and read out with the

corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening.

- 26.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the total Tender Prices, per lot (contract) if applicable, including any discounts and alternative Tenders; the presence or absence of a Tender Security or Tender-Securing Declaration, if required; and any other details as the Procuring Entity may consider appropriate.
- 26.6 Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further. The Form of Tender and the priced Schedule of Insurance Requirements are to be initialed by representatives of the Procuring Entity attending Tender opening in the manner specified in the **TDS**.
- 26.7 The Procuring Entity shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT 24.1).
- 26.8 The Procuring Entity shall prepare a record of the Tender opening that shall include, as a minimum:
- a) the name of the Tenderer and whether there is a withdrawal, substitution, or modification;
 - b) the Tender Price, per lot (contract) if applicable, including any discounts; and
 - c) any alternative Tenders;
 - d) the presence or absence of a Tender Security or Tender-Securing Declaration, if one was required.
 - e) Number of pages of each tender document submitted.
- 26.9 The Tenderers' representatives who represent shall be requested to sign the record. The omission of a Tenderer's signature on the record shall not invalidate the contents and effect of the record. A copy of the tender opening register shall be issued to a tenderer upon request.

E. Evaluation and Comparison of Tenders

27. Confidentiality

- 27.1 Information relating to the evaluation of Tenders and recommendation of contract award, shall not be disclosed to Tenderers or any other persons not officially concerned with the Tendering process until information on the Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 41.
- 27.2 Any effort by a Tenderer to influence the Procuring Entity in the evaluation or contract award decisions may result in the rejection of its Tender.
- 27.3 Notwithstanding ITT 27.2, from the time of Tender opening to the time of Contract Award, if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tendering process, it should do so in writing.

28 Clarification of Tenders

- 28.1 To assist in the examination, evaluation, and comparison of Tenders, and qualification of the Tenderers, the Procuring Entity may, at the Procuring Entity's discretion, ask any Tenderer for clarification of its Tender including breakdowns of the prices in the Activity Schedule, and other information that the Procuring Entity may require. Any clarification submitted by a Tenderer in respect to its Tender and that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the Tenders, in accordance with ITT 32.

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

29 Deviations, Reservations, and Omissions

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

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

30 Determination of Responsiveness

30.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT 12.

30.2 A substantially responsive Tender is one that meets the requirements of the tendering document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:

- a) If accepted, would:
 - i) Affect in any substantial way the scope, quality, or performance of the Insurance Services specified in the Contract; or
 - ii) Limit in any substantial way, inconsistent with the tendering document, the Procuring Entity's rights or the Tenderer's obligations under the Contract; or
- b) if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.

30.3 The Procuring Entity shall examine the technical aspects of the Tender submitted in accordance with ITT 17 and ITT 18, in particular, to confirm that all requirements of *Part II Schedule of Insurance Requirements* have been met without any material deviation or reservation, or omission.

31 Non-conformities, Errors and Omissions

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

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

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

32 Arithmetical Errors

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

32.2 Provided that the Tender is substantially responsive, the Procuring Entity shall handle errors on the following basis:

- a) Any error detected if considered a major deviation that affects the substance of the

tender, shall lead to disqualification of the tender as non-responsive.

b) Any errors in the submitted tender arising from a miscalculation of unit price, quantity, sub-total, and total bid price shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of the tender as non-responsive, and

c) If there is a discrepancy between words and figures, the amount in words shall prevail

32.3 Tenderers shall be notified of any error detected in their bid during the notification of award

33. Comparison of Tenders and Conversion to Single Currency

33.1 The Procuring Entity shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 35.2 to determine the Tender that has the lowest evaluated cost. The comparison shall be on the basis of total cost prices for each offered insurance service.

33.2 For evaluation and comparison purposes, the currency(ies) of the Tender shall be converted in a single currency as specified **in the TDS**. The source of exchange rate and the date of such exchange rate shall also be specified in the **TDS**.

34. Margin of Preference and Reservations

34.1 A margin of preference on local insurance providers may be allowed only when the contract is open to international competitive tendering where foreign contractors are expected to participate in the tendering process and where the contract exceeds the value/threshold specified in the Regulations.

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

34.3 Contracts procured on basis of international competitive tendering shall not be subject to reservations exclusive to specific groups as provided in ITT 34.4.

34.4 Where it is intended to reserve a contract to a specific group of businesses (these groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case maybe), and who are appropriately registered as such by a competent authority, a procuring entity shall ensure that the invitation to tender specifically indicates that only businesses or firms belonging to the specified group are eligible to tender. No tender shall be reserved to more than one group. If not so stated in the Invitation to Tender and in the Tender documents, the invitation to tender will be open to all interested tenderers.

35. Evaluation of Tenders

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

- a) Substantially responsive to the tendering document; and
- b) The lowest evaluated cost.

35.2 In evaluating the Tenders, the Procuring Entity will determine for each Tender the Evaluated Tender Price by adjusting the Tender price as follows:

- a) Prices offered by the Tenderer, corrected appropriately in accordance with ITT 32;
- b) Price adjustment due to discounts offered in accordance with ITT 15.3;
- c) converting the amount resulting from applying (a) and (b) above, if allowed, to a single currency in accordance with ITT 33.2;

d) apply the additional evaluation factors are specified in *Section III, Evaluation and Qualification Criteria*.

35.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in Tender evaluation.

35.4 Where the tender involves multiple service in items, the tenderer will be allowed to tender for one or more items. Each item will be evaluated in accordance with ITT 35.2. The methodology to determine the lowest evaluated tenderer or tenderers will be base done each item and not a combination of items.

36. Comparison of Tenders

36.1 The Procuring Entity shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 35 to determine the Tender that has the lowest evaluated cost.

37. Abnormally Low Tenders and Abnormally high tenders

Abnormally Low Tenders

37.1 An Abnormally Low Tender is one where the Tender price, in combination with other constituent elements of the Tender, appears unreasonably low to the extent that the Tender price raises material concerns as to the capability of the Tenderer to perform the Contract for the offered Tender price or that genuine competition between Tenderers is compromised.

37.2 In the event of identification of a potentially Abnormally Low Tender by the evaluation committee, the Procuring Entity shall seek written clarifications from the Tenderer, including detailed price analysis of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the tendering document.

37.3 After evaluation of the price analyses, in the event that the Procuring Entity determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, the Procuring Entity shall reject the Tender.

Abnormally High Tenders

37.4 An abnormally high tender price is one where the tender price, in combination with other constituent elements of the Tender, appears unreasonably too high to the extent that the Procuring Entity is concerned that it (the Procuring Entity) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Tenderers is compromised.

37.5 In case of an abnormally high price, the Procuring Entity shall make a survey of the market prices, check if the estimated cost of the contract is correct and review the Tender Documents to check if the specifications, scope of work and conditions of contract are contributory to the abnormally high tenders. The Procuring Entity may also seek written clarification from the tenderer on the reason for the high tender price. The Procuring Entity shall proceed as follows:

i) If the tender price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the tender depending on the Procuring Entity's budget considerations.

ii) If specifications, cope of work and/or conditions of contract are contributory to the abnormally high tender prices, the Procuring Entity shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work and conditions of contract, as the case may be.

37.6 If the Procuring Entity determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (*often due to collusion*,

corruption or other manipulations), the Procuring Entity shall reject all Tenders and shall institute or cause relevant Government Agencies to institute an investigation on the cause of the compromise, before retendering.

38. Qualification of the Tenderer

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

38.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT 18. The determination shall not take into consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates, subcontractors or any other firm(s) different from the Tenderer that submitted the Tender.

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

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

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

F. Award of Contract

40. Award Criteria

40.1 Subject to ITT 39.1 the Procuring Entity shall award the Contract to the successful Tenderer. This is the Tenderer whose bid has been determined to be the lowest evaluated bid. This is the bid of the Tenderer that meets the qualification criteria and whose bid has been determined to be substantially responsive to the tender documents, and the lowest evaluated cost.

41. Notice of Intention to enter into a Contract

41.1 Upon award of the contract and prior to the expiry of the Tender Validity Period the Procuring Entity shall issue a Notification of Intention to Enter into a Contract/Notification of Award to the successful Tenderer, in writing, that its bid has been accepted. The notification letter shall specify the sum the Procuring Entity will pay the Tenderer in consideration of the insurance services, hereinafter and in the Contract Forms called "the Contract Price".

41.2 At the same time, the Procuring Entity shall also notify all unsuccessful Tenderers of the results of the tendering process. The notification to unsuccessful Tenderers shall contain at a minimum the following information: (a) the name and address of successful tenderer, (b) the Contract Price of the successful tenderer, (c) the reason why the tender was successful in accordance with Section 86(1), (d) the reasons why the unsuccessful tender was unsuccessful, (e) instructions on how to request a debriefing or submission of a complaint within the Standstill Period.

42. Standstill Period

42.1 The Contract shall not be signed earlier than the expiry of a Standstill Period of 14 days to allow any dissatisfied tender to launch a complaint. Where only one Tender is submitted, the Standstill Period shall not apply.

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

43. Debriefing by the Procuring Entity

43.1 On receipt of the Procuring Entity's Notification of Intention to Enter into a Contract/Notification of Award referred to in ITT 41, an unsuccessful tenderer may make a written request to the Procuring Entity for a debriefing on specific issues or concerns regarding their tender. The Procuring Entity shall provide the debriefing within five days of receipt of the request.

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

44. Negotiations

44.1 The negotiations shall be held at the place indicated in the **TDS** with the Tenderer's representative(s) who must have written power of attorney to negotiate and sign a Contract on behalf of the Tenderer. The Procuring Entity will negotiate a contract and the terms of the Insurance Policy to be provided.

44.2 The negotiations shall start with discussions of the scope of the terms and conditions of the Policy, its conformity to the Procuring Entity's insurance service requirements, the conditions, and circumstances under which the insured will be financially compensated, and the items that would need to be attended to before the contract is signed and an Insurance Policy issued. These discussions shall not substantially alter the original scope of the Procuring Entity's insurance requirements. The items that would need to be attended to by the Procuring Entity before the contract is signed and an Insurance Policy issued should not be so extended as to render the scope of the required service and its price different from the Procuring Entity's insurance service requirements.

44.3 The Procuring Entity shall prepare minutes of negotiations that are signed by the Procuring Entity and the Tenderers' authorized representative.

45. Letter of Award

45.1 Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 42.1, upon addressing a complaint that has been filed within the Standstill Period, the Procuring Entity shall transmit the Letter of Award to the successful Tenderer. The Letter of Award shall request the successful tenderer to furnish the Performance Security within 21 days of the date of the letter.

46. Signing of Contract

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

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

46.3 The written contract shall be entered into within the period specified in the notification of award and before expiry of the tender validity period, and upon the successful Tenderer furnishing a Performance Security where required under ITT 47

47. Performance Security

47.1 Within twenty-one (21) days of the receipt of the Letter of Award from the Procuring Entity, the successful Tenderer shall furnish the Performance Security and, any other documents required in the **TDS**, in accordance with the General Conditions of Contract, using the Performance Security and other Forms included in *Section VIII, Contract Forms*. A foreign institution providing a bank guarantee shall have a correspondent financial institution located in Kenya, unless the Procuring Entity has agreed in writing

that a correspondent bank is not required.

47.2 Failure of the successful Tenderer to submit the Performance Security and other documents required in the **TDS** or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security. In that event the Procuring Entity may award the Contract to the Tenderer offering the next Lowest Evaluated Cost.

47.3 Performance security shall not be required for services contracts less than Kenya Shillings five million. Where performance security is required for women, youth and persons with disabilities and other disadvantaged groups, it shall not exceed one per cent of the Contract Price.

