
COUNTY GOVERNMENT OF MOMBASA



SUPPLY, TEST AND COMMISSION OF GARBAGE COLLECTION COMPACTOR TRUCK 20M³

TENDER NO. CGM/PRO/T/39/2018-2019

TENDER DOCUMENT

Closing Date 29th May 2019

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ABBREVIATIONS AND ACRONYMS

CDS	Contract Data Sheet
GCC	General Conditions of Contract
PE	Procuring Entity
PPDA 2015	Public Procurement and Asset Disposal Act, 2015
PPDR 2006	Public Procurement and Disposal Regulations, 2006
PPOA	Public Procurement Oversight Authority
STD	Standard Tender Documents
SOR	Statement of Requirements
SP	Service Provider
VAT	Value Added Tax

SECTION I: INVITATION TO TENDER

TENDER NO. CGM/PRO/T/39/2018-2019

**TENDER DESCRIPTION: SUPPLY, TEST AND COMMISSION OF GARBAGE
COLLECTION COMPACTOR TRUCK 20M³**

Date: November, 2018

1. The County Government of Mombasa now invites sealed Tenders from manufacturers/ Authorized Agents for the **SUPPLY, TEST AND COMMISSION OF GARBAGE COLLECTION COMPACTOR TRUCK 20M³**
2. The tender is open to firms who are manufactures of bigger fire engine trucks or authorized agents who will be required to show authenticated evidence that they have previously satisfactorily designed, build and delivered such trucks with similar specifications in the tender.
3. Tendering will be conducted through the National Competitive Bidding procedures specified in the Public Procurement and Asset Disposal Act, 2015 and the Public Procurement and Disposal Regulations, 2006 and Amendment Regulations (2013) Nos. 106 and 114 and **are open to all Tenderers as defined in the Regulations.**
4. A complete set of bidding documents in English may be purchased by interested eligible bidders upon submission of a written application to the address below and upon payment of a non-refundable fee of **Kshs. 1,000**. The method of payment will be cash or banker's cheque from a reputable bank in Kenya payable to Mombasa County. The Bidding documents will be collected from the address below upon production of a purchase receipt.
5. The document can be viewed and downloaded from the County Government of Mombasa website www.mombasa.go.ke at no fee.
6. Bidders are advised to regularly visit the county website to obtain any additional information/addendum on the tender. **All addenda/additional information on the tender shall be posted on the county website as they become available.**
7. The amount of Tender Security shall be **Kenya Shillings One Hundred Thousand (Kshs. 100,000.00)** in the form of a Banker's guarantee or an Insurance Company Guarantee issued by an insurance firm approved by the Public Procurement Regulatory Authority (PPRA), cash, letter of credit or guarantee by a deposit taking microfinance institution, Sacco society, the Youth Enterprise Development Fund or the Women Enterprise Fund valid for 120 days from the date of tender opening in the format provided in the tender document.
8. Completed Tender Documents in plain, sealed envelopes bearing **ONLY** the Tender Number and its description, and without bearing any name or mark, whatsoever to indicate the identity of the sender must be deposited at the **Tender Box located at the County Assembly Hall ground floor next to the main office. Bulky tenders can be submitted at the office of Head of Procurement and Supplies, 2nd floor County**

Assembly Hall, Treasury Square, Mombasa to reach him not later than 1030 hours on 29th May 2019

And addressed as follows:

TENDER NO. CGM/PRO/T/39/2018-2019; SUPPLY, TEST AND COMMISSION OF GARBAGE COLLECTION COMPACTOR TRUCK 20M³

“DO NOT OPEN BEFORE 1000 HOURS EAST AFRICAN TIME ON 1030 hours on 29th May 2019”

Addressed to:

THE COUNTY SECRETARY,
COUNTY GOVERNMENT OF MOMBASA,
P.O BOX 80133-80100, MOMBASA
EMAIL: countysec@mombasa.go.ke

9. Prices quoted shall be in Kenya Shillings or United States Dollars (US\$) should be net inclusive of all taxes and delivery and shall remain valid for 90 days from the opening date of the tender.
10. Tenders will be opened promptly after thereafter at **1045hrs** in the presence of Tenderers' representatives who choose to attend the opening ON **29th May 2019** at the **Finance Department Boardroom**.
11. Late or incomplete Tenders shall not be accepted.
12. Canvassing or lobbying for the tender shall lead to automatic disqualification.

DIRECTOR SUPPLY CHAIN MANAGEMENT
FOR: COUNTY SECRETARY

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A. Introduction

1. **Scope of Tender**
 - 1.1 The Procuring Entity indicated in the **Tender Data Sheet** (TDS) invites Tenders for the provision of Goods as specified in the **Tender Data Sheet** and Section VII, Technical Specification.
 - 1.2 The successful Tenderer will be expected to complete the supply of the goods by the required completion date specified in the **Tender Data Sheet**.

2. **Source of Funds**
 - 2.1 The Procuring Entity has set aside sufficient funds for the operations of the Procuring Entity named in the **Tender Data Sheet** during the Financial Year indicated in the **Tender Data Sheet**. It is intended that part of the proceeds of the funds will be applied to cover eligible payments under the contract for the supply of goods as described in the **Tender Data Sheet**.
 - 2.2 Payments will be made directly by the Procuring Entity and will be subject in all respects to the terms and conditions of the resulting contract placed by the Procuring Entity.

3. **Eligible Tenderers**
 - 3.1 A Tenderer may be a natural person, private entity, government-owned entity, subject to ITT sub-Clause 3.4 or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a joint venture, consortium or association. In the case of a joint venture, consortium or association, unless otherwise specified in the **Tender Data Sheet**, all parties shall be jointly and severally liable.
 - 3.2 The invitation for Tenders is open to all suppliers as defined in the Public Procurement and Disposal Act, 2015 and the Public Procurement and Disposal Regulations, 2006 except as provided hereinafter.
 - 3.3 Local Tenderers shall satisfy all relevant licensing and/or registration requirements with the appropriate statutory bodies in Kenya. Foreign Tenderers who are selected as having submitted the lowest evaluated Tender shall register with the appropriate statutory body and shall be required to submit evidence of registration as an approved Service Provider in Kenya before signing the Contract.

3.4 A Tenderer shall not have a conflict of interest. All Tenderers found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest with one or more parties in this Tendering process, if he/she seeks or has a direct or indirect pecuniary interest with another Tenderer or has a direct or indirect pecuniary interest with a person that would conflict with that person's duties with respect to the procurement. Conflicts of interest would arise where Tenderers:

- a) Are associated or have been associated in the past, directly or indirectly with a firm or any of its affiliates which have been engaged by the Procuring Entity to provide consulting services for the preparation of the design, specifications and other documents to be used for the procurement of the goods to be purchased under this Invitation for Tenders; or
- b) Have controlling shareholders in common; or
- c) Receive or have received any direct or indirect subsidy from any of them; or
- d) Have the same legal representative for purposes of this Tender; or
- e) Have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Tender of another Tenderer, or influence the decisions of the Procuring Entity regarding this Tendering process; or
- f) Participated as a consultant in the preparation of the design or technical specifications of the goods and related services that are the subject of the Tender.

3.5 Tenderers shall not be eligible to submit a Tender if they have been debarred under Section 115 of the Act.

3.6 Tenderers shall provide such evidence of their continued eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.

4. **Eligible Goods and Related Services**

4.1 All goods and related services to be supplied under the contract shall have their origin in eligible source countries, and all expenditures made under the contract will be limited to such goods and services. For purpose of this Tender ineligible countries, if any, are listed in the **Tender Data Sheet**.

4.2 For the purposes of this Clause, the term "goods" includes commodities, raw materials, machinery, equipment and

industrial plants, and “related services” includes services such as insurance, installation, training and initial maintenance.

- 4.3 For purposes of this Clause, “origin” means the place where the goods are mined, grown, cultivated, produced, manufactured, or processed, or through manufacture, process, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its imported components or the place from which the related services are supplied.
- 4.4 The nationality of the firm that produces, assembles, distributes, or sells the goods and services shall not determine their origin.
- 4.5 To establish the eligibility of the supplies and the related services, Tenderers shall fill the country of origin declarations included in the Form of Tender.
- 4.6 If so required in the **Tender Data Sheet**, the Tenderer shall demonstrate that it has been duly authorized by the manufacturer of the goods to supply in Kenya, the goods indicated in its Tender.

5. One Tender per Tenderer

- 5.1 A firm shall submit only one Tender in the same Tendering process, either individually as a Tenderer or as a partner in a joint venture. However, this does not prevent a Tenderer from submitting an Alternative Tender as provided for under Clause 6.2.
- 5.2 No firm can be a subcontractor while submitting a Tender individually or as a partner of a joint venture in the same Tendering process.
- 5.3 A firm, if acting in the capacity of subcontractor in any Tender, may participate in more than one Tender but only in that capacity.
- 5.4 A Tenderer who submits or participates in more than one Tender (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the Tenders in which the Tenderer has participated to be disqualified.

6. Alternative Tenders by Tenderers

- 6.1 Tenderers shall submit offers that comply with the requirements of the Tender documents, including the basic Tenderer’s technical design as indicated in the specifications and Schedule of Requirements. Alternatives will not be considered, unless specifically allowed for in the **Tender Data Sheet**. If so allowed, sub-Clause 6.2 shall Prevail.
- 6.2 If so allowed in the **Tender Data Sheet**, Tenderers wishing to offer technical alternatives to the requirements of the Tender documents must also submit a Tender that complies with the requirements of the Tender documents, including the basic

technical design as indicated in the specifications. In addition to submitting the basic Tender, the Tenderer shall provide all information necessary for a complete evaluation of the alternative by the Procuring Entity, including technical specifications, breakdown of prices, and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Tenderer conforming to the basic technical requirements shall be considered by the Procuring Entity.

7. Cost of Tendering

7.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Procuring Entity shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.

B. Tender documents

8. Content of Tender documents

8.1 The goods required, Tendering procedures, and contract terms are prescribed in the Tender documents. In addition to the Invitation for Tenders, the Tender documents which should be read in conjunction with any addenda issued in accordance with ITT clause 9.2 include:

- Section II Instructions to Tenderers (ITT)
- Section III Tender Data Sheet (TDS)
- Section IV General Conditions of Contract (GCC)
- Section V Contract data sheet (CDS)
- Section VI Schedule of Requirements
- Section VII Technical Specifications
- Section VIII Tender Forms
 - a) Form of Tender
 - b) Price schedule for Goods and Related Services
 - c) Confidential Business Questionnaire
 - d) Integrity Undertaking by Tenderer on Anti-bribery Policy/ Code of Conduct and Compliance Program
 - e) Letter of Acceptance
 - f) Form of Contract
- Section IX Forms of Security
 - a) Tender Security Form
 - b) Performance Bond/Security Form
 - c) Bank Guarantee for Advance Payments
 - d) Manufacturer's Authorization Form
- Section X Form RB 1 Application to Public Procurement Administrative Review Board

8.2 The number of copies to be completed and returned with the Tender is specified in the **Tender Data Sheet**.

8.3 The Procuring Entity is not responsible for the completeness of the Tender documents and their addenda, if they were not appropriately obtained directly

from the Procuring Entity.

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| 9. Clarification of Tender documents | <p>9.1 A prospective Tenderer requiring any clarification of the Tender documents may notify the Procuring Entity in writing or electronic mail or facsimile at the Procuring Entity's address indicated in the Tender Data Sheet prior to the deadline for the submission of Tenders prescribed in sub- Clause 22.1.</p> <p>9.2 The Procuring Entity will within the period stated in the Tender Data Sheet respond in writing to any request for clarification provided that such request is received no later than the period indicated in the Tender Data Sheet prior to the deadline for the submission of Tenders prescribed in sub-Clause 22.1.</p> <p>9.3 Copies of the procuring Entity's response will be forwarded to all Purchasers of the Tender documents, including a description of the inquiry, but without identifying its source.</p> <p>9.4 Should the Procuring Entity deem it necessary to amend the Tender documents as a result of a clarification, it shall do so following the procedure under ITT Clause 10.</p> |
| 10. Amendment of Tender documents | <p>10.1 Before the deadline for submission of Tenders, the Procuring Entity, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Tenderer, may modify the Tender document by issuing addenda.</p> <p>10.2 Any addendum issued shall be part of the Tender document pursuant to sub-Clause 8.1 and shall be communicated in writing to all who have obtained the Tender documents directly from the Procuring Entity. Prospective Tenderers shall acknowledge receipt of each addendum by writing electronic mail, telex or facsimile to the Procuring Entity.</p> <p>10.3 In order to allow prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity, at its discretion, may extend the deadline for the submission of Tenders, pursuant to Sections 55(3) and 61(1) of the Act.</p> |

C. Preparation of Tenders

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| 11. Language of Tender | <p>11.1 The Tender prepared by the Tenderer, as well as all correspondence and documents relating to the Tender exchanged by the Tenderer and the Procuring Entity shall be written in English unless another language is specified in the Tender Data Sheet. Supporting</p> |
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documents and printed literature furnished by the Tenderer may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the **Tender Data Sheet**, in which case, for purposes of interpretation of the Tender, the translation shall govern.

12. Documents Constituting the Tender

12.1 The Tender prepared by the Tenderer shall constitute the following components:

- a) Form of Tender and a Price Schedule completed in accordance with ITT Clauses 15, 16, and 17;
- b) Documentary evidence established in accordance with ITT Clause 14 that the Tenderer is eligible to Tender and is qualified to perform the contract if its Tender is accepted;
- c) Documentary evidence established in accordance with ITT sub-Clause 14.3(a) that the Tender has been authorized by the manufacturer to supply the goods into Kenya, where required and where the supplier is not the manufacturer of those goods;
- d) Documentary evidence established in accordance with ITT Clause 13 that the goods and ancillary services to be supplied by the Tenderer are eligible goods and services and conform to the Tender documents;
- e) Tender securing declaration or Tender security furnished in accordance with ITT Clause 19 and/or 19A;
- f) Written Power of Attorney authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT Clause 20.2; and
- g) Any other document required in the **Tender Data Sheet**.

13. Documents Establishing Eligibility of Goods and Related Services and

13.1 Pursuant to ITT Clause 12, the Tenderer shall furnish, as part of its Tender, documents establishing the eligibility and conformity to the Tender documents of all goods and related services, which the Tenderer proposes to supply under the contract.

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- Conformity to Tender documents**
- 13.2 The documentary evidence of the eligibility of the goods and related services shall consist of a statement in the Price Schedule of the country of origin of the goods and related services offered which shall be confirmed by a certificate of origin issued at the time of shipment.
- 13.3 The documentary evidence of conformity of the goods and related services to the Tender documents may be in the form of literature, drawings, and data, and shall consist of:
- a) a detailed description of the essential technical and performance characteristics of the Goods;
 - b) an item-by-item commentary on the Procuring Entity's Technical Specifications demonstrating substantial responsiveness of the Goods and Services to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.
 - c) Any other specific documentation requirement as stated in the **Tender Data Sheet**.
- 13.4 The Tenderer shall also furnish a list giving full particulars, including available sources and current prices of goods, spare parts, special tools, etc., necessary for the proper and continuing functioning of the Goods during the period specified in the **Tender Data Sheet** following commencement of the use of the goods by the Procuring Entity.
- 13.5 For purposes of the commentary to be furnished pursuant to sub-Clause 13.3(c) above, the Tenderer shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by the Procuring Entity in its Technical Specifications, are intended to be descriptive only and not restrictive. The Tenderer may substitute alternative standards, brand names, and/or catalogue numbers in its Tender, provided that it demonstrates to the Procuring Entity's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.
- 13.6 The required documents and other accompanying documents must be typewritten in English or as stated in **Tender Data Sheet**. In case any other language than English is used the pertinent translation into English shall be attached to the original version.

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14. **Documents Establishing Eligibility and Qualification of the Tenderer**
- 14.1 Pursuant to ITT Clause 11, the Tenderer shall furnish, as part of its Tender, documents establishing the Tenderer's eligibility to Tender and its qualifications to perform the contract if its Tender is accepted.
- 14.2 The documentary evidence of the Tenderer's eligibility to Tender shall establish to the Procuring Entity's satisfaction that the Tenderer, at the time of submission of its Tender, is from an eligible country as defined under ITT Clause 4.
- 14.3 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:
- a) that, in the case of a Tenderer offering to supply goods under the contract which the Tenderer did not manufacture or otherwise produce, the Tenderer has been duly authorized by the goods' Manufacturer or producer to supply the goods in Kenya ;
 - b) The Tenderer has the financial, technical, and production capability necessary to perform the Contract, meets the qualification criteria specified in the **Tender Data Sheet**, and has a successful performance history in accordance with criteria specified in the **Tender Data Sheet**. If a pre-qualification process has been undertaken for the Contract, the Tenderer shall, as part of its Tender, update any information submitted with its pre-qualification;
 - c) that, in the case of a Tenderer not doing business within Kenya, the Tenderer is or will be (if awarded the contract) represented by an Agent in that country equipped and able to carry out the Supplier's maintenance, repair, and spare parts stocking obligations prescribed in the General Conditions of Contract and/or Technical Specifications; and
 - d) That the Tenderer meets the qualification criteria listed in the **Tender Data Sheet**.
- 14.4 When Tendering for more than one Contract under the lots, the Tenderer must provide evidence that it meets or exceeds the sum of all the individual requirements for

the lots being applied for in regard to:-

- a) Average annual turnover;
- b) Particular experience including key production rates;
- c) Financial means, etc;
- d) Personnel capabilities; and
- e) Equipment capabilities.

In case the Tenderer fails to fully meet any of these criteria, it may be qualified only for those lots for which the Tenderer meets the above requirement.

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| 15. Form of Tender | 15.1 | The Tenderer shall fill the Form of Tender furnished in the Tender documents. The Tender Form must be completed without any alterations to its format and no substitute shall be accepted. |
| 16. Tender Prices | 16.1 | The Tender prices and discounts quoted by the Tenderer in the Form of Tender and in the Price Schedules shall conform to the requirements specified below. |
| | 16.2 | Unless otherwise indicated in the Tender Data Sheet, all items in the Schedule of Requirements must be listed and priced separately in the Price Schedules. If a Price Schedule shows items listed but not priced, the Tender will be rejected as being substantially non-responsive. Items not listed in the Price Schedule shall be assumed to be not included in the Tender and the Tender will be rejected as being substantially non-responsive. |
| | 16.3 | The Tender price to be quoted in the Tender Form in accordance with sub-Clause 16.1 shall be the total price of the Tender, excluding any discounts offered. |
| | 16.4 | The Tenderer shall quote any unconditional discounts and the methodology for their application in the Tender Form in accordance with sub-Clause 16.9. |
| | 16.5 | The Tenderer shall indicate on the appropriate Price Schedule the unit prices (where applicable) and total Tender price of the goods it proposes to supply under the contract |
| | 16.6 | Prices indicated on the Price Schedule shall be entered separately in the following manner: <ol style="list-style-type: none"> a) For goods offered from within Kenya : <ol style="list-style-type: none"> i) The price of the goods quoted EXW (ex works, ex factory, ex warehouse, ex showroom, or off-the- |

shelf, as applicable), including all customs duties and sales and other taxes already paid or payable:

On the components and raw material used in the manufacture or assembly of goods quoted ex works or ex factory;

or

On the previously imported goods of foreign origin quoted ex warehouse, ex showroom, or off-the-shelf;

ii) Taxes which will be payable on the goods if the contract is awarded;

iii) The price for inland transportation, insurance, and other local costs incidental to delivery of the goods to their final destination, if specified in the **Tender Data Sheet**; and

iv) The price of other (incidental) services, if any, listed in the **Tender Data Sheet**.

b) For goods offered from abroad:

i) The price of the goods shall be quoted using the INCOTERMS specified in the **Tender Data Sheet**;

ii) The price for inland transportation, insurance, and other local costs incidental to delivery of the goods from the port of entry to their final destination, if specified in the **Tender Data Sheet**; and

iii) The price of (incidental) services, if any, listed in the **Tender Data Sheet**.

16.7 Prices proposed on the Price Schedule for goods and related services shall be disaggregated, where appropriate as indicated in this sub-Clause. This desegregation shall be solely for the purpose of facilitation the comparison of Tenders by the Procuring Entity. This, shall not in any way limit the Procuring Entity's right to contract on any of the terms offered:-

a) **For Goods:-**

i. The price of the Goods, quoted DDP or other INCOTERMS as specified in the **Tender Data Sheet**;

ii. All customs duties, value added tax, and other

taxes applicable in the United goods or on the components and raw materials used in their manufacture or assembly, if the contract is awarded to the Tenderer; and

b) **For Related Services**

- i. The price of the related services,
- ii. All customs duties, value added tax, and other taxes applicable Kenya, paid or payable, on the related services, if the contract is awarded to the Tenderer; and

c) The total price for the item.

16.8 Prices quoted by the Tenderer shall be fixed during the Tenderer's performance of the contract and not subject to variation on any account, unless otherwise specified in the **Tender Data Sheet**. A Tender submitted with an adjustable price quotation will be treated as non-responsive and shall be rejected, pursuant to ITT Clause 28. If, however, in accordance with the **Tender Data Sheet**, prices quoted by the Tenderer shall be subject to adjustment during the performance of the contract, a Tender submitted with a fixed price tender will not be rejected, but there will be no price adjustment in any resulting contract.

16.9 If so indicated in the Invitation for Tenders and Instructions to Tenderers, that Tenders are being invited for individual contracts (Lots) or for any combination of contracts (packages), Tenderers wishing to offer any price reduction for the award of more than one contract shall specify in their Tender the price reductions applicable to each package, or alternatively, to individual contracts within a package.

17. Tender Currencies

17.1 Prices shall be quoted in the following currencies:

For goods and services that the Tenderer will supply from within Kenya, the prices shall be quoted in Kenya Shillings, unless otherwise specified in the **Tender Data Sheet**.

For goods and related services that the Tenderer will supply from outside Kenya, or for imported parts or components of goods and related services originating outside Kenya, the Tender prices shall be quoted in the foreign currency stated in the **Tender Data Sheet**.

- 17.2 For purposes of evaluating Tenders, the PE shall fix exchange rates for the nominated foreign currency by foreign or international Tenderers from eligible countries.

In fixing the exchange rates for the nominated foreign currencies indicated in the **Tender Data Sheet**, the PE shall use ruling mean rate obtained from the Central Bank of Kenya (Website: www.centralbank.go.ke for more information) for the nominated foreign currency on the date of the Tender opening. The fixed exchange rate, which shall be indicated in the **Tender Data Sheet** by the PE, is for purposes of evaluation of tenders **ONLY**.

The rates of exchange to be used by the Tenderer in arriving at the local currency equivalent and the proportions mentioned in sub-Clause 16.1 above shall be the selling rates for similar transactions established by the Central Bank of Kenya prevailing on the date specified in the **Tender Data Sheet** or, if no date is specified, the date 28 days prior to the latest deadline for submission of Tenders. These exchange rates shall be adjusted for all payments so that no exchange risk will be borne by the Tenderer. If the Tenderer uses other rates of exchange, the provisions of sub-Clause 30.1 shall apply. In any case, payments will be computed using the rates quoted in the Tender.

- 17.3 Tenderers shall indicate details of their expected foreign currency requirements in the Tender.

- 17.4 Tenderers may be required by the Procuring Entity to clarify their foreign currency requirements and to substantiate that the amounts included in Lump Sum and in the Contract data sheet are reasonable and responsive to sub-Clause 17.1.

**18. Tender
Validity
Period**

- 18.1 Tenders shall remain valid for the period specified in the **Tender Data Sheet** after the Tender submission deadline prescribed by the Procuring Entity, pursuant to ITT Clause 22. A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.

- 18.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request that the Tenderers consent to an extension of the period of validity of their Tenders. The request and the Tenderers responses shall be made in writing electronic mail, telex and facsimile. The Tender security provided under ITT Clause 19A.1 shall also be suitably extended. A Tenderer may refuse the request without forfeiting its

Tender security or causing to be executed its Tender securing declaration. A Tenderer agreeing to the request will not be required nor permitted to modify its Tender, but will be required to extend the validity of its Tender security or Tender Securing declaration for the period of the extension, and in compliance with ITT Clause 19 in all respects.