48. Publication of Procurement Contract

48.1 Within fourteen days after signing the contract, the Procuring Entity shall publish the contract award notice on its notice boards and websites and on the website of the PPRA tender portal. At the minimum, the notice shall contain the following information:

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

49. Procurement Related Complaint and Administrative Review

49.1 The procedures for making Procurement-related Complaints are as specified in the **TDS**.

49.2 A request for administrative review shall be made in the form provided under Contract Forms.

SECTION II - TENDER DATA SHEET (TDS)

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

| ITT Clause | A. General |
|--|--|
| ITT 1.1 | The Procuring Entity is Kenya Medical Supplies Authority (KEMSA) The Tender reference number (ITT) is: KEMSA-ONT09-2023/2024 The name of the Invitation to Tender is Provision of Insurance Services for one Year Renewable |
| ITT 2.1(a) | Electronic –Procurement System The Procuring Entity website: www.kemsa.co.ke or www.tenders.go.ke The electronic-procurement system shall be used to manage the following aspects of the Tendering process: <i>Issuing tendering documents, issuance of addenda, issuance of tender clarifications, publication of contract award notice.</i> |
| ITT 2.2 | The intended date for commencing providing the Insurance Services is: date of contract signing |
| ITT 2.2 | The insurance duration for each item will be: 1 year Renewable |
| ITT 3.3 | The information made available on competing firms is as follows: none. |
| ITT 4.1 | Maximum number of members in the Joint Venture (JV) shall be: 2 (two) |
| B. Contents of Tendering Document | |
| ITT 7.1 8.1 | (i) The Tenderer will submit any request for clarifications in writing at the Address shown in ITT 8.1 to reach the Procuring Entity not later than 7 days to the bid submission deadline. (ii) The Procuring Entity shall publish its response at the website: www.kemsa.co.ke |
| ITT 7.2 | (A) A pre-arranged pretender site visit <i>shall</i> take place at the following date, time, and place: Date: Time: Place: Not Applicable (B) Pre-tender meeting <i>shall</i> take place at the following date, time and place: Date: Time: Place: Not Applicable |
| ITT 7.3 | The Tenderer will submit any questions in writing, to reach the Procuring Entity not later than seven days to the deadline for submission of bids. |
| ITT 7.5 | The Procuring Entity’s website where Minutes of the pre-Tender meeting and the pre-arranged pretender will be published is www.kemsa.co.ke Not Applicable |
| ITT 8.1 | For Clarification of Tender purposes only, the Procuring Entity’s address is: Kenya Medical Supplies Authority Attention: The Chief Executive Officer Postal Address: P. O. Box 47715 Nairobi, Kenya Physical Address: 13 Commercial Street, Industrial Area Telephone: +254 20 3922000/537670/1/2/3 Electronic mail address: procure@kemsa.co.ke Requests for clarification should be received by the Procuring Entity no later than 7 days to closing date of the tender. Web page: www.tenders.go.ke |

| | | | | | | | | | | | |
|------------------------------|--|-----|------------------------------|------|-------------------|------|------------------|-----|-----------------|----------------|----|
| ITT 12.1 (j) | The Tenderer shall submit the following additional documents in its Tender: Support Documents under Tendering Forms and others specified under Section III Evaluation and Qualification Criteria shall be submitted as annexes to the tender. | | | | | | | | | | |
| ITT 14.1 | Alternative Tenders <i>shall not be</i> considered. | | | | | | | | | | |
| ITT 15.5 | The prices quoted by the Tenderer <i>shall not</i> be subject to adjustment during the performance of the Contract. | | | | | | | | | | |
| ITT 16.1 | The currency of the Tender and the currency of payments shall be Kenya Shillings | | | | | | | | | | |
| ITT 18.3 | Prequalification <i>has not been</i> undertaken. | | | | | | | | | | |
| ITT 19.1 | The Tender validity period shall be 120 days | | | | | | | | | | |
| ITT 20.1 | <p><i>If a Tender Security shall be required, a Tender-Securing Declaration shall not be required, and vice versa.</i></p> <p>A Tender Security <i>shall be</i> required. A Tender-Securing Declaration <i>shall not be</i> required.</p> <p>If a Tender Security shall be required, the amount and currency of the Tender Security shall be KE 180,000.00 from a bank recognized by the Central Bank of Kenya and valid for 150 days from the date of tender opening / closing. The tender security must be in its original form.</p> | | | | | | | | | | |
| ITT 20.3 | <p><i>The form of the tender security shall be:</i></p> <table border="1"> <tr> <td>(i)</td> <td>Cash</td> <td>No</td> </tr> <tr> <td>(ii)</td> <td>Bank Guarantee</td> <td>Yes</td> </tr> <tr> <td>(iii)</td> <td>Insurance Bond</td> <td>No</td> </tr> </table> | | (i) | Cash | No | (ii) | Bank Guarantee | Yes | (iii) | Insurance Bond | No |
| (i) | Cash | No | | | | | | | | | |
| (ii) | Bank Guarantee | Yes | | | | | | | | | |
| (iii) | Insurance Bond | No | | | | | | | | | |
| ITT 21.1 | In addition to the original of the Tender, the number of copies is: 1 (one) | | | | | | | | | | |
| ITT 21.3 | The written confirmation of authorization to sign on behalf of the Tenderer shall consist of: A Written Power of Attorney | | | | | | | | | | |
| | D. Submission and Opening of Tenders | | | | | | | | | | |
| ITT 23.1 | <p>For <u>Tender submission purposes</u> only, the Procuring Entity's address is:</p> <p>Attention: Chief Executive Officer</p> <p>Postal Address: P. O. Box 47715 Nairobi, Kenya</p> <p>Physical Address: 13 Commercial Street, Industrial Area</p> <p>The deadline for Tender submission is 21st August, 2023</p> <p>Tenderers <i>shall not</i> have the option of submitting their Tenders electronically.</p> <p>The electronic Tender submission procedures shall be: Not Applicable</p> | | | | | | | | | | |
| ITT 26.1 | <p>The Tender opening shall take place at:</p> <p>Physical Address: Kenya Medical Supplies Authority 13 Commercial Street, Industrial Area At KEMSA's Tender Opening Hall</p> <p>Date: 21st August, 2023</p> <p>Time: 10:00am East African Time</p> | | | | | | | | | | |
| ITT 26.1 | The electronic Tender opening procedures shall be: Not Applicable | | | | | | | | | | |
| ITT 26.6 | The Form of Tender and priced Schedule of requirements shall be initialed by Members of the Tender Opening Committee and the Secretary. | | | | | | | | | | |
| | E. Evaluation and Comparison of Tenders | | | | | | | | | | |
| ITT 33.2 | The currency shall be Kenya Shillings and the source of exchange rate shall be Central Bank of Kenya as on deadline date for submission of tenders. | | | | | | | | | | |
| ITT 34.2 | Margin of preference shall <i>not be allowed.</i> | | | | | | | | | | |
| ITT 34.2 | <p>The invitation to tender is extended to the following group that qualify for Reservations who shall be duly registered with the National Treasury. Not Applicable</p> <table border="1"> <tr> <td>Small and Medium Enterprises</td> <td>No</td> </tr> <tr> <td>Women Enterprises</td> <td>No</td> </tr> <tr> <td>Youth Enterprise</td> <td>No</td> </tr> <tr> <td>PWD Enterprises</td> <td>No</td> </tr> </table> | | Small and Medium Enterprises | No | Women Enterprises | No | Youth Enterprise | No | PWD Enterprises | No | |
| Small and Medium Enterprises | No | | | | | | | | | | |
| Women Enterprises | No | | | | | | | | | | |
| Youth Enterprise | No | | | | | | | | | | |
| PWD Enterprises | No | | | | | | | | | | |

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|-----------------|--|
| | F. Award of Contract |
| ITT 44.1 | The negotiations will be held at KEMSA Head Office Nairobi, Kenya |
| ITT 47.1 | The other required documents to be furnished by the successful Tenderer are: <p style="text-align: center;">(a) Letter of acceptance of award (b) Proposed insurance Policy (c) Performance Security (d) Duly filled Beneficial Ownership Information Disclosure Form</p> |
| ITT 49.1 | The procedures for making a Procurement-related Complaint are available from the PPRA Website www.ppra.go.ke or email complaints@ppra.go.ke . If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to: For the attention: Board Secretary Title/position: Board Secretary Procuring Entity: Public Procurement Administrative Board Email address: complaints@ppra.go.ke . In summary, a Procurement-related Complaint may challenge any of the following: (i) the terms of the Tender Documents; and (ii) the Procuring Entity's decision to award the contract. |

SECTION III - EVALUATION AND QUALIFICATION CRITERIA

3.1. GENERAL PROVISION

This *Section III Evaluation and Qualification Criteria* contains the criteria that the Employer shall use to evaluate and qualify tenderers. No other factors, methods or criteria shall be used other than specified in this tender document. The Tenderer shall provide all the information requested in the forms included in *Section IV, Tendering Forms*.

Wherever a Tenderer is required to state a monetary amount, Tenderers should indicate the Kenya Shilling equivalent using the rate of exchange determined as follows:

- (a) For business turnover or financial data required for each year: Use the exchange rate prevailing on the last day of the respective calendar year (in which the amount for that year is to be converted) was originally established.
- (b) Value of single contract: use the exchange rate prevailing on the date of the contract signature.
- (c) Exchange rates shall be taken from the publicly available source identified in the ITT. Any error in determining the exchange rates in the Tender may be corrected by the Procuring Entity.

3.2. MANDATORY ELIGIBILITY CRITERIA

The Procuring Entity will start the evaluation of Tenderers by examining all tenders to ensure they meet in all respects the eligibility criteria and other mandatory requirements in the Instructions to Tender (ITT) and the Tender Datasheet (TDS), and that the tender is complete in all aspects in meeting the requirements provided for in the mandatory eligibility criteria outlined below. Tenders that do not pass the mandatory eligibility criteria at the preliminary examination stage will be considered non-responsive and will not be considered further in evaluation.

| <i>No.</i> | <i>Subject</i> | <i>Eligibility Criteria</i> | <i>Required Documentary Evidence</i> |
|------------|------------------------|---|--|
| 1 | Completeness of Tender | The Tenderer shall submit a complete bid using the documents comprising the tender as defined under ITT 12. | (a) Tendering Forms (b) Support Documents |
| 2 | Legal Capacity | The Tenderer shall have legal capacity to enter a contract. | (a) Certificate of Incorporation (b) Tenderer Information Form (c) Power of Attorney (d) Letter of Intent or Agreement, for Joint Ventures, if allowed. |
| 3 | Tender Validity | The Tenderer guarantees that it shall not withdraw its bid, refuse to sign the contract if awarded, or fail to furnish any required performance security. | (a) Tender valid for the required period under Data Sheet ITT 19.1 (b) Original Tender Security in the amount and form as provided in Data Sheet ITT 20.1 |
| 4 | Tax Compliance | The Tenderer has fulfilled tax obligations. | (a) Valid Tax compliance certificate from Kenya Revenue Authority. (b) County Single Business Permit 2023 |
| 5 | Underwriter | The Tenderer shall be registered and with an insurance license as fire and perils, plant and machinery breakdown and stock deterioration Insurance Provider | License from the Insurance Regulatory Authority (IRA). |
| 6 | Broker | The Tenderer shall be registered as a broker | License from the Insurance Regulatory Authority (IRA). |
| 7 | Professionalism | The Tenderer as a member of a regulated profession shall have satisfied all the professional requirements. | Membership certificate of the Association of Kenya Insurers (AKI). |