19. Tender Security

- 19.1 In addition, pursuant to ITT Clause 12, if specified in the **Tender Data Sheet**, the Tenderer shall furnish as part of its Tender a Tender Security in original form and in the amount and currency specified in the **Tender Data Sheet**.
- 19.2 The Tender security shall be denominated in the currency of the Tender and shall be in one of the following forms:
- a) cash
 - b) a bank guarantee;
 - c) an insurance company guarantee issued by an insurance firm approved by the PPOA; or
 - d) an irrevocable letter of credit.
- 19.3 Any Tender security must be valid for a period of at least 30 (Thirty) days after the expiry of the Tender Validity Period.
- 19.4 The Tender security shall be payable promptly upon written demand by the Procuring Entity in case any of the conditions listed in sub-Clause 19.A.7 are invoked.
- 19.5 Unsuccessful Tenderers' Tender security will be discharged or returned as promptly as possible, but not later than the expiration of the period of Tender validity prescribed by the Procuring Entity pursuant to ITT Clause 18.
- 19.6 The successful Tenderer's Tender security will be discharged upon the Tenderer signing the contract pursuant to ITT Clause 38, and furnishing the performance security, pursuant to ITT Clause 39.
- 19.7 The Tender security shall be forfeited if a Tenderer:
- a) Withdraws its Tender during the period of Tender validity specified in sub-Clause 18.1 except as provided for in sub-Clause 18.2; or
 - b) Does not accept the correction of errors pursuant to sub-Clause 30.2; or

- c) In the case of a successful Tenderer, if the Tenderer fails:
 - i. To sign the contract in accordance with ITT Clause 38; **or**
 - ii. To furnish performance security in accordance with ITT Clause 39.

20. Format and Signing of Tender

- 20.1 The Tenderer shall prepare an original and the number of copies of the Tender indicated in the **Tender Data Sheet**, clearly marking each “ORIGINAL” and “COPY,” as appropriate. In the event of any discrepancy between them, the original shall prevail.
- 20.2 The original and the copy or copies of the Tender shall be typed or written in indelible ink and shall be signed by the Tenderer or a person or persons duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the **Tender Data Sheet** 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, except for un-amended printed literature, shall be initialled by the person or persons signing the Tender.
- 20.3 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialled by the person or persons signing the Tender.
- 20.4 The Tenderer shall furnish information as described in the Form of Tender on commissions or gratuities, if any, paid or to be paid to agents relating to this Tender and to contract execution if the Tenderer is awarded the contract

D. Submission of Tenders

21. Sealing and Marking of Tenders

- 21.1 The Tenderer shall seal the original and each copy of the Tender in separate envelopes, duly marking the envelopes as “ORIGINAL” and “COPY.” The envelopes shall then be sealed in an outer envelope securely sealed in such a manner that opening and resealing cannot be achieved undetected.
- 21.2 The inner and outer envelopes shall:
 - a) Be addressed to the Procuring Entity at the address given in the **Tender Data Sheet**; and

- b) Bear the Tender name indicated in the **Tender Data Sheet**, the Invitation for Tenders (ITT) title and number indicated in the **Tender Data Sheet**, and a statement: “DO NOT OPEN BEFORE,” to be completed with the time and the date specified in the **Tender Data Sheet**, pursuant to sub-Clause 22.1.
- 21.3 In addition to the identification required in sub-Clause 21.2, the inner envelopes shall also indicate the name and address of the Tenderer to enable the Tender to be returned unopened in case it is declared “late” pursuant to ITT Clause 23 and for matching purpose under ITT Clause 24.
- 21.4 If all envelopes are not sealed and marked as required by sub-Clause 21.2, the Procuring Entity will assume no responsibility for the misplacement or premature opening of Tender.
- 22. Deadline for Submission of Tenders**
- 22.1 Tenders shall be received by the Procuring Entity at the address specified under sub-Clause 21.2 no later than the date and time specified in the **Tender Data Sheet**.
- 22.2 The Procuring Entity may, in exceptional circumstances and at its discretion, extend the deadline for the submission of Tenders by amending the Tender documents in accordance with ITT Clause 9, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline will thereafter be subject to the new deadline.
- 22.3 The extension of the deadline for submission of Tenders shall not be made later than the period specified in the **Tender Data Sheet** before the expiry of the original deadline.
- 23. Late Tenders**
- 23.1 The Procuring Entity shall not consider for evaluation any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT Clause 22.
- 23.2 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.
- 24. Modification, Substitution and Withdrawal of**
- 24.1 A Tenderer may modify or substitute or withdraw its Tender after it has been submitted, provided that written notice of the modification, including modification, substitution or withdrawal of the Tender, is received by

Tenders

the Procuring Entity prior to the deadline for submission of Tenders.

- 24.2 The Tenderer's modification, substitution or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of ITT Clauses 20 and 21 with the outer and inner envelopes additionally marked "**MODIFICATION**" "**SUBSTITUTION**" or "**WITHDRAWAL**" as appropriate. The notice may also be sent by electronic mail or facsimile but followed by a signed confirmation copy, postmarked not later than the deadline for submission of Tenders.
- 24.3 Tenders may only be modified by withdrawal of one or more pages of the original Tender and submission of replacement pages of the Tender in accordance with sub-Clause 24.1. Modifications submitted in any other way shall not be taken into account in the evaluation of Tenders. Each modified page must be marked "**MODIFIED**" with the date of modification.
- 24.4 Tenderers may only offer discounts to or otherwise modify the prices of their Tenders by substituting Tender modifications in accordance with this Clause or included in the original Tender submission.
- 24.5 No Tender may be withdrawn, replaced 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. Withdrawal of a Tender during this interval shall result in the Tenderer's forfeiture of its Tender security or execution of the Tender Securing Declaration, pursuant to the sub-Clause 19.7

E. Opening and Evaluation of Tenders

25. Opening of Tenders

- 25.1 The Procuring Entity will open all Tenders including modifications, substitutions or withdrawal notices made pursuant to ITT Clause 24, in public, in the presence of Tenderers or their representatives who choose to attend, and other parties with a legitimate interest in the Tender proceedings at the place, on the date and at the time, specified in the **Tender Data Sheet**. The Tenderers' representatives present shall sign a register as proof of their attendance.
- 25.2 Where it is stated in the **Tender Data Sheet** that technical and financial proposals shall be submitted in separate envelopes, only the technical envelope will be

opened at the initial opening of Tenders. The financial envelope will be opened following technical evaluation and only in respect of those offers that pass the technical evaluation.

Envelopes marked “WITHDRAWAL” shall be opened and read out first. Tenders for which an acceptable notice of withdrawal has been submitted pursuant to ITT Clause 24 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. Subsequently, all envelopes marked "MODIFICATION" shall be opened and the submissions therein read out in appropriate detail. Thereafter all envelopes marked “SUBSTITUTION” shall be opened and the submissions therein read out in appropriate detail.

- 25.3 All other envelopes shall be opened one at a time. The Tenderers names, the tender prices except where numerous items are quoted separately, the total amount of each Tender and of any alternative Tender (if alternatives have been requested or permitted), any discounts, the presence or absence of Tender security, Tender Securing Declaration and such other details as the appropriate Tender Opening Committee may consider appropriate, will be announced by the secretary of the Tender Opening Committee at the opening. If technical evaluation precedes the opening of financial offers, no prices will be read out at the opening of the technical offers.
- 25.4 Tenders or modifications that are not opened and not read out at the Tender opening shall not be considered further for evaluation, irrespective of the circumstances. In particular, any discount offered by a Tenderer which is not read out at Tender opening shall not be considered further.
- 25.5 Tenderers are advised to send in a representative with the knowledge of the content of the Tender who shall verify the information read out from the submitted documents. Failure to send a representative or to point out any un-read information by the sent Tenderer’s representative shall indemnify the Procuring Entity against any claim or failure to read out the correct information contained in the Tenderers Tender.

- 25.6 No Tender will be rejected at Tender opening except for late Tenders which will be returned unopened to the Tenderer, pursuant to ITT Clause 23.
- 25.7 The Secretary of the tender opening committee shall prepare minutes of the Tender opening. The record of the Tender opening shall be recorded on the Tender Opening Register and shall include, as a minimum: the name of the Tenderer and whether or not there is a withdrawal, substitution or modification, the Tender price per Lot if applicable, including any discounts and alternative offers and the presence or absence of a Tender Security or Tender Securing Declaration.
- 25.8 The Tenderers' representatives who are present shall be requested to sign the record. The omission of a Tenderer's representative's signature on the record shall not invalidate the contents and affect the record. A copy of the record shall be distributed to all the Tenderers.
- 25.9 A copy of the minutes of the Tender opening shall be furnished to individual Tenderers upon request.

26. Confidentiality

- 26.1 Information relating to the examination, clarification, evaluation and comparison of Tenders and recommendation of contract award shall not be disclosed to Tenderers or any other persons not officially concerned with such process until the award to the successful Tenderer has been announced.
- 26.2 Any effort by a Tenderer to influence the Procuring Entity processing of Tenders or award decisions may result in the rejection of its Tender.
- 26.3 Notwithstanding sub-Clause 26.2 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.

27. Clarification of Tenders

- 27.1 To assist in the examination, evaluation and comparison of Tenders and post-qualification of the Tenderers, the Procuring Entity may, at its discretion, ask any Tenderer for a clarification of its Tender including breakdown of prices. Any clarification submitted by a Tenderer that is not in response to a request by the Procuring Entity shall not be considered.
- 27.2 The request for clarification and the response shall be in writing. No change 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 Tenders in accordance with ITT Clause 30.

27.3 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 Tender it should do so in writing.

28. Preliminary Examination of Tenders

28.1 Prior to the detailed evaluation of Tenders, the Procuring Entity will determine whether:

- a) The tender has been submitted in the required format;
- b) Any tender security submitted is in the required form, amount and validity period;
- c) The tender has been signed by the person lawfully authorized to do so;
- d) The required number of copies of the tender have been submitted;
- e) The tender is valid for the period required;
- f) All required documents and information have been submitted; and
- g) Any required samples have been submitted.

The Procuring Entity's determination of a Tender's responsiveness will be based on the contents of the Tender itself.

28.2 A substantially responsive Tender is one which conforms to all the terms, conditions, and specifications of the Tender documents, without material deviation or reservation. A material deviation or reservation is one that:-

- a) Affects in any substantial way the scope, quality, or performance of the Services;
- b) Limits in any substantial way, inconsistent with the Tender documents, the Procuring Entity's rights or the Tenderers obligations under the Contract; or
- c) If rectified, would affect unfairly the competitive position of other Tenderers presenting substantially responsive Tenders.

28.3 The Procuring Entity will confirm that the documents and information specified under ITT Clause 11, ITT

Clause 12 and ITT Clause 13 have been provided in the Tender. If any of these documents or information is missing, or is not provided in accordance with the Instructions to Tenderers, the Tender shall be rejected.

28.4 The Procuring Entity may waive any minor informality, nonconformity, or irregularity in a Tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any Tenderer.

28.5 If a Tender is not substantially responsive, it will be rejected by the Procuring Entity and may not subsequently be made responsive by the Tenderer by correction of the nonconformity.

29. Technical Evaluation

29.1 The Procuring Entity shall examine the Tender to confirm that all terms and conditions specified in the General Conditions of Contract and the Contract data sheet have been accepted by the Tenderer without any material deviation or reservation.

29.2 The Procuring Entity shall evaluate the technical aspects of the Tender submitted in accordance with ITT Clause 12, to confirm that all requirements specified in Section VI – Schedule of Requirements of the Tender documents and Section VII – Technical Specifications have been met without material deviation or reservation.

29.3 If after the examination of the terms and conditions and the technical evaluation, the Procuring Entity determines that the Tender is not substantially responsive in accordance with ITT Clause 28, it shall reject the Tender.

30. Financial Evaluation

30.1 Tenders determined to be substantially responsive will be checked for any arithmetic errors. Errors will be corrected as follows:-

a) If there is a discrepancy between unit prices and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected, unless in the opinion of the Procuring Entity there is an obvious misplacement of the decimal point in the unit price, in which the total price as quoted shall govern and the unit price shall be corrected;

b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and

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- c) Where there is a discrepancy between the amounts in figures and in words, the amount in words will govern.
- 30.2 The amount stated in the Tender will be adjusted by the Procuring Entity in accordance with the above procedure for the correction of errors and, with, the concurrence of the Tenderer, shall be considered as binding upon the Tenderer. If the Tenderer does not accept the corrected amount, its Tender will then be rejected, and the Tender security shall be forfeited or the Tender securing declaration may be executed in accordance with sub-Clause 19.5.
- 30.3 Where applicable and as stated in the Tender Data Sheet, the Procuring Entity will convert all Tender prices expressed in the amounts in various foreign currencies in which the Tender prices are payable to Kenya Shillings at the selling exchange rate established for similar transactions by the Central Bank of Kenya or a commercial bank in Kenya.
- 30.4 The currency selected for converting Tender prices to a common base for the purpose of evaluation, along with the source and date of the exchange rate, are specified in the **Tender Data Sheet**.
- 30.5 The Procuring Entity shall evaluate and compare only the Tenders determined to be substantially responsive, pursuant to ITT Clause 28.
- 30.6 The Procuring Entity's evaluation of a Tender will include and take into account:
- a) In the case of goods manufactured in Kenya or goods of foreign origin already located in Kenya, VAT and other similar taxes, which will be payable on the goods if a contract is awarded to the Tenderer;
 - b) In the case of goods of foreign origin offered from abroad, customs duties and other similar import taxes including value added taxes which will be payable on the goods if the contract is awarded to the Tenderer; and
 - c) Any allowance for price adjustment during the period of execution of the contract, if provided in the Tender.

30.7 The comparison shall be between the EXW price of the goods offered from within Kenya, such price to include all costs, as well as duties and taxes paid or payable on components and raw material incorporated or to be incorporated in the goods, and the landed cost (CIF named port of destination or CIP border point, or CIP named place of destination) making up the price of the goods offered from Kenya.

30.8 a) In evaluating the Tenders, the evaluation committee will, in addition to the Tender price quoted in accordance with sub-Clause 15.1, take account of the evaluation criteria specified in the **Tender Data Sheet**.

30.9 For the evaluation criteria specified in the **Tender Data Sheet** pursuant to sub-Clause 32.4, one or more of the following quantification methods will be applied, as detailed in the **Tender Data Sheet**:

a) *Inland transportation from EXW/port of entry/border point, Insurance and incidentals.*

Inland transportation, insurance, and other incidental costs for delivery of the goods from EXW/port of entry/border point to Project Site named in the **Tender Data Sheet** will be computed for each Tender by the PE on the basis of published tariffs by the rail or road transport agencies, insurance companies, and/or other appropriate sources. To facilitate such computation, Tenderer shall furnish in its Tender the estimated dimensions and shipping weight and the approximate EXW/CIF (or CIP border point) value of each package. The above cost will be added by the PE to EXW/CIF/CIP border point price.

b) *Delivery schedule.*

The goods covered under this invitation are required to be delivered (shipped) within an acceptable range of weeks specified in the Schedule of Requirement. **No credit will be given for earlier deliveries, and Tenders offering delivery beyond this range will be treated as non-responsive.** Within this acceptable range, an adjustment per week, as specified in the **Tender Data Sheet**, will be added for evaluation to the Tender price of Tenders offering deliveries later than the earliest delivery period specified in the Schedule of Requirements.

c) *Deviation in payment schedule.*

Tenderers shall state their Tender price for the payment schedule outlined in the CDS. Tenders will be evaluated on the basis of this base price. Tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in Tender price they wish to offer for such alternative payment schedule. The Procuring Entity may consider the alternative payment schedule offered by the selected Tenderer.

d) *Total cost of ownership*

The Procuring Entity will take account of the total cost of ownership of the items being supplied including the following criteria:

e) *Cost of spare parts*

The Procuring Entity will estimate the cost of spare parts usage in the initial period of operation specified in the Tender Data Sheet, based on information furnished by each Tenderer, as well as on past experience of the Procuring entity or other purchasers in similar situations. Such costs shall be added to the Tender price for evaluation.

f) *Spare parts and after sales service facilities in Kenya*

The cost to the PE of establishing the minimum service facilities and parts inventories, as outlined in the **Tender Data Sheet** or elsewhere in the Tender documents, if quoted separately, shall be added to the Tender price.

g) *Operating and maintenance costs*

Since the operating and maintenance costs of the goods under procurement form a major part of the life cycle cost of the equipment, these costs will be evaluated in accordance with the criteria specified in the **Tender Data Sheet** or in the Technical Specifications.

h) *Performance and productivity of the equipment.*

Tenderers shall state the guaranteed performance or efficiency in response to the Technical Specification. For each drop in the performance or efficiency below the norm of 100, an adjustment for an amount specified in the Tender Data Sheet will be added to the Tender price, representing the capitalized cost of additional operating costs over the life of the plant, using the methodology

- specified in the Tender Data Sheet or in the Technical Specifications.
- i) *Specific additional criteria.*
- Other specific additional criteria to be considered in the evaluation and the evaluation method shall be detailed in the Tender Data Sheet and/or the Technical Specifications.
- 30.1 If these Tender documents allow Tenderers to quote separate prices for different Lots, and the award to a single Tenderer of multiple Lots, the methodology of evaluation to determine the lowest evaluated Lot combinations, including any discounts offered in the Form of Tender, is specified in the **Tender Data Sheet**.
- 31. National Preference**
- 31.1 In the evaluation of Tenders the Procuring Entity shall apply exclusive preference to citizens of Kenya where:
- a) The funding is 100% from the Government of Kenya or a Kenyan body;
 - b) The amounts are below the prescribed threshold of KShs.50 million (or KShs.200 million for procurements of works);
- 31.2 To qualify for the preference the candidate shall provide evidence of eligibility by:
- a) Proving Kenyan citizenship by production of a Kenyan Identity Card; or
 - b) Providing proof of being a “citizen contractor” in terms of section 3(1) of the Act, i.e. being a natural person or an incorporated company wholly owned and controlled by persons who are citizens of Kenya.
- 31.3 In the event of the Minister for Finance prescribing additional preference and/or reservation schemes, details will be given in the Tender Data Sheet.
- 32. Post-qualification of Tenderer**
- 32.1 If specified in the **Tender Data Sheet** Post-qualification shall be undertaken.
- 32.2 The Procuring Entity will determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated responsive Tender is qualified to perform the contract satisfactorily, in accordance with the criteria listed in sub-Clause 13.3.
- 32.3 The determination will take into account the Tenderer’s financial, technical, and production capabilities. It will be based upon an examination of the documentary/physical evidence of the Tenderer’s qualifications submitted by the Tenderer, pursuant to

sub-Clause 13.3, as well as such other information as the Procuring Entity deems necessary and appropriate. Factors not included in these Tender documents shall not be used in the evaluation of the Tenderers' qualifications.

32.4 An affirmative determination will be a prerequisite for award of the contract to the Tenderer. A negative determination will result in rejection of the Tenderer's Tender, in which event the Procuring Entity will proceed to the next lowest evaluated Tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

F. Award of Contract

33. Criteria of Award

- 33.1 Subject to ITT Clause 32, the Procuring Entity will award the Contract to the Tenderer whose Tender has been determined to be substantially responsive to the Tender documents and who has offered the lowest Evaluated Tender Price, provided that such Tenderer has been determined to be:
 - a) Eligible in accordance with the provisions of ITT Clause 3;
 - b) Is determined to be qualified to perform the Contract satisfactorily; and
 - c) Successful negotiations have been concluded, if any.
- 33.2 If, pursuant to sub-Clause 14.4, this Contract is being let on a "slice and package" basis, the lowest evaluated Tender price will be determined when evaluating this Contract in conjunction with other Contracts to be awarded concurrently, taking into account any discounts offered by the Tenderers for award of more than one Contract.

34. Procuring Entity's Right to Accept any Tender and to Reject any or All Tenders

- 34.1 Notwithstanding ITT Clause 33, the Procuring Entity reserves the right to accept or reject any Tender, and to reject all Tenders at any time prior to notification of contract award, without thereby incurring any liability to the affected Tenderer or Tenderers.
- 34.2 Notice of the rejection of all Tenders shall be given promptly to all Suppliers that have submitted Tenders.
- 34.3 The Procuring Entity shall upon request communicate to any Tenderer the grounds for its rejection of its Tender, but is not required to justify those grounds.

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- 35. Procuring Entity's Right to Vary Quantities at the Time of Award**
- 35.1 The Procuring Entity reserves the right at the time of contract award to increase or decrease the quantity of goods or related services originally specified in these Tender documents (schedule of requirements) provided this does not exceed the percentage indicated in the **Tender Data Sheet**, without any change in unit price or other terms and conditions of the Tender and Tender documents.
- 36. Notification of Award**
- 36.1 The Tenderer whose Tender has been accepted will be notified of the award by the Procuring Entity prior to expiration of the Tender validity period by e-mail, or facsimile and confirmed by registered letter. This letter (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") will state the sum that the Procuring Entity will pay the Service provider in consideration of the provision and maintenance of the Service(s) as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price).
- 36.2 The notification of award will constitute the formation of the Contract, subject to the Tenderer furnishing the Performance Security (if required) in accordance with ITT Clause 39 and signing of the contract in accordance with sub-Clause 38.2.
- 36.3 At the same time as the person submitting the successful tender is notified, the Procuring Entity will notify each unsuccessful Tenderer, the name of the successful Tenderer and the Contract amount and will discharge the Tender security or Tender securing declaration of the Tenderers.
- 36.4 If, after notification of award, a Tenderer wishes to ascertain the grounds on which its Tender or application for pre-qualification was unsuccessful, it should address its request to the secretary of the Tender Committee that authorized the award of contract. The secretary of the Tender Committee shall, within fourteen days after a request, provide written reasons as to why the tender, proposal or application to be pre-qualified was unsuccessful. However, failure to take this opportunity to clarify the grounds for rejection does not affect the Tenderer's right to seek immediate review by the Public Procurement Administrative Review Board under Clause 43.
- 37. Post Tender Concurrence**
- 37.1 Limited negotiations may be undertaken with the evaluated Tender under Direct procurement method relating to the following areas:

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- a) A minor alteration to the technical details of the statement of requirements;
 - b) Reduction of quantities for budgetary reasons, where the reduction is in excess of any provided for in the solicitation documents;
 - c) A minor amendment to the contract data sheet;
 - d) Finalising payment arrangements;
 - e) Delivery arrangements;
 - f) The methodology; or
 - g) Clarifying details that were not apparent or could not be finalised at the time of Tendering.
- 37.2 Where negotiation fails to result into an agreement, the Procuring Entity may invite the next ranked Tenderer for negotiations. Where negotiations are commenced with the next ranked Tenderer, the Procuring Entity shall not reopen earlier negotiations.
- 38. Signing of Contract**
- 38.1 Promptly after notification, the Procuring Entity shall send the successful Tenderer the agreement and Contract data sheet, incorporating all agreements between the parties obtained as a result of Contract negotiations.
- 38.2 Within the period specified in the notification or **Tender Data Sheet** but not later than fourteen (14) days since notification of award of contract, the successful Tenderer shall sign and date the contract and return it to the Procuring Entity. No contract is formed between the person submitting the successful tender and the procuring entity until the written contract is entered into.
- 39. Performance Security**
- 39.1 Within twenty one (21) days, but no earlier than fourteen (14) days, after receipt of the Letter of Acceptance, the successful Tenderer shall deliver to the Procuring Entity a Performance Security in the amount and in the form stipulated in the **Tender Data Sheet** and the **Contract data sheet**, denominated in the type and proportions of currencies in the Letter of Acceptance and in accordance with the Conditions of Contract.
- 39.2 If the Performance Security is provided by the successful Tenderer in the form of a Bank Guarantee or Insurance Bond, it shall be issued either:
- a) At the Tenderer's option, by a bank or insurance firm located in Kenya, or a foreign bank or insurance firm through a correspondent bank or insurance firm located

in Kenya,

OR

b) With the consent of the Procuring Entity, directly by a foreign bank acceptable to the Procuring Entity.