| | | | |
|----|--|---|---|
| | | | Membership certificate of the Association of Insurance Brokers of Kenya (AIBK) |
| 8 | Insolvency | The Tenderer shall not be insolvent, in receivership, or on the process of being wound up. | Form of Tender on the tenderer's company letter head |
| 9 | PPRA Eligibility | (i) The Tenderer is not precluded by the PPRA to enter a contract with the Procuring Entity. (ii) The Tenderer or its subcontractors have not been debarred from participating in procurement proceedings. | (a) Form of Tender on the tenderer's company letter head (b) Self-Declaration Form SD1 (c) Appendix 1-Fraud and Corruption |
| 10 | Corrupt Practice | The Tenderer has not been convicted of corrupt or fraudulent practices. | (a) Form of Tender on the tenderer's company letter head (b) Certificate of Independent Price Determination (c) Self-Declaration on Corrupt Practice SD2 (d) Appendix 1-Fraud and Corruption (e) Declaration and Commitment to the Code of Ethics |
| 11 | Conflict of Interest | The Tenderer has no conflict of interest and meets all eligibility requirements under ITT 4. | (a) Form of Tender on the tenderer's company letter head (b) Confidential Business Questionnaire (c) Self-Declaration on Corrupt Practice SD2 (d) CR12 dated within last 30 days of submission deadline. (e) Beneficial Ownership Certificate |
| 12 | Nationality | The Tenderer shall have its nationality in accordance with ITT 4.5 | (a) Tenderer Information Form (b) Confidential Business Questionnaire |
| 13 | State Owned Enterprise | The Tenderer, if a state-owned enterprise, meets the conditions under ITT 4.7. | Form of Tender on the tenderer's company letter head |
| 14 | Suspension Based on Execution of Tender Securing Declaration | The Tenderer and subcontractors are not under suspension based on-execution of a Tender Securing Declaration pursuant to ITT 20.7 and 20.8 | Form of Tender on the tenderer's company letter head |
| 15 | Goods, equipment, and services to be supplied under the contract | To have their origin in any country that is not determined to be ineligible under ITT 4.5 | Form of Tender on the tenderer's company letter head |

| NO. | MANDATORY ELIGIBILITY CRITERIA Continued.. | YES /NO |
|-----|---|---------|
| 16 | 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). The numbering MUST be sequential. All pages whether blank, back to back including dividers, bid security and price schedule MUST be paginated/ serialized with indelible ink . | |
| 17 | An underwriter can only give one broker an authorization to offer the services: That is, one underwriter, one broker. | |
| 18 | An underwriter cannot participate in the bidding process if it has given an authorization to a broker. | |
| 19 | Brokers Must Provide duly signed underwriter's Authorization | |
| 20 | Rebating is not allowed | |
| 21 | Brokers Must submit original Underwriter's quotation. | |
| 22 | Must Provide Current CR12 (dated within the last 30 days from date of submission of bids) certified by commissioner of oaths and accompanied by copies of IDs of the Director (s). | |
| 23 | Brokers Must provide tender document of the proposed underwriter for preliminary and technical evaluation | |
| 24 | Underwriters Must Provide current Credit rating certificate with the status "POSITIVE OR STABLE" | |

3.3. TECHNICAL EVALUATION CRITERIA

- (1) The Tenderers that pass the Mandatory Eligibility Criteria shall next be subjected to detailed technical evaluation to establish if the offered insurance services conform to the required insurance service specifications.
- (2) To establish the conformity of the offered insurance services to the tendering document, the Tenderer shall furnish as part of its tender the documentary evidence that the Services provided conform to the insurance service specifications and standards specified in *Section V Schedule of Insurance Requirements*, using particularly the *Technical Proposal Form* and other forms provided under *Section IV Tendering Forms*.
- (3) Pursuant to ITT 30.3, using the format in the table below, the Procuring Entity shall examine the technical aspects of the Tender submitted in accordance with ITT 17 and ITT 18 to confirm that all requirements of *Section V, Schedule of Insurance Requirements* and summarized in the second column in the table below, have been met without any material deviation or reservation, or omission.

| <i>No.</i> | <i>Required Insurance Service Specifications</i> | <i>Tenderer's Offered Insurance Services</i> | <i>Conform/ Not Conform</i> | <i>Major/Minor Deviation, Reservation or Omission</i> | <i>Comment</i> |
|------------|---|--|-----------------------------|---|----------------|
| 1 | The Tenderer must adhere to and fully provide for services regarding Group Personal Accident (KEMSA Board Directors' Cover), GPA WIBA for staff, Employers Liability Policy and International Travel Policy as provided under <i>Section V Schedule of Insurance Requirements</i> . | | | | |
| 2 | Provide detailed evidence of claims paid totaling to or more than 10 million from atleast 5 clients within the last 2 years (2021, 2022) submit copies of bank slips as evidence | | | | |
| 3 | The bidder must indicate the procedure and timelines for processing of Claims. | | | | |
| 4 | The Tenderer must indicate the claims reimbursement procedure and timelines for cash refunds. | | | | |
| 5 | Underwriters Must Provide letter of credit worthiness from the insurance bankers | | | | |
| 6 | Underwriters Must Provide a list of all the exclusions. If it does not have any exclusions, confirm the same in writing. | | | | |

- (4) Where alternative tenders are permitted under ITT 14.1, the methodology for technical evaluation shall be as follows. The Procuring Entity shall consider Tenders offered for alternatives as specified in Part II- Procuring Entity's Insurance Requirements. Only the technical alternatives, if any, of the Tenderer with the Best Evaluated Tender conforming to the basic technical requirements shall be considered by the Procuring Entity. **Not Applicable.**
- (5) If a Tender is not substantially responsive to the technical criteria of tender document, it shall be rejected by the Procuring Entity and shall not be considered further in evaluation.

3.4. QUALIFICATION EVALUATION CRITERIA

The Tenderers that pass the *technical evaluation criteria* shall be subjected to the post-qualification evaluation. The tender was not subject to pre-qualification procedure; hence the tenders shall be evaluated to check if they meet the following post *qualification evaluation criteria* on **pass/fail** basis. Any Tenderer that does not meet the qualification criteria shall be disqualified and shall not be considered further in evaluation.

| No. | Qualification Evaluation Criteria | Required Documentary Evidence | | | | | | | | | | |
|-----|---|---|---|-------------------------------------|---|-------------------------------------|---|-------------|---|---|----|--|
| 1 | The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the following cash flow requirement of Kenya Shillings 16 million equivalents. | (a) Form 15: Financial Sources (b) Letter from a bank recognized in Kenya. (c) Audited Accounts and Financial Statements for the latest 3 years: 2019, 2020, 2021. | | | | | | | | | | |
| 2 | <p>The Tenderer shall submit <i>audited accounts and financial statements</i> acceptable to the Procuring Entity, for the last three years (2019, 2020, 2021) to demonstrate the current soundness of the Tenderer's financial position and its prospective long-term profitability as follows:</p> <p>(1) The Current Ratio [Current Assets divided by Current Liabilities] shall be greater than 1 (one) for each of the three years.</p> <p>(2) The Net worth [Total Assets Less Total Liabilities] shall be positive for each of the three years.</p> <p>(3) The Return on Equity [Annual Net Income divided by the Net-Worth, expressed as a percentage] shall be greater than 1 (one) % for each of the three years.</p> <p>(4) The Debt Ratio [Total Liabilities divided by Total Assets] shall be less than 1 (one) for each of the three years.</p> | (a) Form 14: Financial Situation and Performance (b) Audited Accounts and Financial Statements | | | | | | | | | | |
| 3 | At least 5 (five) contracts of a similar nature for GPA/WIBA <i>insurance cover</i> that have been satisfactorily and substantially completed as a prime service provider, or joint venture member, or sub-contractor <i>each</i> of minimum value of Kenya shillings 5 million equivalent rendered within the last three years of 2020, 2021 and 2022 . | (a) Form 16: Similar Experience Form (b) Service Completion Certificates, contract agreement, for each of the similar services in Form 16 Similar Experience Form c. Underwriters to submit IRA extract report | | | | | | | | | | |
| 7 | <p>Key Personnel: The Tenderer shall provide evidence of key personnel suitably qualified and experienced that will administer the contract and meet the requirements below to be assessed on pass/fail basis. Must attach copies of CV, both academic and professional certificates of each member listed as proof of qualifications</p> <table border="1" data-bbox="245 1921 1117 2123"> <thead> <tr> <th data-bbox="245 1921 290 2024">#</th> <th data-bbox="290 1921 472 2024">Key Position</th> <th data-bbox="472 1921 544 2024">No.</th> <th data-bbox="544 1921 895 2024">Minimum Academic and Professional Qualification</th> <th data-bbox="895 1921 1117 2024">Minimum Years of Similar Experience</th> </tr> </thead> <tbody> <tr> <td data-bbox="245 2024 290 2123">1</td> <td data-bbox="290 2024 472 2123">Team Leader</td> <td data-bbox="472 2024 544 2123">1</td> <td data-bbox="544 2024 895 2123">Must have at least a Master's degree in law, Business Administration,</td> <td data-bbox="895 2024 1117 2123">15</td> </tr> </tbody> </table> | # | Key Position | No. | Minimum Academic and Professional Qualification | Minimum Years of Similar Experience | 1 | Team Leader | 1 | Must have at least a Master's degree in law, Business Administration, | 15 | (a) Form 18: Key Personnel complete with academic and professional certificates. |
| # | Key Position | No. | Minimum Academic and Professional Qualification | Minimum Years of Similar Experience | | | | | | | | |
| 1 | Team Leader | 1 | Must have at least a Master's degree in law, Business Administration, | 15 | | | | | | | | |

| | | | | | | | |
|---|--|---------------------|---|---|----|---|--|
| | | | | Insurance; Must have AIIK, CII, ACII or CPA professional certification. | | | |
| | 2 | Underwriter | 1 | Must have at least a bachelor's degree in marketing, Business Administration, Insurance; must have AIIK, CII, ACII or CPA professional certification. | 10 | | |
| | 3 | 2 No. Support staff | 1 | Must have AIIK or ACII as a qualification | 5 | | |
| 8 | <p><i>History of non-performing Contracts:</i> The Tenderer and each member of JV in case the Tenderer is a JV, shall demonstrate using the relevant forms in <i>Section IV Tendering Forms</i> that Non-performance of a contract did not occur because of the default of the Tenderer, or the member of a JV in the last five years. (2018, 2019,2020, 2021and 2022)</p> | | | | | Form 12: Historical Contract Non-performance and Pending Litigation | |
| 9 | <p><i>Pending Litigation and History:</i> There shall be no consistent history of court/arbitral award decisions against the Tenderer since 1st January 2018. All parties to the contract shall furnish the information in the appropriate form about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the years specified. A consistent history of awards against the Tenderer or any member of a JV may result in rejection of the tender.</p> | | | | | Form 12: Historical Contract Non-performance and Pending Litigation | |

3.5. FINANCIAL EVALUATION CRITERIA

The Tenderers that meet the technical evaluation criteria and the qualification criteria shall be subjected to the financial evaluation criteria set out in this section using the procedure specified under ITT E.

- (1) The tender price shall be adjusted for arithmetic errors and the tender evaluated as provided ITT 32 and the tender evaluated in compliance with Section 79 and Regulation 74(2).
- (2) In accordance with ITT 33, the bid prices in foreign currency shall be converted into Kenya shillings for evaluation and comparison purposes only, using the exchange rate specified in the Tender Data Sheet.
- (3) Price adjustment of the bid prices due to quantifiable non-material non-conformities pursuant to ITT 31 as provided in Section 79 of the PPADA.
- (4) Where allowed in the Tender Data Sheet ITT 34.2, the margins of preference on the evaluated prices shall be applied on the relevant tender prices to obtain the evaluated prices using the following applicable margins of preference. **[Not Applicable]**
- (5) The Tenderers shall be ranked based on the *evaluated price*; the first ranked will be the Tenderer with the lowest evaluated total price.