39.3 Failure of the successful Tenderer to comply with the requirement of sub-Clause 39.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender security, in which event the Procuring Entity may make the award to the next lowest evaluated Tenderer or call for new Tenders.

40. Advance Payment

40.1 If provided for in the **Tender Data Sheet**, the Procuring Entity will provide an Advance Payment on the Contract Price as stipulated in the General Conditions of Contract.

40.2 The Advance Payment request shall be accompanied by an Advance Payment Security (Guarantee) in the form provided in Section IX. For the purpose of receiving the Advance Payment, the Tenderer shall make and estimate of, and include in its Tender, the expenses that will be incurred in order to commence Delivery of Goods. These expenses will relate to the purchase of equipment, machinery, materials, and on the engagement of labour during the first month beginning with the commencement date of the Contract.

41. Adjudicator

41.1 Where so provided in the **Tender Data Sheet**, the Procuring Entity may propose the person named in the **Tender Data Sheet** to be appointed as Adjudicator under the Contract, at an hourly fee specified in the **Tender Data Sheet**, plus reimbursable expenses. If the Tenderer disagrees with this proposal, the Tenderer should so state in the Tender. If, in the Letter of Acceptance, the Procuring Entity has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Contract data sheet at the request of either party.

42. Fraud and Corruption

42.1 The Government requires that Procuring entities (including beneficiaries of Government funded projects and procurement) as well as Tenderers/Suppliers/Contractors under Government financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. It is the responsibility of the procuring entity to require that Tenderers suppliers, and contractors and their subcontractors observe the highest standard of

ethics during the procurement and execution of such contracts. In pursuance of this policy:

a) For the purpose of this provision, the following definitions are provided:-

“Corrupt practice” includes the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement or disposal process or in contract execution;

“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 and includes collusive practices amongst Tenderers prior to or after Tender submission designed to establish Tender prices at artificial non competitive levels and deprive the procuring entity of the benefits of free and open competition;

“Collusive practice” means an arrangement between two or more suppliers, contractors and subcontractors designed to achieve an improper purpose, including to influence improperly the actions of a procuring entity (PE) prior to or after Tender submission, designed to establish Tender prices at artificial non competitive levels and to deprive the PE of the benefit of free and open competition;

“Coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly a supplier, contractor or subcontractor or the property of either to influence improperly the actions of a PE;

“Obstructive practice” means deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an investigation 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.

b) A procuring entity (PE) has the right to require that Tenderers, suppliers, and contractors and their subcontractors permit persons duly appointed by KACC/PPOA to inspect their accounts and records and other documents relating to the Tender submission and contract performance,

c) The Procuring Entity will reject a proposal for award if it determines that the Tenderer recommended for award has engaged in any of the above practices in competing for the contract;

- d) In pursuit of the policy defined in sub-Clause 45.1 the Procuring Entity will cancel the portion of the funds allocated to a contract for goods, works, or services if it at any time determines that corrupt or fraudulent practices were engaged in by representatives of the procuring entity or approving authority or of a beneficiary of the funds during the procurement or the execution of that contract, without the procuring entity or approving authority having taken timely and appropriate action satisfactory to the Government of Kenya to remedy the situation
- e) The Director-General may, on the advice of the Advisory Board, debar a person from participating in procurement proceedings on the ground that the person has committed an offence under the Public Procurement and Disposal Act, 2015, or any other Act, or on other grounds as specified in Section 115 of the Act. A debarment shall be for a period of time of not less than five years. Before a person is so debarred, he/she will be given an opportunity to make representations to the Director-General and may request the Review Board to review the debarment.

42.2 The Government of Kenya reserves the right, where a firm has been found by a foreign country, international organization or other foreign organization to have engaged in corrupt or fraudulent practice, to declare that such a firm is ineligible, for a specified period to be awarded a public financed Contract in Kenya.

42.3 Any communications between the Tenderer and the Procuring Entity related to matters of alleged fraud or corruption must be made in writing.

G. Review of Procurement Decisions

- 43. Right to Review** 43.1 A Tenderer who claims to have suffered or to risk suffering, loss or damage or injury as a result of breach of a duty imposed on by Procuring Entity or an approving authority by the Public Procurement and Disposal Act 2015 or regulations, the procurement proceedings or processes, may seek administrative review as prescribed by the Act. The following matters, however, shall not be subject to the administrative review:
- The choice of procurement method;
 - A decision by the procuring entity to reject all

tenders, proposals or quotations;

- Where a contract is signed in accordance with section 135, PPADA, 2015.

Where an appeal is frivolous.

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|--|------|---|
| 44. Time Limit on Review | 44.1 | The Tenderer shall submit an application for review in the number of copies and pay fees as prescribed by regulations within fourteen (14) days of the occurrence of the breach complained of where the request is made before the making of an award or within fourteen (14) days of the notification under sections 167 or 168 of the Act |
| 45. Submission of Applications for Review by the Public Procurement Administrative Review Board | 45.1 | Any application for administrative review shall be submitted in writing to the Secretary, Public Procurement Administrative Review Board on Form RB 1 (which may be downloaded from the PPOA website) at the address shown in the Tender Data Sheet . The secretary to the review board shall immediately after filing of the request under Regulation 73, serve a copy thereof on the procuring entity or Director-General as the case may be. |
| | 45.2 | The application for administrative review shall be in accordance with the requirements of Regulation 73 of the Public Procurement and Disposals Regulations, 2006, including: <ol style="list-style-type: none"> a) Reasons for the complaint ,including any alleged breach of the Act or Regulations; b) An explanation of how the provisions of the Act, Regulation or provision has been breached or omitted, including the dates and name of the responsible public officer, where known; c) Statements or other evidence supporting the complaint where available as the applicant considers necessary in support of its request; d) Remedies sought; and e) Any other information relevant to the complaint. |
| 46. Decision by the Public Procurement Administrative Review Board | 46.1 | The Administrative Review Board shall within thirty days after receipt of a application for administrative review deliver a written decision which shall indicate: <ol style="list-style-type: none"> a) Whether the application is upheld in whole, in part or rejected; b) The reasons for its decision; c) The corrective measures to be undertaken; and d) Order payment of costs as between parties to review. |

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- 46.2 The decision of the Administrative Review Board shall be final unless the Tenderer institutes an appeal with High Court under section 100(1) of the Act
47. Judicial Review
- 47.1 The Tenderer not satisfied with the decision of the Public Procurement Administrative Review Board may appeal to the High Court within fourteen days after the decision is made and the decision of the High Court will be final.
- 47.2 The Secretary to the Administrative Review Board may be contacted at the address shown in the **Tender Data Sheet**.

SECTION III: TENDER DATA SHEET

Tender Data Sheet

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

TDS Clause Number	ITT Clause Number	Amendments of, and Supplements to, Clauses in the Instruction to Tenderers
A. Introduction		
1.	1.1	Name of Procuring Entity: County Government of Mombasa (CGM). The subject of procurement is: SUPPLY, TEST AND COMMISSION OF GARBAGE COLLECTION COMPACTOR TRUCK 20M³
2.	1.2	Period for supply of goods: as per contract Expected commencement date for supply of Goods: as per contract Required completion date for supply of the Goods: as per contract
3.	2.1 & 2.2	Financial year for the operations of the Procuring Entity: 2018/19 Name and identification number of the Contract: CGM/PRO/T/39/2018-2019: SUPPLY, TEST AND COMMISSION OF GARBAGE COLLECTION COMPACTOR TRUCK 20M³
4.	3.1	Tender is open to manufacturers and their duly authorised agents.
5.	4.1	<i>Sub Clause deleted</i>
6.	4.6 13.3	<i>Sub Clause deleted</i>
7	6	Alternative Tenders to the requirements of the Tender documents <i>will not</i> be permitted with respect to technical specifications documents with material deviations from the specifications shall be rejected

B. Tender documents

8.	8.2 20.1	The number of copies of the Tender to be completed and returned in addition to the original will be <i>one – 1 hard copy</i>
9.	9.1	The address for clarification of Tender documents is Director Supply Chain Management County Government of Mombasa

		2nd floor County Assembly Hall, Treasury Square Finance <u>Mombasa</u>
10.	9.2	Period to respond to request for clarification (<i>3 days</i>) Period prior to deadline for submission of Tenders for the Tenderers to request clarifications (<i>7 days</i>)

C. Preparation of Tenders

11.	11.1	The Language of all correspondence and documents related to the Tender is: English
12.	12.1 (g)	<p>In addition to the documents stated in ITT Clause 12, the following documents must be included with the Tender and submitted as prescribed below;</p> <p>Tenders shall be submitted in a two envelope system (Envelope A - Technical Submission and Envelope B - financial Submission).</p> <p>The tender prepared by the tenderers shall comprise of a Technical submission “Envelope A” and a financial submission “Envelope B”. Envelope A – Shall contain NO indication of the tender price or other financial information of the bid</p> <p>The two sealed envelopes shall then be sealed in an outer envelope bearing the tender number and name and a statement ‘ DO NOT OPEN BEFORE 1000 HOURS ON 29th May 2019</p> <p>Only tenders that are responsive to the mandatory requirements and have attained the pass mark of 75% in the technical evaluation shall have their financial submission opened.</p> <p>Envelope A shall contain the Technical submission and shall be clearly marked “Envelope A – Technical Submission”.</p> <p>Envelope A shall contain NO indication of the tender price or other financial information of the bid and: -</p> <p>The Tender submission:</p> <ol style="list-style-type: none"> 1. Shall have a table contents page clearly indicating Sections and Page Numbers (Mandatory). 2. Shall have pages in the whole document numbered in the correct sequence. In addition the whole submission shall be serialized numerically including all appendixes and attachments (Mandatory). 3. Shall be firmly bound and should not have any loose pages (Mandatory). 4. Shall be signed (where signatures are required) by a duly authorized representative as evidenced by a Power of Attorney (Mandatory). <p>Failure to meet this requirement will lead to disqualification.</p> <p>Envelope A shall contain the following components:</p>

	<ul style="list-style-type: none"> i. Qualification Information Statement that the tenderer is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring Entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods under this Invitation for tenders (MANDATORY). ii. Particulars of Tendering Company including the Company background, email address, statutory registration documents (incorporation/ registration certificate) valid and current business permit and valid and current compliance certificate with tax authorities (MANDATORY). iii. Tender Security as described in the format provided herein. amounting to Kshs. 100,000.00 or USD 1,000 in the form of a Banker’s guarantee or an Insurance Company Guarantee issued by an insurance firm approved by the Public Procurement Oversight Authority (PPRA) cash, letter of credit or guarantee by a deposit taking microfinance institution, Sacco society, the Youth Enterprise Development Fund or the Women Enterprise Fund valid for 120 days from the date of tender opening in the format provided in the tender document (Mandatory). iv. Duly filled and signed Confidential Business Questionnaire Form as provided herein (Mandatory). v. Duly filled and signed Anti-Corruption Declaration Form in the Format provided herein (Mandatory). vi. Duly filled and signed Declaration Form (Mandatory). vii. Duly filled and signed Manufacturer’s Authorization Form in the format provided herein. (Mandatory). viii. Duration of Warranty (defects liability) plan clearly stated as including warranty covering 12 months or 50000 km whichever comes first and the manufacturer’s detailed Defects Liability Period Support Plan. This must cover warranty obligations of the manufacturers and customer and clearly set conditions under which warranty claim is valid or void. (Mandatory). ix. Written undertaking that, in the case of a tenderer not doing business within Kenya, the tenderer is or will be (if awarded the contract) represented by an agent in Kenya equipped, and able to carry out the tenderer’s maintenance, repair, and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications (Mandatory). x. A written guarantee that spares for the maintenance of the trucks shall remain available and the tenderer’s ability to supply them for the minimum period of 6 years (Mandatory). xi. List and evidence of at least similar compactors of the same size built or supplied by the manufacturer covering the last 5 years 2018, 2017, supplied. The list shall include addresses of sale sites, names and addresses of contact persons. The evidence documents for cited experience shall be such as completion certificates or satisfactory recommendation letters or invoices, contract documents and/or purchase orders. xii. Memorandum of Procedure for design, building, delivery, testing and commissioning in descriptive Ms. Project or Gantt chart format. The
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		<p>detailed program must indicate a delivery period of 2Months or less upon confirmation of order.</p> <p>xiii. A complete set of audited accounts for the years 2018 and 2017</p> <p>xiv. Any other item and information which the Tenderer considers may support his technical proposal should be clearly marked “additional Information”.</p> <p><u>Envelope B – FINANCIAL PROPOSAL</u> shall contain:</p> <p>i. Form of Tender.</p> <p>ii. Schedule of Prices, with separate details indicating a breakdown of the costs and priced list of special tools, which shall comprise the Form of Tender Price.</p> <p>iii. Cost of deviations from specifications</p> <p>The inner envelope shall itself contain two envelopes, Envelopes A and B. Envelope A shall contain the technical submission and shall be clearly marked “Envelope A – Technical Submission”. Envelope A shall contain NO indication of the tender price or other financial information of the bid.</p> <p>Envelope B shall contain the financial submission and shall be clearly marked “Envelope B – Financial Submission”. Envelope B shall also indicate the name and address of the tenderer to enable return of unopened financial submissions in case they do not qualify past the technical evaluation stage.</p> <p>The inner envelopes shall also indicate the name and address of the tenderer to enable return of unopened tenders in case it is declared “late”.</p>
13.	13.3 (c)	The information required from Tenderers in ITT Clause 13.3 is modified as follows: none
14.	13.4	Not Applicable
15.	14.3 (b)	<p>The qualification criteria required from Tenderers in ITT Clause 14.3(b) is modified as follows: NONE</p> <p>The total monetary value of good(s) supplied for each of the last three years should be indicated</p>
16.	14.3 (d)	Clause deleted
17.	16.6 (a)	N/A
18.	16.6 (b)	<p>The price quoted shall be <u>inclusive of all taxes for Local Firms/Agents</u></p> <p><i>Add an additional sub clause 16.6(b) iv</i></p> <p><i>Prices for training and commissioning shall be inclusive of applicable taxes</i></p>
19.	16.8	The price shall be fixed