3.6. DUE DILIGENCE

The purpose of this stage will be to conduct due diligence on the **tenderer** determined to have the lowest evaluated price using the following procedure:

- (a) The Procuring Entity reserves the right and may subject the lowest evaluated bidder to **due diligence** based on the documents submitted under *Section IV Tendering Forms*, tender documents, and other sources.
- (b) The Tenderers shall be ranked from the lowest to the highest evaluated price, and the Tenderer with the lowest evaluated price selected for due diligence on a **pass/fail** basis.
- (c) If the lowest evaluated tenderer fails after the conduct of due diligence, that fact shall be noted in the evaluation report and the tender rejected as non-responsive.
- (d) In that event, the second lowest Tenderer shall be subjected to the due diligence based on the forms submitted under *Section IV Bidding Forms*, tender documents, and other sources. The process shall be repeated until a successful Tenderer that passes the due diligence is established and proposed for award of contract.

3.7. AWARD CRITERIA

Subject to ITT 39.1 the Procuring Entity shall award the Contract to the successful Tenderer. This is the bid of the Tenderer that meets the qualification criteria and whose bid has been determined to be substantially responsive to the tender documents, has passed the due diligence, and is the lowest evaluated cost.

SECTION IV- TENDERING FORMS

The tenderer shall use the following forms to prepare a bid. Tenderers shall not submit multiple forms to satisfy each criterion. Only one form is required for each bid.

LIST OF TENDERING FORMS

- Form 1: Form of Tender
- Form 2: Price Schedule Form
- Form 3: Technical Proposal Form
- Form 4: Certificate of Independent Tender Determination
- Form 5: Self Declaration Form SD1
- Form 6: Self Declaration SD2
- Form 7: Declaration and Commitment to the Code of Ethics
- Form 8: Appendix 1 Fraud and Corruption
- Form 9: Tenderer Information Form
- Form 10: Tenderer's JV Members Information Form
- Form 11: Tenderer's Eligibility Confidential Business Questionnaire
- Form 12: Historical Contract Non-Performance and Litigation
- Form 13: Average Annual Insurance Turnover
- Form 14: Financial Situation and Performance
- Form 15: Financial Sources
- Form 16: Similar Experience Form
- Form 17: Key Equipment Form
- Form 18: Key Personnel Form
- Form 19: Form of Tender Security-Demand Bank Guarantee
- Form 20: Form of Tender Security (Insurance Guarantee)
- Form 21: Form of Tender Securing Declaration

SUPPORT DOCUMENTS

The Tenderer shall provide copies of documents and information as annex to the bid:

- Annex 1: Power of Attorney
- Annex 2: Certificate of Incorporation or Certificate of Registration
- Annex 3: CR 12 dated within the last 30 days from date of submission of bids.
- Annex 4: Registration with the Insurance Regulatory Authority (IRA)
- Annex 5: Membership of the Association of Kenya Insurers (AKI)
- Annex 6: Membership of the Association of Insurance Brokers of Kenya (AIBK)
- Annex 7: Valid Tax Compliance Certificate
- Annex 8: County Business Permit
- Annex 9: Beneficial Ownership Certificate
- Annex 10: Corporate Organization Chart including list of Directors.
- Annex 11: Copies of audited accounts and financial and statements
- Annex 12: Letter from a financial institution as evidence of financial resources
- Annex 13: Service Completion Certificates or purchase orders / copies of contracts for similar services, IRA Extract Report
- Annex 14: Academic certificates for each proposed key personnel
- Annex 15: Professional certificates for each proposed key personnel
- Annex 16: Evidence of ownership OR lease for equipment
- Annex 17: Joint Venture Letter of Intent or Agreement (if applicable)
- Annex 18: Sample Insurance Policy
- Annex n: *Any other required documents, added to the annexes*

Instructions to Tenderers

The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address. All italicized text is to help Tenderer in preparing this form. Tenderer must complete and sign CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELF DECLARATION OF THE TENDERER and TENDERER'S ELIGIBILITY-CONFIDENTIAL BUSINESSQUESTIONNAIRE all attached to this Form of Tender. 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

Tenderer shall delete these instructions in the submitted bid

Date of this Tender submission: _____ [insert date (as day, month and year) of Tender submission] Tender No. : _____ [insert number of ITT process]

Tender Description:

To: _____ [insert complete name of Procuring Entity]

- a) **No reservations:** We have examined and have no reservations to the tendering document, including Addenda issued in accordance with ITT 9;
- b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with ITT 4;
- c) **Tender-Securing Declaration:** We have not been suspended nor declared ineligible by the Procuring Entity based on execution of a Tender-Securing Declaration or Proposal-Securing Declaration in Kenya in accordance with ITT 20;
- d) **Conformity:** We offer to provide the Insurance Services in conformity with the tendering document of the following: [insert the list of items tendered for and a brief description of the Insurance Services];
- e) **Tender Price:** The total price of our Bid, excluding any discounts offered in item (f) below is: [Insert one of the options below as appropriate]
Option 1, in case of one lot: Total price is: [insert the total price of the Bid in words and figures, indicating the various amounts and the respective currencies];
Or
Option 2, in case of multiple lots: (a) Total price of each lot [insert the total price of each lot in words and figures, indicating the various amounts and the respective currencies]; and (b) Total price of all lots (sum of all lots) [insert the total price of all lots in words and figures, indicating the various amounts and the respective currencies];
- f) **Discounts:** The discounts offered and the methodology for their application are:
 - i) The discounts offered are: *Not Applicable.*
 - ii) The exact method of calculations to determine the net price after application of discounts is shown below: *Not Applicable.*
- g) **Tender Validity Period:** Our Tender shall be valid for the period specified in TDS 19.1 (as amended if applicable) from the date fixed for the Tender submission deadline (specified in TDS 23.1 (as amended if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- h) **Performance Security:** If our Tender is accepted, we commit to obtain a Performance Security in accordance with the tendering document;
- i) **One Tender Per Tenderer:** We are not submitting any other Tender (s) as an individual Tenderer, and we are not participating in any other Tender (s) as a Joint Venture member or as a subcontractor, and meet the requirements of ITT 4.3, other than alternative Tenders submitted in accordance with ITT 14;
- j) **Suspension and Debarment:** We, along with any of our subcontractors, suppliers, consultants, manufacturers, or insurance Providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a

temporary suspension or a debarment imposed by the PPRA. Further, we are not in eligible under Kenya's official regulations or pursuant to a decision of the United Nations Security Council;

- k) **State-owned enterprise or institution:** *[select the appropriate option and delete the other] [We are not a state- owned enterprise or institution]/ [We are a state-owned enterprise or institution but meet the requirements of ITT 4.6];*
- l) **Commissions, gratuities and fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the Tendering process or execution of the Contract: *[insert complete name of each Recipient, including Insurance Brokers, 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.”)

[Delete if not appropriate, or amend to suit] We confirm that we understand the provisions relating to Standstill Period as described in this tendering document and the Procurement Regulations.

- (m) **Binding Contract:** We understand that this Tender, together with your written acceptance thereof included in your Form of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- (n) **Not Bound to Accept:** We understand that you are not bound to accept the lowest evaluated cost Tender, the Best Evaluated Tender or any other Tender that you may receive;
- (o) **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.
- (p) **Collusive practices:** We here by 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; and
- (q) **Code of Ethical Conduct:** We undertake to adhere by the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal, copy available from www.ppra.go.ke during the procurement process and the execution of any resulting contract.
- (r) We, the Tenderer, have completed fully and signed the following Forms as part of our Tender:
- (i) Tenderer's Eligibility: Confidential Business Questionnaire to establish we are not in any conflict to interest.
 - (ii) Certificate of Independent Tender Determination to declare that we completed the tender without colluding with other tenderers.
 - (iii) Self-Declaration of the Tenderer to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.
 - (iv) Declaration and commitment to the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal.
- (s) Further, we confirm that we have read and understood the full content and scope of fraud and corruption as informed in “Appendix 1-Fraud and Corruption” attached to the Form of Tender.

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

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

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

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

Date signed: *[insert date of signing] day of [insert month], [insert year].*

FORM 2: PRICE SCHEDULE FORM

| Item No. | Item Description | Value of item to be insured | Major contingencies requiring insurance | Insurance period | Insurance Premium per specified period (Tender Price) | Total Tender Price for Insurance Service (Col. 5-6) |
|----------|---|-----------------------------|---|------------------|---|---|
| 1 | Group Personal Accident (KEMSA BOARD OF DIRECTORS COVER) NOT LIFE | | <p>a) <u>Summary:</u> Payment of the benefits as defined in the event of an insured person sustaining bodily injury caused by violent, accidental external and visible means which results in death or disablement and medical expenses</p> <p>b) <u>Benefits:</u> i) Death-Kshs 7,000,000.00 per member ii) Permanent Total Disablement- Kshs 7,000,000 per member. iii) Temporary Total Disablement Kshs.20,000 per member/week up to 104 weeks. iv) Medical expense, Kshs.2,500,000 per Member</p> <p>c) <u>No. of Board members:</u> 5 Board members</p> | 12 months | | |

| | | | | | |
|---|--|---|-----------|--|--|
| 2 | Group Personal Accident with WIBA cover for staff (GPA-WIBA cover) | <p>a) <u>Summary:</u></p> <p>i) GPA: Payment of the benefits as defined in the event of an insured person sustaining bodily injury caused by violent, accidental, external and visible means which results in death or disablement and medical expenses. Monthly earnings as appearing on the Pay slip plus bonus, overtime and any other Allowances and benefits that are of a constant nature</p> <p>ii) WIBA: Covers employees against accidental work related injuries, disablement or death or occupational illness contracted by employees while in the course of work or project undertaken by KEMSA. Employees being workmen as defined by the Work Injury Benefits Act, 2007</p> <p>b) <u>Benefits (GPA)</u></p> <p>i) Death (5 years earnings)</p> <p>ii) Permanent Total Disablement (96 months earnings)</p> <p>iii) Temporary Total Disablement (actual weekly earnings up to 104 weeks).</p> <p>iv) Medical expenses (per person per accident) - Kshs 2,500,000</p> <p>c) <u>Benefits WIBA:</u></p> <p>i) Death - 96 months earnings</p> <p>ii) Permanent total disability – 96 months earnings</p> <p>iii) Temporary total disability – actual weekly earnings maximum – 104 weeks)</p> <p>iv) Medical expense – Kshs 2,500,000/=</p> <p>v) Last expense – Kshs. 300,000/=</p> <p>d) <u>Staff numbers:</u></p> <p>i) Permanent Staff – 294</p> <p>ii) Contract Staff – 273</p> <p>Annual Basic Salary: Ksh. 630,725,406.00 Annual Gross salary: Ksh. 887,835,415.44 NOTE: The staff numbers change from time to time due to HR dynamics.</p> | 12 months | | |
| 3 | Employers | <p>a) <u>Summary:</u> Indemnity in respect of bodily injury by accident or</p> | 12 months | | |

| | | | | | | |
|---|------------------------|--|---|-----------|--|--|
| | Liability (Common Law) | | disease caused during the period of insurance and arising out of and in the course of employment by the insured in the business and directly related to negligence or breach of common law or statutory duty by the employer. b) Benefits: i) Any one person – Kshs 5,000,000.00 ii) Any one accident – Kshs 25,000,000.00 iii) Any one year – Unlimited | | | |
| 4 | International travel | | a) Summary: Covers baggage, Personal Accident Insurance, Emergency Medical, political violence, terrorism, riots, strike and malicious damage whilst on travel. b) Scope: Covers to be arranged once a member of staff travels abroad, i.e. premium deposit is on a declaration basis | 12 months | | |

| Item No. | Description of Insurance Cover/Policy | Total Premium Per Annum (12 months) |
|----------------------------|--|-------------------------------------|
| POLICIES | | |
| 1. | Group Personal Accident (KEMSA BOARD OF DIRECTORS COVER) NOT LIFE | |
| 2 | Group Personal Accident with WIBA cover for staff (GPA-WIBA cover) | |
| 3 | Employers Liability (Common Law) | |
| 4 | International travel | |
| Total Premium (LOT) | | |

Name of Tenderer[insert complete name of Tenderer]

Signature of Tenderer..... [signature of person signing the Tender]

Date..... [insert date]

Note:

1. Premiums quoted MUST be inclusive of all applicable levies and taxes
2. The tender shall be awarded as a LOT.
3. Tenderers MUST quote for all the policies to be considered for award as a LOT

FORM 3: TECHNICAL PROPOSAL FORM

3.1. Organization and Management Structure

[The Tenderer to present a maximum three-page description of the organization and senior management structure.

Include corporate organization chart and list of directors]

3.2. Conformance to Insurance Specifications

The Tenderer will use the format in the table below to demonstrate that its proposed insurance services conform to the insurance service specifications set out in **Section V Insurance Service Requirements**.

The Tenderer will propose its offered medical insurance services in Column 3.

Under Column 4, the Tenderer shall state if its offered services Conform or Not Conform to the Procuring Entity's Section V Insurance Service Specifications.

The Tenderer shall write comments under Column 5 clarifying their offered insurance services, including explanation why the offer does not conform to the required insurance specifications.

FORM 4: 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]

FORM 5: SELF DECLARATION 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 cak
3. red from participating in procurement proceeding under Part IV of the Act.
4. THAT what is deponed to herein above is true to the best of my knowledge, information and belief.

.....
(Title)

.....
(Signature)

.....
(Date)

Bidder Official Stamp

FORM 6: SELF DECLARATION ON CORRUPT AND FRAUDULENT PRACTICES SD2

SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE SD2

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

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

.....
(Title)

.....
(Signature)

.....
(Date)

Tenderer's Official Stamp

FORM 7: DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

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

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

Name of Authorized signatory.....

Sign.....

Position.....

Office address..... Telephone.....

E-mail.....

Name of the Firm/Company.....

Date.....

(Company Seal/ Rubber Stamp where applicable)

Witness

Name

Sign.....

Date.....

FORM 8: APPENDIX 1-FRAUD AND CORRUPTION

(Appendix 1 shall not be modified)

1. Purpose

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

2. Requirements

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

2.2 Kenya's public procurement and asset disposal act (*no. 33 of 2015*) under Section 66 describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted below highlight Kenya's policy of no tolerance for such practices and behavior:

- 1) a person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
- 2) A person referred to under subsection (1) who contravenes the provisions of that sub-section commits an offence;
- 3) Without limiting the generality of the subsection (1) and (2), the person shall be—
 - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
 - b) if a contract has already been entered into with the person, the contract shall be voidable;
- 4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
- 5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement: -
 - a) shall not take part in the procurement proceedings;
 - b) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
 - c) shall not be a subcontractor for the bidder to whom was awarded contract, or a member of the group of bidders to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.
- 6) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;
- 7) If a person contravenes subsection (1) with respect to a conflict of interest described in subsection (5)(a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer. Etc.

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

- a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
 - i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - ii) "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
 - iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - v) "obstructive practice" is:
 - deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

- acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3 e. below.
- b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:
"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.
 - c) Rejects a proposal for award¹ of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
 - d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or debar or recommend to appropriate authority (ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;
 - e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect² all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and
 - f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a "Self-Declaration Form" as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

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

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

FORM 9: TENDERER’S INFORMATION FORM

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

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

Tender Name and Identification:*[insert identification*

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

alternative] Page _____ of _____ pages

| |
|---|
| 1. Tenderer’s Name: <i>[insert Bidder’s legal name]</i> |
| 2. Tenderer’s JV Member’s name: <i>[insert JV’s Member legal name]</i> |
| 3. Tenderer’s JV Member’s country of registration: <i>[insert JV’s Member country of registration]</i> |
| 4. Tenderer’s JV Member’s year of registration: <i>[insert JV’s Member year of registration]</i> |
| 5. Tenderer’s JV Member’s legal address in country of registration: <i>[insert JV’s Member legal address in country of registration]</i> |
| 6. Tenderer’s JV Member’s authorized representative information Name: <i>[insert name of JV’s Member authorized representative]</i> Address: <i>[insert address of JV’s Member authorized representative]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers of JV’s Member authorized representative]</i> Email Address: <i>[insert email address of JV’s Member authorized representative]</i> |
| 7. Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i> <ul style="list-style-type: none">▪ Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITT 4.4.▪ In case of JV, letter of intent to form JV or JV agreement in accordance with ITT 3.1▪ In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not under the supervision of the Procuring Entity, in accordance with ITT 4.6. |
| 8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. |

FORM 10: TENDERER’S JV MEMBERS INFORMATION FORM [NOT APPLICABLE]

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

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

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

Page _____ of _____ pages

| |
|---|
| 1. Tenderer’s Name: <i>[insert Bidder’s legal name]</i> |
| 2. Tenderer’s JV Member’s name: <i>[insert JV’s Member legal name]</i> |
| 3. Tenderer’s JV Member’s country of registration: <i>[insert JV’s Member country of registration]</i> |
| 4. Tenderer’s JV Member’s year of registration: <i>[insert JV’s Member year of registration]</i> |
| 5. Tenderer’s JV Member’s legal address in country of registration: <i>[insert JV’s Member legal address in country of registration]</i> |
| 6. Tenderer’s JV Member’s authorized representative information Name: <i>[insert name of JV’s Member authorized representative]</i> Address: <i>[insert address of JV’s Member authorized representative]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers of JV’s Member authorized representative]</i> Email Address: <i>[insert email address of JV’s Member authorized representative]</i> |
| 7. Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i> <ul style="list-style-type: none"> ▪ Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITT 4.4. ▪ In case of JV, letter of intent to form JV or JV agreement in accordance with ITT 3.1 ▪ In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not under the supervision of the Procuring Entity, in accordance with ITT 4.6. |
| 8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. |

FORM 11: CONFIDENTIAL BUSINESS QUESTIONNAIRE

| Instruction to Tenderer | | | |
|---|---|---|----------------|
| <i>Tender is instructed to complete the particulars required in this Form, one form for each member if Tender is a JV. Tenderer is further reminded that it is an offence to give false information on this Form.</i> | | | |
| ITEM | DESCRIPTION | | |
| A: Tenderer's Details | | | |
| 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. | Country City Location Building Floor Postal Address Name and email of contact person. | |
| 6 | Current Trade License Registration Number and Expiring date | | |
| 7 | Name, country, and full address of Registering Body/Agency | Postal and physical addresses Email Telephone Number | |
| 8 | Description of Nature of Business | | |
| 9 | Maximum value of business which the Tenderer handles. | | |
| 10 | State if Tenderer Company is listed in stock exchange, give name and full of state which stock exchange | Postal and physical addresses, Email Telephone number | |
| B: General and Specific Details | | | |
| Sole Proprietor, provide the following details | | | |
| I | Name in full | | |
| ii | Age | | |
| iii | Nationality | | |
| iv | Country of Origin | | |
| iv | Citizenship | | |
| Partnership, provide the following details | | | |
| Names of Partners | | Nationality | Citizenship |
| | | | % Shares owned |
| 1 | | | |
| 2 | | | |
| 3 | | | |
| 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 | | | |
| C: DISCLOSURE OF INTEREST-Interest of the Firm in the Procuring Entity. | | | |
| 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 | | | |
| Conflict of interest disclosure | | | |
| Type of Conflict | | Disclosure YES OR NO | If YES provide details of the relationship with Tenderer |
| 1 | Tenderer is directly or indirectly controlled by or is under common control with another tenderer. | | |
| 2 | Tenderer receives or has received any direct or indirect subsidy from another tenderer. | | |
| 3 | Tenderer has the same legal representative as another tenderer | | |
| 4 | Tenderer has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process. | | |
| 5 | Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender. | | |
| 6 | Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract specified in this Tender Document. | | |
| 7 | Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract. | | |
| 8 | Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision of the such Contract. | | |
| 9 | Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract. | | |
| D: Certification | | | |
| On behalf of the Tenderer, I certify that the information given above is complete, current and accurate as at the date of submission | | | |
| i | Full name | | |
| ii | Title/Designation | | |
| iii | Signature | | |
| iv | Date | | |

FORM 12: HISTORICAL CONTRACT NON-PERFORMANCE AND PENDING LITIGATION

Tenderer's Name: _____
 Date: _____
 JV Member's Name _____
 ITT No. and title: _____

Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria

Contract non-performance did not occur since 1st January [*insert year*] specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.1.

Contract(s) not performed since 1st January [*insert year*] specified in Section III, Evaluation and Qualification Criteria, requirement 2.1

Contract(s) withdrawn since 1st January [*insert year*] specified in Section III, Evaluation and Qualification Criteria, requirement 2.1

| Year | Non- performed portion of contract | Contract Identification | Total Contract Amount (current value, currency, exchange rate and Kenya Shilling equivalent) |
|------------------------|---|--|---|
| [<i>insert year</i>] | [<i>insert amount and percentage</i>] | Contract Identification: [<i>indicate complete contract name/ number, and any other identification</i>] Name of Procuring Entity: [<i>insert full name</i>] Address of Procuring Entity: [<i>insert street/city/country</i>] Reason(s) for nonperformance: [<i>indicate main reason(s)</i>] | [<i>insert amount</i>] |

Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria

No pending litigation in accordance with Section III, Evaluation and Qualification Criteria

Pending litigation in accordance with section III, Evaluation and Qualification criteria as indicated below

No Litigation History in accordance with Section III, Evaluation and Qualification Criteria

Litigation History in accordance with Section III, Evaluation and Qualification Criteria as indicated below

| Year of dispute | Amount in dispute (currency) | Contract Identification | Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate) |
|------------------------|-------------------------------------|---|--|
| | | Contract Identification: _____ Name of Procuring Entity: _____ Address of Procuring Entity: _____ Matter in dispute: _____ Party who initiated the dispute: _____ Status of dispute: _____ | |
| | | Contract Identification: _____ Name of Procuring Entity: _____ Address of Procuring Entity: _____ Matter in dispute: _____ Party who initiated the dispute: _____ Status of dispute: _____ | |

Litigation History in accordance with Section III, Evaluation and Qualification Criteria

No Litigation History in accordance with Section III, Evaluation and Qualification Criteria

| | Litigation History in accordance with Section III, Evaluation and Qualification Criteria as indicated below | | |
|------------------------|---|---|--|
| Year of dispute | Amount in dispute (currency) | Contract Identification | Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate) |
| <i>[insert year]</i> | <i>[insert percentage]</i> | Contract Identification: [indicate complete contract name, number, and any other identification] Name of Procuring Entity: <i>[insert full name]</i> Address of Procuring Entity: <i>[insert street/city/country]</i> Matter in dispute: <i>[indicate main issues in dispute]</i> Party who initiated the dispute: <i>[indicate "Procuring Entity" or "Contractor"]</i> Reason(s) for Litigation and award decision <i>[indicate main reason(s)]</i> | <i>[insert amount]</i> |

FORM 13: AVERAGE ANNUAL INSURANCE TURNOVER

Tenderer's Name: _____

Date: _____

JV Member's Name _____

ITT No. and title: _____

| Year | Amount in Currency | Currency | Exchange rate | Amount (KES) |
|--------------------------------|--------------------|----------|---------------|--------------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| Average Annual Supply Turnover | | | | |

Note: Wherever a Tenderer is required to state a monetary amount, the Tenderers should indicate the Kenya Shilling equivalent using the rate of exchange determined as follows: (a) for business turnover or financial data required for each year, use the exchange rate prevailing on the last day of the respective calendar year to convert the amounts for that year. (b) value of single contract, use the exchange rate prevailing on the date of the contract signature. (c) the exchange rates shall be taken from the publicly available source identified in the **Data Sheet ITT 33.2**. Any error by the Tenderer in determining the exchange rates in the Tender may be corrected by the Procuring Entity.