20.	17.1	a) For goods and related services originating in Kenya the currency of the Tender shall be <i>Kenya Shillings or USD</i> ; b) For goods and related services originating outside of Kenya , the Tenderer shall express its Tender in <i>United States Dollars USD</i>
21.	17.2	For the purpose of evaluation only, the rate of exchange to be used will be those established by the Central Bank of Kenya prevailing on <i>date of Tender opening</i> .
22.	18.1	The Tender validity period shall be <i>[90]</i> days.
23.	19.1	The amount of Tender security is Kshs. 100,000.00 or USD 1000 in the format provided in the tender document and shall be valid for 120 days from the date of tender opening.

D. Submission of Tenders

25.	21.2 (a)	Tenders shall be addressed to: The County Secretary County Government of Mombasa, P.O BOX 90400-80100, MOMBASA, KENYA Phone: +254 (041) 231s1531, Fax: +254 (041) 2311531 2nd Fl, Betting and Licensing Building Mombasa. Alternatively, completed tenders may be deposited at Tender Box located at the County Assembly Hall ground floor, Treasury Square, to reach him not later than 1030 hrs on 29th May, 2019 Bulky tenders can be submitted at the office of Head of Procurement and Supplies, 2nd floor County Assembly Hall, Treasury Square, Mombasa to reach him not later than 1030hrs. on 29th May 2019
26.	21.2 (b)	Tender name: SUPPLY, TEST AND COMMISSION OF GARBAGE COLLECTION COMPACTOR TRUCK 20M³.
27.	22.1	The deadline for Tender submission is 1030 HOURS 29th May, 2019
28.	22.3	Extension of the deadline for submission of Tenders shall not be made later than 7 Days before date of tender opening

E. Opening and Evaluation of Tenders

29.	25.1	The Tender opening shall take place at the Finance Department Boardroom , in Mombasa County and Tenderers or their representatives may attend the opening promptly after 1045 HOURS 29th May 2019						
30	29. Technical Evaluation	Technical proposals shall be subjected to the following evaluation criteria: <table border="1" data-bbox="539 1933 1465 2031"> <thead> <tr> <th>No.</th> <th>FACTOR UNDER CONSIDERATION (RATING)</th> <th>Wt. (%)</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	No.	FACTOR UNDER CONSIDERATION (RATING)	Wt. (%)			
No.	FACTOR UNDER CONSIDERATION (RATING)	Wt. (%)						

		<p>a) Adherence to Technical Specifications under clauses 6.2 (50Marks) NB: <i>Only tenderers whose products meet at least 90% of this factor (i.e. 45 out of 50 Marks) shall proceed to be evaluated below.</i></p>	<p>50</p>
		<p>b) Experience: ➤ List of at least 2 deliveries made to different clients covering the last 4 years supplied to at least 2 distinct regions within or outside the country (5 marks) ➤ List includes addresses of sale sites, names and addresses of contact persons and evidence for each cited experience as completion certificates or satisfactory recommendation letters or invoices, contract documents and/or purchase orders (5 marks).</p>	<p>10</p>
		<p>c) Memorandum of procedure: ➤ covering design, building, delivery, testing and commissioning in descriptive Ms. Project or Gantt chart format (10 marks) ➤ Indicates delivery period of 2-3 Months or less upon confirmation of order. (10 marks)</p>	<p>20</p>
		<p>d) Financial Strength: Tenderer’s financial position and operational performance from the analysis of Certified Audited Accounts for 2014 and 2015 specifically: ➤ Liquidity ratios CA/CL ≥ 1 (6 marks) ➤ Gearing ratios not more than 50% (6 marks) ➤ Profitability ratios 10% and above (8 marks) Note: Getting less than the above requirements will get half marks.</p>	<p>20</p>

Bidders will be required to score a minimum of 75% to proceed to the next stage of evaluation

Site Visit/Due Diligence

In determining satisfaction as to whether the bidder(s) whose technical submission(s) has/have been scored above the required pass mark of 75%, the Procuring Entity MAY conduct site visits/due diligence to the reference sites and manufacturing plant after opening and evaluation of financial submission “Envelope B” but before signing of contract with recommended bidder so as to establish whether the information provided in the technical

		<p>submission is accurate.</p> <p>Where site visits are conducted, the Evaluation Criteria shall be based on:</p> <ul style="list-style-type: none"> <input type="checkbox"/> <i>Quality of workmanship</i> <input type="checkbox"/> <i>Reliability of the equipment</i> <input type="checkbox"/> <i>Availability of spare parts</i> <input type="checkbox"/> <i>Durability of the equipment</i> <input type="checkbox"/> <i>Cost of Maintenance</i>
30.	30.4	<p>The currency that shall be used for Tender evaluation and comparison purposes to convert all Tender prices expressed in various currencies is Kenya Shillings</p> <p>The source of exchange rate shall be Central Bank of Kenya</p> <p>The date of exchange rate shall be Selling rate on date of tender opening</p>
31.	30.8	<p>Criteria for Tender evaluation – <i>Financial.</i></p> <p><i>Lowest evaluated bid</i></p>
32.	30.9 (b)	<p>Delivery schedule. Delivery in excess of 3 months shall be declared non-responsive.</p>
F. Contract Award		
43.	35.1	<p>Clause deleted</p>
44.	39.1	<p>The Performance Security shall be <i>10 percent of the Contract Price</i> in the format provided from a bank with its operations in Kenya.</p>
45.	40.1	<p>The Advance Payment shall be limited to <i>20% of the Contract Price</i></p>
46.	40.2	<p>Maximum amount of Advance payment shall be [<i>as 40.1 above</i>]</p>
47.	41.1	<p>clause deleted refer to conditions of contract</p>

SECTION IV: GENERAL CONDITIONS OF CONTRACT

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General Conditions of Contract

1. Definitions

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

- a) “CDS” means the Contract data sheet.
- b) “Completion” means the fulfilment of the related services by the Supplier in accordance with the terms and conditions set forth in the contract
- c) “Contract” means the agreement entered into between the Procuring Entity and the Supplier, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- d) “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution and includes, inter alia, bribery and extortion or coercion which involves threats of injury to person, property or reputation.
- e) “Day” means calendar day.
- f) “Delivery” means the transfer of the goods from the supplier of equipment, machinery, and /or other materials which the Supplier is required to supply to the Procuring Entity under Contract.
- g) “Effective Date” means the date on which this Contract becomes effective pursuant to GCC Clause
- h) “Eligible Country" means the countries and territories eligible for participation in procurements financed by the specified institution.
- i) “End User” means the organization(s) where the goods will be used, as named in the CDS.
- j) “Force Majeure” means an event or situation beyond the control of the Supplier and not involving the Supplier’s fault or negligence and not foreseeable, is unavoidable, and is not due to negligence or lack of care on the part of the Supplier. Such events may include, but are not restricted to, acts of the Procuring Entity in its sovereign capacity, wars or revolutions,

fires, floods, epidemics, quarantine, restrictions, acts of terrorism piracy and freight embargoes.

- k) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Purchaser, and includes collusive practices among Tenderers (prior to or after Tender submission)
- l) “GCC” means the General Conditions of Contract contained in this section.
- m) “Origin” means the place where the Goods were mined, grown, or produced or from which the Services are supplied. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially recognized new produce results that is substantially different in basic characteristics or in purpose or utility from its components.
- n) “Procuring Entity” means the entity purchasing the Goods and related service, as named in **CDS**.
- o) “Project Site” where applicable, means the place or places named in CDS.
- p) “Related Services” means those services ancillary to the supply of the Goods, such as transportation and insurance, and any other incidental services, such as installation, commissioning, provision of technical assistance, training, initial maintenance and other such obligations of the Supplier covered under the Contract.
- q) “Supplier” means the individual, private or public entity or a combination of the above whose Tender to perform the contract has been accepted by the Procuring Entity and is named as such in the Contract Agreement, and includes the legal successors or permitted assigns of the supplier.
- r) “The Contract Price” means the price payable to the Supplier as specified under the Contract, subject to such additions and adjustment here to or deduction there from as may be made pursuant to the contract for the full and proper performance of its contractual obligations.

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2. **Application** 2.1 These General Conditions shall apply to the extent that they are not superseded by provisions of other parts of the Contract.
3. **Governing Language** 3.1 The Contract and all correspondence and documents relating to the contract exchanged by the Supplier and the Procuring Entity shall be written in English, unless another language is **specified in CDS**. Subject to GCC Clause 3.1, the version of the Contract written in the specified language shall govern its interpretation.
4. **Applicable Law** 4.1 The contract shall be governed and interpreted in accordance with the laws of Kenya, unless otherwise **specified in CDS**.
5. **Country of Origin and Nationality of Supplier** 5.1 The origin of Goods and Services means the place where the goods are mined, grown, cultivated, produced, manufactured, or processed, or through manufacture, process, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its imported components or the place from which the related services are supplied.
6. **Standards** 6.1 The Goods supplied under this Contract shall conform to the standards mentioned in the Technical Specifications, and, when no applicable standard is mentioned, to the authoritative standards appropriate to Kenya. Such standards shall be the latest issued by the concerned institution.
7. **Use of Contract Documents and Information; Inspection and Audit by the Government of Kenya** 7.1 The Supplier shall not, without the Procuring Entity's prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring Entity in connection therewith, to any person other than a person employed by the Supplier in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance.
- 7.2 The Supplier shall not, without the Procuring Entity's prior written consent, make use of any document or information enumerated in GCC Clause 7.1 except for purposes of performing the Contract.