FORM 14: FINANCIAL SITUATION AND PERFORMANCE

Tenderer's Name: _____

Date: _____

JV Member's Name _____

ITT No. and title: _____

| Type of Financial information in _____ (currency) | Historic information for previous __years, _____ (amount in currency, currency, exchange rate, KES equivalent) | | | | |
|---|---|--------|--------|--------|--------|
| | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
| Statement of Financial Position (Information from Balance Sheet) | | | | | |
| Total Assets (TA) | | | | | |
| Total Liabilities (TL) | | | | | |
| Total Equity/Net Worth (NW) | | | | | |
| Current Assets (CA) | | | | | |
| Current Liabilities (CL) | | | | | |
| Working Capital (WC) | | | | | |
| Information from Income Statement | | | | | |
| Total Revenue (TR) | | | | | |
| Profits Before Taxes (PBT) | | | | | |
| Cash Flow Information | | | | | |
| Cash Flow from Operating Activities | | | | | |

FORM 15: FINANCIAL SOURCES

The Tenderer to specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total cash flow demands of the subject contract(s) as specified in *Section III, Evaluation and Qualification Criteria*

| No. | Source of finance | Amount (Kenya Shilling) Equivalent |
|-----|-------------------|------------------------------------|
| 1 | | |
| 2 | | |
| 3 | | |

The Tenderer and its parties shall provide copies of financial statements for **3 years** pursuant *Section III, Evaluation and Qualifications Criteria*. The financial statements shall:

- (a) reflect the financial situation of the Tenderer or of JV member, but not an affiliated entity (such as parent company or group member).
- (b) be independently audited or certified in accordance with Kenyan legislation.
- (c) be complete, including all notes to the financial statements.
- (d) correspond to accounting periods already completed and audited.
- (e) Annexed are copies of financial statements for the years required above; and complying with the requirements

FORM 16: SIMILAR EXPERIENCE FORM

Tenderer's Name: _____
 Date: _____
 JV Member's Name _____
 ITT No. and title: _____

| No. | Contract Identification | Role of Tenderer [Single or JV Member] |
|-----|--|--|
| 1 | Name of Client: Contract Number: Contract Description: Contract Amount: Date of Delivery: Client Address: Client Telephone: Client Email: Client Contact Name: | |
| 2 | Name of Client: Contract Number: Contract Description: Contract Amount: Date of Delivery: Client Address: Client Telephone: Client Email: Client Contact Name: | |
| 3 | Name of Client: Contract Number: Contract Description: Contract Amount: Date of Delivery: Client Address: Client Telephone: Client Email: Client Contact Name: | |
| 4 | Name of Client: Contract Number: Contract Description: Contract Amount: Date of Delivery: Client Address: Client Telephone: Client Email: Client Contact Name: | |
| n | <i>[The Tenderer may add more rows to add the required experience]</i> | |

The Tenderer shall annex copies of contract agreements or purchase orders supported delivery certificates for each similar experience.

FORM 17. KEY EQUIPMENT

The Tenderer shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in *Section III, Evaluation and Qualification Criteria*. A separate Form shall be prepared for each item of equipment listed or for alternative equipment proposed by the Tenderer.

| | | |
|-----------------------|--|------------------------|
| Item of equipment | | |
| Equipment information | Name of manufacturer | Model and power rating |
| | Capacity | Year of manufacture |
| Current Status | Current location | |
| | Details of current commitments | |
| Source | Indicate source of the equipment <input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Leased <input type="checkbox"/> Specially manufactured | |

Omit the following information for equipment owned by the Tenderer.

| | | |
|------------|--|------------------------|
| Owner | Name of owner | |
| | Address of owner | |
| | Telephone | Contact name and title |
| | Fax | Email |
| Agreements | Details of rental / lease / manufacture agreements specific to the project | |

FORM 18: KEY PERSONNEL

| |
|------------------|
| Name of Tenderer |
|------------------|

| | | |
|--|----------------------|--|
| Position [#1]: <i>[title of position]</i> | | |
| Personnel information | Name: | Date of birth: |
| | Address: | E-mail: |
| Professional qualifications: | | |
| Academic qualifications: | | |
| Language proficiency: <i>[language and levels of speaking, reading and writing skills]</i> | | |
| Details | Address of employer: | |
| | Telephone: | Contact (manager / personnel officer): |
| | Email: | |
| | Job title: | Years with present employer: |
| | | |

Summarize professional experience in reverse chronological order. Indicate the specific technical and managerial experience relevant to the project.

| Project | Role | Duration of involvement | Relevant experience |
|-------------------------------|---|-------------------------|--|
| <i>[main project details]</i> | <i>[role and responsibilities on the project]</i> | <i>[time in role]</i> | <i>[describe the experience relevant to this position]</i> |
| | | | |
| | | | |

Declaration: I, the undersigned Key Personnel, certify that to the best of my knowledge and belief, the information contained herein correctly describes myself, my qualifications and my experience.

I confirm that I am available as certified in the following table and throughout the expected time schedule for this position as provided in the Bid:

| | |
|------------|---------|
| Commitment | Details |
|------------|---------|

| | |
|-------------------------------------|---|
| Commitment to duration of contract: | <i>[insert period (start and end dates) for which this Key Personnel is available to work on this contract]</i> |
| Time commitment: | <i>[insert the number of days/week/months/ that this Key Personnel will be engaged]</i> |

I understand that any misrepresentation or omission in this Form may:

- (a) be taken into consideration during evaluation of tenders;
- (b) my disqualification from participating in the tender;
- (c) my dismissal from the contract.

Name of Key Personnel: *[insert name]*

Signature: _____

Date: (day month year): _____

Countersignature of authorized representative of the Bidder:

Signature: _____

Date: (day month year): _____

FORM 19: FORM OF TENDER SECURITY-DEMAND BANK GUARANTEE

Beneficiary: _____

ITT No: _____

Date: _____

TENDER GUARANTEE No.: _____

Guarantor: _____

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

[signature(s)]

FORM 20: FORM OF TENDER SECURITY (INSURANCE GUARANTEE) [NOT APPLICABLE]

1. Whereas [Name of the tenderer] (hereinafter called “the tenderer”) has submitted its tender dated [Date of submission of tender] for the [Name and/or description of the tender] (hereinafter called “the Tender”) for the execution of__under Invitation for Tenders No. _____ (“the ITT”).
2. KNOW ALL PEOPLE by these presents that WE of [Name of Insurance Company] having our registered office at (hereinafter called “the Guarantor”), are bound unto [Name of Procuring Entity] (hereinafter called “the Procuring Entity”) in the sum of (Currency and guarantee amount) ¹for which payment well and truly to be made to the said Procuring Entity, the Guarantor binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with the Common Seal of the said Guarantor this ___day of _____ 20 ___.

3. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Applicant:
 - a) has withdrawn its Tender during the period of Tender validity set forth in the Principal's Letter of Tender (“the Tender Validity Period”), or any extension thereto provided by the Principal; or
 - b) having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity Period or any extension thereto provided by the Principal; (i) failed to execute the Contract agreement; or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to tenderers (“ITT”) of the Procuring Entity's Tendering document.

then the guarantee undertakes to immediately pay to the Procuring Entity up to the above amount upon receipt of the Procuring Entity's first written demand, without the Procuring Entity having to substantiate its demand, provided that in its demand the Procuring Entity shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.

4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) twenty-eight days after the end of the Tender Validity Period.
5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

[Date]

[Witness]

[Signature of the Guarantor]

[Seal]

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

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

FORM 21: FORM OF TENDER SECURING DECLARATION [NOT APPLICABLE]

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

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

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

To:*[insert complete name of*

Purchaser] I/We, the undersigned, declare that:

1. I/We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.
2. I/We accept that I/we will automatically be suspended from being eligible for tendering in any contract with the Purchaser for the period of time of **3 years** starting on the **date of notification of such breach** 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

SUPPORT DOCUMENTS

The Tenderer shall provide certified copies of documents and information as annex to the bid:

Annex 1: Power of Attorney

Annex 2: Certificate of Incorporation or Certificate of Registration

Annex 3: CR 12 dated within the last 30 days from date of submission of bids.

Annex 4: Registration with the Insurance Regulatory Authority (IRA)

Annex 5: Membership of the Association of Kenya Insurers (AKI)

Annex 6: Membership of the Association of Insurance Brokers of Kenya (AIBK)

Annex 7: Valid Tax Compliance Certificate

Annex 8: County Business Permit

Annex 9: Corporate Organization Chart including list of Directors.

Annex 10: Copies of audited accounts and financial and statements

Annex 11: Letter from a financial institution as evidence of financial resources

Annex 12: Service Completion Certificates or purchase orders copies of contracts for similar services, IRA extract report

Annex 13: Academic certificates for each proposed key personnel

Annex 14: Professional certificates for each proposed key personnel

Annex 15: Evidence of ownership OR lease for equipment or medical system

Annex 16: Joint Venture Letter of Intent or Agreement (if applicable)

Annex 17: Sample Insurance Policy

Annex n: *Any other required documents, added to the annexes*

PART II: SCHEDULE OF INSURANCE REQUIREMENTS

SECTION V – INSURANCE SERVICE SPECIFICATIONS

| Item No. | Item Description | Value of item to be insured | Major contingencies requiring insurance |
|-----------------|---|------------------------------------|--|
| 1 | Group Personal Accident (KEMSA BOARD OF DIRECTORS COVER) NOT LIFE | | <p align="center">a) <u>Summary:</u> Payment of the benefits as defined in the event of an insured person sustaining bodily injury caused by violent, accidental external and visible means which results in death or disablement and medical expenses</p> <p align="center">b) <u>Benefits:</u></p> <ul style="list-style-type: none"> i) Death-Kshs 7,000,000.00 per member ii) Permanent Total Disablement- Kshs 7,000,000 per member. iii) Temporary Total Disablement Kshs.20,000 per member/week up to 104 weeks. iv) Medical expense, Kshs.2,500,000 per Member <p align="center">c) <u>No. of Board members:</u> 10 Board members</p> |

| | | | |
|---|--|--|---|
| 2 | Group Personal Accident with WIBA cover for staff (GPA-WIBA cover) | | <p style="text-align: center;">a) <u>Summary:</u></p> <p>i) GPA: Payment of the benefits as defined in the event of an insured person sustaining bodily injury caused by violent, accidental, external and visible means which results in death or disablement and medical expenses. Monthly earnings as appearing on the Pay slip plus bonus, overtime and any other Allowances and benefits that are of a constant nature</p> <p>ii) WIBA: Covers employees against accidental work related injuries, disablement or death or occupational illness contracted by employees while in the course of work or project undertaken by KEMSA. Employees being workmen as defined by the Work Injury Benefits Act, 2007</p> <p style="text-align: center;">b) <u>Benefits (GPA)</u></p> <p>i) Death (5 years earnings) ii) Permanent Total Disablement (96 months earnings) iii) Temporary Total Disablement (actual weekly earnings up to 104 weeks). iv) Medical expenses (per person per accident) - Kshs 2,500,000</p> <p style="text-align: center;">c) <u>Benefits WIBA:</u></p> <p>i) Death - 96 months earnings ii) Permanent total disability – 96 months earnings iii) Temporary total disability – actual weekly earnings maximum – 104 weeks) iv) Medical expense – Kshs 2,500,000/= v) Last expense – Kshs. 300,000/=</p> <p style="text-align: center;">d) <u>Staff numbers:</u></p> <p>i) Permanent Staff – 298 ii) Contract Staff – 6 iii) Seconded Staff – 5 iv) Short Term contract Staff – 439 v) Casual Staff – 7</p> <p>Annual Basic Salary: Ksh. 721M Annual Gross salary: Ksh. 1.03B NOTE: The staff numbers change from time to time due to HR dynamics.</p> |
|---|--|--|---|

| | | | |
|---|-------------------------------------|--|---|
| 3 | Employers Liability (Common Law) | | <p>a) <u>Summary:</u> Indemnity in respect of bodily injury by accident or disease caused during the period of insurance and arising out of and in the course of employment by the insured in the business and directly related to negligence or breach of common law or statutory duty by the employer.</p> <p>b) <u>Benefits:</u></p> <ul style="list-style-type: none"> i) Any one person – Kshs 5,000,000.00 ii) Any one accident – Kshs 25,000,000.00 iii) Any one year – Unlimited |
| 4 | International travel | | <p>a) <u>Summary:</u> Covers baggage, Personal Accident Insurance, Emergency Medical, political violence, terrorism, riots, strike and malicious damage whilst on travel.</p> <p>b) <u>Scope:</u> Covers to be arranged once a member of staff travels abroad, i.e. premium deposit is on a declaration basis</p> |