- 7.3 Any document, other than the Contract itself, enumerated in GCC Clause 7.1 shall remain the property of the Procuring Entity and shall be returned (all copies) to the Procuring Entity on completion of the Supplier's performance under the Contract if so required by the Procuring Entity .
- 7.4 The Supplier shall permit the Government of Kenya or / and donor agencies involved in financing the project to inspect the Supplier's accounts and records relating to the performance of the Supplier and to have them audited by auditors appointed by the Government of Kenya or / and the appropriate donor agencies, if so required by the Government of Kenya or / and the appropriate donor agencies.
8. **Patent and Copy Rights**
- 8.1 The Supplier shall indemnify the Procuring Entity against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof in Kenya.
- 8.2 The patent right in all drawings, documents, and other materials containing data and information furnished to the Procuring Entity by the Supplier herein shall remain vested in the supplier, or, if they are furnished to the Procuring Entity directly, or through the Supplier by any third party, including suppliers of materials, the patent right in such materials shall remain vested in such third party.
9. **Performance Security**
- 9.1 Within twenty-one (21) days of receipt of the notification of Contract award, the successful Tenderer shall furnish to the Procuring Entity the performance security in the amount **specified in CDS.**
- 9.2 The proceeds of the performance security shall be payable to the Procuring Entity as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.
- 9.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Procuring Entity and shall be in one of the following forms:
- a) A bank guarantee,
 - b) an irrevocable letter of credit, or
 - c) an insurance bond issued by a reputable insurance company approved by PPOA in the form provided in the Tender documents or another form acceptable to the Procuring Entity ; or

- d) A banker's or certified cheque.
- 9.4 The performance security will be discharged by the Procuring Entity and returned to the Supplier not later than thirty (30) days following the date of completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless otherwise **specified in CDS**.
- 10. Inspections and Test**
- 10.1 The Procuring Entity or its representative shall have the right to inspect and /or to test the Goods to confirm their conformity to the Contract specifications at no extra cost to the Procuring Entity. **CDS** and the Technical Specifications shall specify what inspections and tests shall be carried out. The Procuring Entity shall notify the Supplier in writing, in a timely manner, of the identity of any representatives retained for these purposes.
- 10.5 Nothing in GCC Clause 10 shall in any way release the supplier from any warranty or other obligations under this Contract.
- 11. Packing**
- 11.1 The supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods final destination and the absence of heavy handling facilities at all points in transit.
- 12. Delivery and Documents**
- 12.1 Delivery of the Goods shall be made by the Supplier in accordance with the terms specified in the Schedule of Requirements. The details of insurance and transportation shall be as provided by the INCOTERM DDP or such other INCOTERM and / or other documents to be furnished by the Supplier as are **specified in CDS**.
- 12.2 For purposes of the Contract, "DDP", "CIP", "CIF", "FCA", "FOB", "EXW" and other trade terms used to describe the obligations of the parties shall have the meanings assigned to them by the current edition of INCOTERMS published by the International Chamber of Commerce, Paris.
- 12.3 Documents to be submitted by the Supplier are **specified in CDS**.
- e) Training of the Procuring Entity's personnel, at the

Supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied Goods.

- 13. Spare Parts**
- 14.1 Supplier shall carry sufficient inventories to assure ex-stock supply of consumable spares for the Goods. Other spare parts and components shall be supplied as promptly as possible and in any event within the period specified in the CDS.
- a) Such spare parts as the Procuring Entity may select to purchase from the Supplier, provided that this election shall not relieve the Supplier of any warranty obligations under the Contract; and
 - b) In the event of termination of production of the spare parts:
 - a) Advance notification to the Procuring Entity of the pending termination, in sufficient time to permit the Procuring Entity to procure needed requirements; and
 - b) Following such termination, furnishing at no cost to the Procuring Entity, the blueprints, drawings, and specifications of the spare parts, if requested.
- 14. Warranty**
- 15.1 The Supplier warrants that the Goods supplied under the Contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the Contract. The Supplier further warrants that all Goods supplied under this Contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the Procuring Entity, specifications) or from any act or omission of the Supplier, that may develop under normal use of the supplied Goods in the conditions prevailing in the Republic of Kenya.
- 15.2 This warranty shall remain valid for a period specified in the **CDS** after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the Contract, or for a period specified in the **CDS** after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless **specified otherwise in CDS**.

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- 15.3 The Procuring Entity shall promptly notify the Supplier in writing of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the Supplier shall, within the period **specified in CDS** and with all reasonable speed, repair or replace the defective Goods or parts thereof, without costs to the Procuring Entity other than, where applicable, the cost of inland delivery of the repaired or replaced Goods or parts from EXW or the port or place of entry to entry to the final destination.
- 15.5 If the Supplier, having been notified, fails to remedy the defect(s) within the period **specified in CDS**, the Procuring Entity may proceed to take such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Procuring Entity may have against the Supplier under the Contract.

15. Payment

- 16.1 The method and conditions of payment to be made to the Supplier under this Contract shall be **specified in CDS**.
- 16.2 The Supplier's request(s) for payment shall be made to the Procuring Entity in writing, accompanied by an invoice describing, as appropriate, the Goods delivered and Services performed, and by documents submitted pursuant to GCC Clause 12, and upon fulfilment of other obligations stipulated in the Contract.
- 16.3 After delivery and acceptance of the Goods, payments shall be made promptly by the Procuring Entity within thirty (30) days after submission of a valid invoice or claim by the Supplier, or such other period as **specified in the CDS**.
- 16.4 If the Procuring Entity makes a late payment, the Supplier shall be paid interest on the late payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the rate as **specified in the CDS**.
- 16.5 The currency or currencies in which payment is made to the Supplier under this Contract shall be **specified in CDS** subject to the following general principle: payment will be made in the currency or currencies in which the payment has been requested in the Supplier's Tender.
- 16.6 All payments shall be made in the currency or currencies specified in the **CDS** pursuant to GCC Clause 18.4

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16. **Prices**
- 17.1 The contract price shall be as specified in the Contract Agreement subject to any additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
- 17.2 Prices charged by the Supplier for Goods delivered and Services performed under the Contract shall not vary from the prices quoted by the Supplier in its Tender, with the exception of any price adjustments **authorized in the CDS**.
17. **Change Orders**
- 18.1 If the Procuring Entity at any time wishes to make changes within the general scope of the Contract to any one or more of the following, by a written order given to the Supplier pursuant to GCC Clause 21:
- a) Drawings, designs, or specifications, where Specialized Goods to be furnished under the Contract are to be specifically manufactured for the Procuring Entity ;
 - b) The method of shipment or packing;
 - c) The place of delivery; and/or
 - d) the Services to be provided by the Supplier,
- He may request the Supplier to provide a quotation on the effect of the change on the time and the cost of the contract.
- 18.2 Any quotation for additional cost or time by the Supplier for adjustment under this clause must be presented within thirty (30) days from the date of the Supplier's receipt of the Procuring Entity's request for change order.
- 18.3 Prices to be charged by the supplier for any related services that might be needed but which were not included in the Contract shall be agreed upon in advance by the Parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.
- 18.4 If the Procuring Entity accepts the Supplier's quotation he will issue a formal Change Order in writing. The Supplier will not be eligible to claim reimbursement for any change to the contract unless he is in receipt of such formal written instruction.
- 18.5 All variations must collectively not exceed 10% of the original contract quantity for goods and/or incidental services. Any price variation must be based on the consumer price index or the Central Bank of Kenya inflation rate.

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18. **Contract Amendments** 19.1 Subject to GCC Clause 20, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.
19. **Assignment** 20.1 Neither the Procuring Entity nor the Supplier shall assign, in whole or in part, obligations under this Contract, except with the prior written consent of the other party.
20. **Subcontracts** 21.1 The Supplier shall notify the Procuring Entity in writing of all subcontracts awarded under this contract if not already specified in the Tender. Such notification, in the original Tender or later, shall not relieve the Supplier from any liability or obligation under the contract.
- 21.2 Subcontracts must comply with the provision of GCC Clause 5.
21. **Delays in the Supplier's Performance** 22.1 Delivery of the Goods and performance of Services shall be made by the Supplier in accordance with the time schedule prescribed by the Procuring Entity in the Schedule of Requirements.
- 22.2 If at any time during performance of the Contract, the Supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the Goods and performance of Services, the Supplier shall promptly notify the Procuring Entity in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Supplier's notice, the Procuring Entity shall evaluate the situation and may at its discretion extend the Supplier's time for performance, with or without liquidated damages, in which case the extension shall be ratified by the parties by amendment of Contract.
- 22.3 Except as provided under GCC Clause 27, a delay by the Supplier in the performance of its delivery obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 25, unless an extension of time is agreed upon pursuant to GCC Clause 24.2 without the application of liquidated damages.

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22. **Liquidated Damages** 23.1 Subject to GCC Clause 27, if the Supplier fails to deliver any or all of the Goods or to perform the Services within the period(s) specified in the Contract, the Procuring Entity shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage **specified in CDS** of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage **specified in CDS**. Once the maximum is reached, the Procuring Entity may consider termination of the Contract pursuant to GCC Clause 26.
23. **Termination for Default** 24.1 The Procuring Entity or the Supplier, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the concerned party may terminate the Contract if the other party causes a fundamental breach of the Contract.
- 24.2 Fundamental breaches of Contract shall include, but shall not be limited to the following:
- a) The Supplier fails to deliver any or all of the Goods within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring Entity pursuant to GCC Clause 24; or
 - b) The Supplier fails to perform any other obligation(s) under the Contract;
 - c) The supplier has abandoned or repudiated the contract.
 - d) The Procuring Entity or the Supplier is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
 - e) A payment is not paid by the Procuring Entity to the Supplier within 0 days of the due date for payment;
 - f) The Procuring Entity gives Notice that goods delivered with a defect is a fundamental breach of Contract and the Supplier fails to correct it within a reasonable period of time determined by the Procuring Entity ; and
 - g) The supplier, in the judgment of the Procuring Entity, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

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- 24.3 In the event the Procuring Entity terminates the Contract in whole or in part, pursuant to GCC Clause 26.1, the Procuring Entity may procure, upon such terms and in such manner as it deems appropriate, Goods or Services similar to those undelivered, and the Supplier shall be liable to the Procuring Entity for any excess costs for such similar Goods or Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.
- 24.4 If the Procuring Entity terminates the Contract pursuant to GCC Clause 26.2 (g) above the amount of Liquidated Damages specified in the Contract Data Sheet shall immediately become due from the Supplier to the Procuring Entity.
- 24. Termination for Insolvency**
- 25.1 The Procuring Entity may at any time terminate the Contract by giving written notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Procuring Entity.
- 25. Force Majeure**
- 26.1 Notwithstanding the provisions of GCC Clauses 24, 25, and 26, the Supplier shall not be liable for forfeiture of its performance security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 26.2 If a Force Majeure situation arises, the Supplier shall promptly notify the Procuring Entity in writing of such condition and the cause thereof. Unless otherwise directed by the Procuring Entity in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.
- 26. Disputes**
- 27.1 If any dispute or difference of any kind whatsoever shall arise between the Procuring Entity and the Supplier in connection with or arising out of the Contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If after thirty days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Procuring Entity or the Supplier may give notice for adjudication.

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- 27.3 If either party believes that a decision taken by the other was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the decision.
- 27. Procedure for Disputes**
- 28.1 The Adjudicator stated in the **CDS** shall give a decision in writing within 28 days of receipt of a notification of a dispute.
- 28.2 The Adjudicator shall be paid by the hour at the rate specified in the **CDS**, together with reimbursable expenses of the types specified in the **CDS**, and the cost shall be divided equally between the Procuring Entity and the Supplier, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.
- 28.3 The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place shown in the **CDS**.
- 28. Replacement of Adjudicator**
- 29.1 Should the Adjudicator resign or become incapacitated, or should the Procuring Entity and the Supplier agree that the Adjudicator is not functioning in accordance with the provisions of the Contract a new Adjudicator will be jointly appointed by the Procuring Entity and the Supplier. In case of disagreement between the Procuring Entity and the Supplier, within 30 days, the Adjudicator shall be designated by the Appointing Authority designated in the **CDS** at the request of either party, within 14 days of receipt of such request.
- 29. Limitation of Liability**
- 30.1 Except in cases of criminal negligence or wilful conduct, and in the case of infringement pursuant to GCC Clause 8,
- a) The supplier shall not be liable to the Procuring Entity , whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Procuring Entity ; and
- b) The aggregate liability of the Supplier to the Procuring Entity , whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost

of repairing or replacing defective equipment or to any obligation of the Supplier to indemnify the Procuring Entity with respect to patent infringement..