Name of Tenderer.....[insert complete name of Tenderer]

Signature of Tenderer.....[signature of person signing the Tender]

Date[insert date]

PART III – CONDITIONS OF CONTRACT AND CONTRACT FORMS

SECTION VI-GENERAL CONDITIONS OF CONTRACT

A. General Provisions

1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- a) "Schedule of Requirements" is the priced and completed list of items of Services to be performed by the Insurance Provider forming part of his Tender;
- b) "Completion Date" means the date of completion of the Services by the Insurance Provider as certified by the Procuring Entity
- c) "Contract" means the Contract signed by the Parties, to which these General Conditions of Contract (GCC) are attached, together with all the documents listed in Clause 1 of such signed Contract;
- d) "Contract Price" means the price to be paid for the performance of the Services, in accordance with Clause 6;
- e) "Procuring Entity" means the Procuring Entity or party who employs the Insurance Provider
- f) "Foreign Currency" means any currency other than the currency of Kenya;
- g) "GCC" means these General Conditions of Contract;
- h) "Government" means the Government of Kenya;
- i) "Local Currency" means Kenya shilling;
- j) "Party" means the Procuring Entity or the Insurance Provider, as the case may be, and "Parties" means both of them;
- k) "Personnel" means persons hired by the Insurance Provider;
- l) "Insurance Provider" is a person or corporate body whose Tender to provide the Services has been accepted by the Procuring Entity;
- m) "Insurance Provider's Tender" means the completed Tendering Document submitted by the Insurance Provider to the Procuring Entity
- n) "SCC" means the Special Conditions of Contract by which the GCC may be amended or supplemented;
- o) "Services" means the work to be performed by the Insurance Provider pursuant to this Contract, as described in Schedule of Requirements included in the Insurance Provider's Tender.
- p) "Public Procurement Regulatory Authority (PPRA)" shall mean the Government Agency responsible for oversight of public procurement.

1.2 Applicable Law

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

1.3 Language

This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

1.4 Notices

Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, hand delivery, or email to such Party at the address **specified in the SCC**.

1.5 Location

The Services shall be performed at such locations as are specified in *Appendix A*, in the specifications and, where the location of a particular task is not so specified, at such locations, whether in Kenya or elsewhere, as the Procuring Entity may approve.

1.6 Authorized Representatives

Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Procuring Entity or the Insurance Provider may be taken or executed by the officials **specified in the SCC**.

1.7 Inspection and Audit by the PPRA

The Insurance Provider shall permit and shall cause its subcontractors and sub-consultants to permit, PPRA and/ or persons appointed by PPRA to inspect the Site and/ or the accounts and records relating to the procurement process, selection and/ or contract execution, and to have such accounts and records audited by auditors appointed by PPRA. The Insurance Provider's and its Subcontractors' and sub-consultants' attention is drawn to Sub-Clause 3.10 which provides, inter alia, that acts intended to materially impede the exercise of PPRA's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to PPRA's prevailing sanctions procedures).

1.8 Taxes and Duties, e t c

The Insurance Provider shall pay such taxes, duties, fees, levies and other impositions as may be levied under the Applicable Law, the amount of which is deemed to have been included in the Contract Price.

2 Commencement, Completion, Modification, and Termination of Contract

2.1 Effectiveness of Contract

This Contract shall come into effect on the date the Contract is signed by both parties or such other later date as may be **stated in the SCC**.

2.2 Duration and Commencement of Services the Commencement date and duration of the insurance cover shall be **specified in the SCC**.

2.3. Modification

Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written agreement between the Parties.

2.4 Force Majeure

2.4.1 Definition

For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party, and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

2.4.2 No Breach of Contract

The failure of a Party to fulfill any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

2.4.3 Extension of Time

Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

2.4.4 Payments

During the period of their inability to perform the Services as a result of an event of Force Majeure, the Insurance Provider shall be titled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Service after the end of such period.

2.5. Termination

2.5.1 By the Procuring Entity

The Procuring Entity may terminate this Contract, by not less than thirty (30) days' written notice of

termination to the Insurance Provider, to be given after the occurrence of any of the events specified in paragraphs (a) through (d) of this Sub-Clause 2.5.1:

- a) If the Insurance Provider does not remedy a failure in the performance of its obligations under the Contract, within thirty (30) days after being notified or within any further period as the Procuring Entity may have subsequently approved in writing;
- b) If the Insurance Provider become insolvent or bankrupt;
- c) if, as the result of Force Majeure, the Insurance Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- d) if the Insurance Provider, in the judgment of the Procuring Entity has engaged in Fraud and Corruption, in competing for or in executing the Contract

2.5.2 By the Insurance Provider

The Insurance Provider may terminate this Contract, by not less than thirty (30) days' written notice to the Procuring Entity, such notice to be given after the occurrence of any of the events specified in paragraphs (a) and (b) of this Sub-Clause 2.5.2:

- a) If the Procuring Entity fails to pay any monies due to the Insurance Provider pursuant to this Contract and not subject to dispute pursuant to Clause 8 within forty-five (45) days after receiving written notice from the Insurance Provider that such payment is overdue; or
- b) if, as the result of Force Majeure, the Insurance Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

2.5.3 Payment upon Termination

Upon termination of this Contract pursuant to Sub-Clauses 2.5.1 or 2.5.2, the Procuring Entity shall make the following payments to the Insurance Provider:

- a) remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination;
- b) except in the case of termination pursuant to paragraphs (a), (b), (d) of Sub-Clause 2.5.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract;
- c) The Insurance provider shall pay or refund to the Procuring Entity any moneys paid but for which no consume rate services were provided.

3 Obligations of the Insurance Provider

3.1 General

The Insurance Provider shall perform the Services in accordance with the terms of the signed Insurance Policy and the Schedule of Requirements, and carry out its obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Insurance Provider shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the Procuring Entity, and shall at all times support and safeguard the Procuring Entity's legitimate interests in any dealings with Subcontractors or third parties.

3.2 Conflict of Interests

3.2.1 Insurance Provider Not to Benefit from Commissions and Discounts.

The remuneration of the Insurance Provider pursuant to Clause 6 shall constitute the Insurance Provider's sole remuneration in connection with this Contract or the Services, and the Insurance Provider shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Insurance Provider shall use their best efforts to ensure that the Personnel, any Subcontractors, and agents of either of them similarly shall not receive any such additional remuneration.

3.2.2 Insurance Provider and Affiliates Not to be Otherwise Interested in Services other than the insurance Services

The Insurance Provider agree that, during the term of this Contract and after its termination, the Insurance

Provider and its affiliates, as well as any Subcontractor and any of its affiliates, shall be disqualified from providing goods, works, or Services (other than the insurance Services and any continuation thereof) for any contingency resulting from or closely related to the Services.

3.2.3 Prohibition of Conflicting Activities

Neither the Insurance Provider nor its Subcontractors nor the Personnel shall engage, either directly or indirectly, in any of the following activities:

- a) During the term of this Contract, any business or professional activities in Kenya which would conflict with the activities as signed to them under this Contract;
- b) during the term of this Contract, neither the Insurance Provider nor their Subcontractors shall hire public employees in active duty or on any type of leave, to perform any activity under this Contract;
- c) after the termination of this Contract, such other activities as may be **specified in the SCC**.

3.3 Confidentiality

The Insurance Provider, its Subcontractors, and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the Procuring Entity's business or operations without the prior written consent of the Procuring Entity.

3.4 Reporting Obligations

The Insurance Provider shall submit to the Procuring Entity the reports and documents specified in *Appendix B* in the form, in the numbers, and within the periods set for thin the said Appendix.

3.5 Documents Prepared by the Insurance Provider to Be the Property of the Procuring Entity.

All reports, and other documents and software submitted by the Insurance Provider in accordance with Sub-Clause 3.4 shall become and remain the property of the Procuring Entity, and the Insurance Provider shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Procuring Entity, together with a detailed inventory thereof. The Insurance Provider may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be **specified in the SCC**.

3.6 Liquidated Damages

3.6.1 Payments of Liquidated Damages

The Insurance Provider shall pay liquidated damages to the Procuring Entity at the rate per day **stated in the SCC** for each day that the Insurance Provider fails to pay the agreed compensation costs beyond or later the agreed date when such compensation should be made. The date by when the compensation costs should be made is specified in **the SCC**. The total amount of liquidated damages shall not exceed the amount **defined in the SCC**. The Procuring Entity may deduct liquidated damages from payments due to the Insurance Provider. Payment of liquidated damages shall not affect the Insurance Provider's liabilities.

3.6.2 Correction for Over-payment

The Procuring Entity shall correct any overpayment of liquidated damages by the Insurance Provider by adjusting the next payment premium or certificate. The Insurance Provider shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 6.4.

3.7 Performance Security

The Insurance Provider shall not be required to provide any Performance Security to the Procuring Entity.

3.8 Fraud and Corruption

The Procuring Entity requires compliance with the Government's Anti-Corruption laws and its prevailing sanctions. The Procuring Entity requires the Insurance Provider to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the tendering process or execution of the Contract. The information disclosed must include at least the name and address of the agent

or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

4 Insurance Provider's Personnel

The Contract shall not obligate the Insurance Provider to provide any specific personnel for carrying out of the Services.

5 Obligations of the Procuring Entity

5.1 Change in the Applicable Law

If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Insurance Provider, then the remuneration and reimbursable expenses otherwise payable to the Insurance Provider under this Contract shall be increased or decreased accordingly by agreement between the Parties, and corresponding adjustments shall be made to the amounts referred to in Sub-Clauses 6.2 (a) or (b), as the case may be.

6 Payments to the Insurance Provider

6.1 Lump-Sum Remuneration

The Insurance Provider's remuneration shall not exceed the Contract Price and shall be a fixed lump-sum. Except as provided in Sub-Clause 5.1, the Contract Price may only be increased above the amounts stated in Sub-Clause 6.2 if the Parties have agreed to additional payments in accordance with Sub-Clauses 2.3 and 6.3.

6.2 Contract Price

The price payable is **set forth in the SCC**.

6.3 Terms and Conditions of Payment

Payments will be made to the Insurance Provider according to the payment schedule **stated in the SCC**.

6.4 Interest on Delayed Payments

If the Procuring Entity has delayed payments beyond thirty (30) days after the due date stated in the SCC, interest shall be paid to the Insurance Provider for each day of delay at the rate stated in **the SCC**.

7 Quality Control

The contract shall not have any quality control modalities as this is not envisaged in the industry

8 Settlement of Disputes

8.1 Amicable Settlement

Any party with dispute against the other party shall give notice to the other party, requesting the party to make good the matters of the dispute. The Parties shall attempt to settle the dispute amicably. If the dispute cannot be settled amicably, the complaining party should move to commence arbitration after thirty days from the day on which a notice was given, even if no attempt at an amicable settlement has been made.

8.2 Arbitration if the Insurance Provider is a Kenyan firm

8.2.1 Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 8.1 shall be finally settled by arbitration. Arbitration shall be conducted in accordance with the Arbitration Laws of Kenya.

8.2.2 The arbitrators shall have full power to open up, review all matters relevant to the dispute. Nothing shall disqualify representatives of the Parties from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

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

8.2.4 The terms of the remuneration of each or all the members of Arbitration shall be mutually agreed upon by the

Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

8.2.5 In case of any claim or dispute, such claim or dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed, on the request of the applying party, by the Chairman or Vice Chairman of any of the following institutions the:

- i) Law Society of Kenya, or
- ii) Chartered Institute of Arbitrators (Kenya Branch), or
- iii) Insurance Institute of Kenya, or
- iv) The Actuarial Society of Kenya.

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

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

8.3 Failure to Comply with Arbitrator's Decision

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

8.4 Arbitration if the Insurance Provider is a foreign firm

8.4.1 Arbitration proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.

SECTION VII-SPECIAL CONDITIONS OF CONTRACT

| GCC Clause | Amendments of, and Supplements to, Clauses in the General Conditions of Contract |
|-------------------|--|
| 1.1 | <p>The Parties to the Contract are:</p> <p>The Procuring Entity is Kenya Medical Supplies Authority</p> <p>The Insurance Provider is:</p> <p>The Contract Number is: KEMSA-ONT09-2023/2024</p> <p>The contract name is Provision of Insurance Services for one Year Renewable.</p> |
| 1.4 | <p>For notices, the Procuring Entity's address shall be:</p> <p>Attention: Chief Executive Officer</p> <p>Postal address: PO BOX 47715-00100, GPO</p> <p>Physical Address: 13 Commercial Street, Industrial Area</p> <p>Telephone: 254 20 3922000/537670/1/2/3</p> <p>Electronic mail address: procure@kemsaco.ke</p> |
| 1.6 | <p>The Authorized Representatives are:</p> <p>For the Procuring Entity: Chief Executive Officer</p> <p>For the Insurance Provider: _____</p> <p><i>Name:</i></p> <p><i>Postal Address:</i></p> <p><i>Telephone:</i></p> <p><i>Email:</i></p> |
| 2.1 | <p>The date on which this Contract shall come into effect is Contract signing date.</p> |
| 2.2 | <p>The Commencement date and duration of the insurance cover shall be:</p> <p>Commencement date TBA</p> <p>Completion or Expiry Date _____</p> <p>Duration of the coverage is: 1 year Renewable</p> |
| 3.2.3 (c) | <p>After the termination of this Contract, the activities are: All data provided by the Procuring Entity originally and during implementation of the contract.</p> |
| 3.5 | <p>The restrictions in the use of documents are: With prior permission of Procuring Entity</p> |
| 3.6.1 | <p>The liquidated damages per day is 1% per week of delay.</p> <p>The date by when the compensation costs should be made is 15 days.</p> <p>The total amount of liquidated damages shall not exceed 10% of Contract Price.</p> |
| 6.2 | <p>Contract Price is KES__</p> |
| 6.3 | <p>(a) The price shall be made in one lump sum on contract signature: No</p> <p>(b) The price shall be made on yearly installments of (i) Year 1 KES -----</p> |
| 6.4 | <p>Interest shall be paid to the Insurance Provider for each day of delayed payment at the rate of 1% per month.</p> |
| 8.4.1 | <p>The rules of procedure for arbitration proceedings <i>with a local Insurance Provider</i> shall be as follows: All disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of <i>the Nairobi Centre for International Arbitration</i> by one or more arbitrators appointed in accordance with said Rules.</p> |

APPENDIXES

Appendix A: Description of the Services

Give detailed descriptions of the Services to be provided, dates for completion of various tasks, place of performance for different tasks, specific tasks to be approved by Employer, etc.

Appendix B: Schedule of Payments and Reporting Requirements

List all milestones for payments and list the format, frequency, and contents of reports or products to be delivered; persons to receive them; dates of submission; etc. If no reports are to be submitted, state here "Not applicable."

Appendix C: Key Personnel and Subcontractors

List the titles [and names, if already available], detailed job descriptions and minimum qualifications of foreign Personnel to be assigned to work in the Government's country, and staff-months for each. List of approved Subcontractors (if already available); same information with respect to their Personnel.

Appendix D: Breakdown of Contract Price

List here the elements of cost used to arrive at the breakdown of the lump-sum price. Rates for Equipment Usage or Rental or for Personnel (Key Personnel and other Personnel), Reimbursable expenditures.

Appendix E: Copy of Insurance Policy Cover

SECTION VIII-CONTRACT FORMS

List of Contract Forms

1. Form of Contract
2. Insurance Policy
3. Notification of Award
4. Letter of Acceptance
5. Beneficial Ownership Disclosure Form
6. Performance Security [Option 1-Unconditional Demand Bank Guarantee]
7. Performance Security [Option 2-Performance Bond]
8. Advance Payment Security [Demand Bank Guarantee]
9. Request for Review Form

1. FORM OF CONTRACT

[Form head paper of the Procuring Entity]

Lump-Sum Remuneration

This CONTRACT (here in after called the “Contract”) is made the *[day]* day of the month of *[month]*, *[year]*, between, on the one hand, *[name of Procuring Entity]* (here in after called the “Procuring Entity”) and, on the other hand, *[name of Insurance Provider]* (here in after called the “Insurance Provider”).

[Note: In the text below text in brackets is optional; all notes should be deleted in final text. If the Insurance Provider consist of more than one entity, the above should be partially amended to read as follows:“... (here in after called the “Procuring Entity”) and, on the other hand, a joint venture consisting of the following entities, each of which will be jointly and severally liable to the Procuring Entity for all the Insurance Provider’s obligations under this Contract, namely, [name of Insurance Provider] and [name of Insurance Provider] (here in after called the “Insurance Provider”).]

WHEREAS

- a) the Procuring Entity has requested the Insurance Provider to provide certain Services as defined in the General Conditions of Contract attached to this Contract (here in after called the “Services”);
- b) the Insurance Provider, having represented to the Procuring Entity that they have the required professional skills, and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract at a contract price of.....;

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents shall be deemed to form and be read and construed as part of this Agreement, and the priority of the documents shall be as follows:
 - a) The Letter of Acceptance.
 - b) The Insurance Provider’s Tender;
 - c) The General Conditions of Contract;
 - d) The Special Conditions of Contract;
 - e) The Priced Schedule of Requirements;
 - f) Signed Insurance Policy, and
 - g) The following Appendixes:
 - Appendix A: Description of Insurance Services
 - Appendix B: Schedule of Payments
 - Appendix C: Key Personnel and Subcontractors
 - Appendix D: Breakdown of Price
 - Appendix E: Services and Facilities Provided by the Procuring Entity
2. The mutual rights and obligations of the Procuring Entity and the Insurance Provider shall be as set forth in the Contract, in particular:
 - a) The Insurance Provider shall carry out the Services in accordance with the provisions of the Contract; and
 - b) The Procuring Entity shall make payments to the Insurance Provider in accordance with the provisions of the Contract.

IN WITNESS WHERE OF, the Parties here to have caused this Contract to be signed in the irrespctive names as of the day and year first above written.

For and on behalf of..... *[name of Procuring Entity] [Authorized Representative]*

For and on behalf of *[name of Insurance Provider] [Authorized Representative]*

[Note: If the Insurance Provider consists of more than one entity, all these entities should appear as signatories, e.g., in the following manner:]

For and on behalf of each of the Members of the Insurance Provider.....*[name of member] [Authorized Representative]*

[name of member] [Authorized Representative]

2. INSURANCE POLICY

The Appendix to the contract shall be an **Insurance Policy** that shall provide a description of the Services, compensation procedure and all the contingencies that shall lead to the compensation claim. The Policy is an industry form (the norm) but would be negotiated before signature to ensure all parties concerns are considered. No provision or Clause in the Insurance Policy shall negate any Condition of Contract.

3. NOTIFICATION OF AWARD

[Form head paper of the Procuring Entity]

.....*[date]*

To: *[name and address of the Insurance Provider]*

This is to notify you that your Tender dated.....*[date]* for execution of the.....*[name of the Contract and identification number, as given in the Special Conditions of Contract]* for the Contract Price of the equivalent of.....*[amount in numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers is here by accepted by us (Procuring Entity).

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

Please return the attached Contract dully signed Authorized Signature

Name and Title of Signatory:

Name of Agency:

Attachment: Contract

4. LETTER OF ACCEPTANCE

[Insert letter of acceptance by the successful tenderer]

5. BENEFICIAL OWNERSHIP DISCLOSURE FORM

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

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

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

- Directly or indirectly holding 25% or more of the shares.*
- Directly or in directly holding 25% or more of the voting rights.*
- Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer.*

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

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

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

Details of beneficial ownership

| Identity of Beneficial Owner | Directly or indirectly holding 25% or more of the shares (Yes / No) | Directly or indirectly holding 25 % or more of the Voting Rights (Yes / No) | Directly or indirectly having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer (Yes / No) |
|---|---|---|--|
| <i>[include full name (last, middle, first), nationality, country of residence]</i> | | | |

OR

ii) *We declare that there is no Beneficial Owner meeting one or more of the following conditions: directly or indirectly holding 25% or more of the shares. Directly or indirectly holding 25% or more of the voting rights. Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer.*

OR

We declare that we are unable to identify any Beneficial Owner meeting one or more of the following conditions. [If this option is selected, the Tenderer shall provide explanation on why it is unable to identify any Beneficial Owner]

Directly or indirectly holding 25% or more of the shares. Directly or indirectly holding 25% or more of the voting rights. Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer]”

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

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

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

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

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

Email: _____

6. PERFORMANCE SECURITY [OPTION 1-UNCONDITIONAL DEMAND BANK GUARANTEE]

[Guarantor letterhead]

Beneficiary: _____ *[insert name and Address of Employer]*

Date: _____ *[Insert date of issue]*

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

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

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

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

7. PERFORMANCE SECURITY [OPTION 2- PERFORMANCE BOND]

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

[Guarantor letterhead or SWIFT identifier code]

Beneficiary: _____ *[insert name and Address of*

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

PERFORMANCE BOND No.: _____

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

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

SIGNED ON _____ on behalf of

By _____ in the capacity

of In the presence of

SIGNED ON _____ on behalf of

By _____ in the capacity

of In the presence of

8. ADVANCE PAYMENT SECURITY [DEMAND BANK GUARANTEE]

[Guarantor letterhead]

Beneficiary: _____ [Insert name and Address of

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

ADVANCE PAYMENT GUARANTEE No.: _____ [Insert guarantee reference

number] **Guarantor:** _____ [Insert name and address of place

of issue, unless indicated in the letterhead]

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

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

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

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

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

9. REQUEST FOR REVIEW

FORM FOR REVIEW(r.203(1))

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

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

BETWEEN

.....**APPLICANT**

AND

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

Request for review of the decision of the..... (Name of the Procuring Entity ofdated the...day of20.....in the matter of Tender No.....of20..... for(Tender description).

REQUEST FOR REVIEW

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

- 1.
- 2.

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

- 1.
- 2.

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

FOR OFFICIAL USE ONLY Lodged with the Secretary Public Procurement Administrative Review Board on.....day of20.....

SIGNED

Board Secretary