- 30. **Notices**
 - 31.1 Any notice given by one party to the other pursuant to this Contract shall be sent to the other party in writing or by facsimile or e-mail and confirmed in writing or by facsimile or e-mail to the other party’s address **specified in CDS**. The term “in writing” means communicated in written form with proof of receipt.
 - 31.2 A notice shall be effective when delivered or on the notice’s effective date, whichever is later.
- 31. **Taxes and Duties**
 - 32.1 The Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed inside and outside the Republic of Kenya.
 - 32.2 If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in the Republic of Kenya, the Procuring Entity shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

**SECTION V - CONTRACT DATA SHEET
(SPECIFIC CONDITIONS OF CONTRACT)**

Contract Data Sheet

The following Contract Data shall supplement the General Conditions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract. The corresponding clause number of the GCC is indicated in parentheses.

CDS Clause Number	GCC Clause Number	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
		Definitions (GCC Clause 1)
1.	1.1	The Procuring Entity is: COUNTY GOVERNMENT OF MOMBASA
2.	1.1(j)	The Supplier is: <i>[Name and address]</i>
3.	1.1(k)	<p>The Project is: SUPPLY, TEST AND COMMISSION OF GARBAGE COLLECTION COMPACTOR TRUCK 20M³</p> <p><i>The Scope of Supply shall be defined in SUPPLY, TEST AND COMMISSION OF GARBAGE COLLECTION COMPACTOR TRUCK 20M³ at County Government of Mombasa, provision of warranty, back up spares, manuals and tools.</i></p> <p><i>The supply shall include a complete set of special tools for the equipment required for troubleshooting and maintenance including any analytical or programming accessories</i></p> <p><i>The supply shall include back up spare parts as per the list provided in the schedule of requirements</i></p> <p><i>The Supply shall include all necessary manuals and other documentation required to operate and maintain the truck in five (5) copies for each of the following categories: -</i></p> <ul style="list-style-type: none"> - Operator - Service - Parts <p><i>The manuals will be of good quality, plastic covered, and in the English language.</i></p> <p><i>The information contained should also be made available to the Purchaser in CD ROM format, with one back up copy.</i></p> <p><i>The purchaser prefers a delivery period of up to 3 Months after contract signing for the equipment</i></p> <p><i>In case of prolonged delay in delivery, Maximum loss recoverable by the Procurement entity shall be 25% of the contract price.</i></p>

		<i>The Supplier shall be responsible for all duties and taxes incurred in the country of building up to delivery in Mombasa</i>
Governing Language (GCC Clause 3)		
4.	3.1	The Governing Language if not English shall be: ENGLISH
Applicable Law (GCC Clause 4)		
5.	4.1	The Applicable Law shall be: Laws of the Republic of Kenya
Country of Origin (GCC Clause 5)		
6.	5.1	Country of Origin is
Performance Security (GCC Clause 9)		
7.	9.1	The amount of performance security, as a percentage of the Contract Price, shall be: <i>[ten (10) percent of the Contract Price] in the format of an unconditional guarantee in the format provided</i>
8.	9.4	After delivery and acceptance of the Goods, the performance security shall be discharged in <i>[not later than 30 days following the date of completion]</i>
Inspections and Tests (GCC Clause 10)		
9.	10.1	<p>Inspection and tests prior to shipment of Goods and at final acceptance are as follows:</p> <p>Quality and quantity inspection, if applicable, shall be carried out prior to shipment of Goods by the manufacturer(s) at the supplier’s own expense and responsibility in terms of the items specified in the specifications. The supplier shall submit the inspection certificate issued by himself/herself which should be attached with the certificate(s) of the manufacturer(s) to the Procuring Entity in order to ensure that the goods are manufactured in compliance with the contract.</p> <p>The purchaser reserves the right to make pre-shipment inspection of the equipment if need be.</p>
Packing (GCC Clause 11)		
10.	11.2	<i>The Goods shall be packed properly in accordance with standard import packing specified by the Procuring Entity in the Technical Specification.</i>

Delivery and Documents (GCC Clause 12)		
11.	12.1	<p>For Goods supplied from abroad: <i>Upon shipment, the Supplier shall notify the Procuring Entity and the Insurance Company by facsimile or e-mail the full details of the shipment, including Contract number, description of Goods, quantity, the vessel, the bill of lading number and date, port of loading, date of shipment, port of discharge, etc. The Supplier shall mail the following documents to the Procuring Entity, with a copy to the Insurance Company:</i></p> <ul style="list-style-type: none"> (i.) <i>One original plus four copies of the Supplier's invoice showing Goods' description, quantity, unit price, and total amount;</i> (ii.) <i>Original and four copies of the negotiable, clean, on-board bill of lading/airway bill/road consignment note marked "freight prepaid" and four copies of non-negotiable bill of lading or equivalent;</i> (iii.) <i>One original plus four copies of the packing list identifying contents of each package;</i> (iv.) <i>Insurance certificate;</i> (v.) <i>Manufacturer's or Supplier's warranty certificate;</i> (vi.) <i>Inspection certificate, issued by the nominated inspection agency, and the Supplier's factory inspection report; and</i> (vii.) <i>Certificate of country of origin issued by the chamber of commerce and industry or equivalent authority in the country of origin in duplicate.</i> <p><i>The above documents shall be received by the Procuring Entity at least one week before arrival of the Goods at the port or place of arrival and, if not received, the Supplier will be responsible for any consequent expenses.</i></p>
12.	12.3	<p>For Goods from within Kenya: <i>Upon delivery of the Goods to the transporter, the Supplier shall notify the Procuring Entity and mail the following documents to the Procuring Entity:</i></p> <ul style="list-style-type: none"> (i.) <i>One original plus four copies of the Supplier's invoice showing Goods' description, quantity, unit price, and total amount;</i> (ii.) <i>Delivery note, railway receipt, or truck receipt;</i>

		<p>(iii.) <i>Manufacturer’s or Supplier’s warranty certificate;</i></p> <p>(iv.) <i>Inspection certificate issued by the nominated inspection agency, and the Supplier’s factory inspection report; and</i></p> <p>(v.) <i>Certificate of country of origin issued by the Kenyan Chamber of Commerce, Industry and Agriculture or equivalent authority in the country of origin in duplicate.</i></p> <p><i>The above documents shall be received by the Procuring Entity before arrival of the Goods and, if not received, the Supplier will be responsible for any consequent expenses.</i></p>
Incidental Services (GCC Clause 13)		
13.	13.1	<p>Incidental services to be provided are:</p> <p><i>[Selected services covered under GCC Clause 15 and/or other should be specified with the desired features. The price quoted in the Tender price or agreed with the selected Supplier shall be included in the Contract Price.]</i></p>
Spare Parts (GCC Clause 14)		
14.	14.1	Minimum period for supply of spare parts is:
Warranty (GCC Clause 15)		
15.	15.2	<p>GCC 15.2—In partial modification of the provisions, the warranty period shall be 50000 km of operation or 12 months from date of acceptance of the Goods or (____) months from the date of shipment, whichever occurs earlier. The Supplier shall, in addition, comply with the performance and/or consumption guarantees specified under the Contract. If, for reasons attributable to the Supplier, these guarantees are not attained in whole or in part, the Supplier shall, at its discretion, either:</p> <p>(a) Make such changes, modifications, and/or additions to the Goods or any part thereof as may be necessary in order to attain the contractual guarantees specified in the Contract at its own cost and expense and to carry out further performance tests in accordance with CDS 9,</p>
16.	15.4 & 15.5	The period for correction of defects in the warranty period is: 1 month

	Payment (GCC Clause 16)	
17.	16.1	<p>The method and conditions of payment to be made to the Supplier under this Contract shall be as follows:</p> <p>Payment for Goods supplied from abroad:</p> <p>Payment of foreign currency portion shall be made in (<u>USD</u>) [<i>currency of</i> in the following manner:</p> <p>The procurement entity shall pay for manufacture, delivery and commissioning of the equipment by way of advance of 20% of contract sum backed by an advance payment bank guarantee and a revolving letter of credit which shall revolve on amounts not exceeding 20% of contract sum for every payment. The advance payment security shall be extended for a period exceeding the latest date of shipment, be reduced in proportion to the value of the equipment delivered to the site, as evidenced by shipping and delivery documents.</p> <p>Payment shall be made on meeting the following conditions/ milestones:</p> <ol style="list-style-type: none"> 1) On Signing of Contract - 20% of the contract price against an approved advance payment Bank guarantee 2) Evidence of shipping. Clean Bill of Lading shall be provided by the contractor, evidencing the shipment of the equipment - 60% of contract price 3) Upon issue of Hand Over /Final Acceptance Certificate by the Purchaser upon carrying out of the Load & Endurance Testing during commissioning of the equipment at the Purchaser's site - 15% of contract price for each crane 4) Retention money on expiry of warranty period - 5% of contract price. <p>(The release of the 5% retention money can be replaced with a warranty bond covering the warranty period, issued by a reputable bank with operations in Kenya and approved by the Purchaser)</p> <ol style="list-style-type: none"> 5) In the event that the Employer fails to make any payment on its respective due date, the Employer shall pay to the Contractor interest on the amount of such delayed payment at the prevailing Central Bank of Kenya's average rate for lending per month for period of delay until payment has been made in full. <p>Payment of local currency portion shall be made in <i>Kenya Shillings</i>] within thirty (30) days of presentation of claim supported by a certificate from the Procuring Entity declaring that the Goods have</p>

		been delivered and that all other contracted Services have been performed.
18.	16.3	Period for payment following a valid invoice: 30 days. Rate to be used for paying the Supplier's interest on the late payment made by Procuring Entity shall be the Central Bank of Kenya rate.
Prices (GCC Clause 17)		
19.	17.1	No price adjustment
Liquidated Damages (GCC Clause 23)		
20.	23.1	Applicable rate: 2.5 per cent per week per equipment of the 1/3 of the contract price . Maximum deduction: is equal to the performance security.
21	24.4	In the event of corrupt or fraudulent practice or any breach of the Integrity Declaration the Supplier shall be liable to pay to the Procuring Entity [insert number per cent [default 100%] of the Contract Price.
Procedure for Disputes (GCC Clause 28)		
22.	28.1	The Adjudicator shall be [<i>insert: name of the Adjudicator</i>]
23.	28.2	Rate of the Adjudicator fees shall be [<i>insert: rate</i>]
24.	28.3	Arbitration institution shall be [<i>insert: institution</i>] Place for carrying out Arbitration [<i>insert: full address of the place/location</i>]
25.	29.1	Appointing Authority for the Adjudicator [<i>insert: Authority</i>]
Notices (GCC Clause 31)		
26.	31.1	Procuring Entity's address for notice purposes: The County Secretary County Government of Mombasa, P.O BOX 90400-80100, MOMBASA, KENYA Phone: +254 (041) 2311531, Fax: +254 (041) 2311531 2 nd Fl, Betting and Licensing Building Mombasa. Supplier's address for notice purposes:

The provisions in the General Conditions shall apply unless modified by Part II, Special Conditions

Read and acknowledged

Name:.....

Signed:.....

Duly authorized to sign for and on behalf of (bidder)

.....

Dated this.....day of20.....

Stamp/Seal

SECTION VI: TECHNICAL SPECIFICATIONS

6 SECTION VI- TECHNICAL SPECIFICATIONS

6.1 GENERAL

- 6.1.1 These specifications describe the basic requirements for equipment. Tenderers are requested to submit with their offers the detailed specifications, drawings, catalogues, etc for the products they intend to supply.
- 6.1.2 Tenderers must indicate on the specifications sheets whether the Equipment offered comply with each specific requirement.
- 6.1.3 All the dimensions and capacities of the Equipment to be supplied shall not be less than those required in these specifications. Deviations from the basic requirements, if any, shall be explained in detail in writing with the offer, with supporting data such as calculation sheets, etc. The Procuring Entity reserves the right to reject the products, if such deviations shall be found critical to the use and operation of the products
- 6.1.4 The tenderers are requested to present information along with their offers as follows;-
- (i) Shortest possible delivery period of each product
 - (ii) Information on proper representative and/or workshop for back-up service/repair and maintenance including their names and addresses

6.1.5 SUPPLY, TEST AND COMMISSION OF GARBAGE COLLECTION COMPACTOR TRUCK 20M³

SPECIFICATION	REQUIREMENT	SPECIFY
1.TRUCK CAB-CHASSIS		
a) MAKE	—	
b) MODEL	—	
c) COUNTRY OF ORIGIN	—	
d) MANUFACTURE'S LITERATURE,AUTHORIZATION AND SPECIFICATION SUPPLIED &IN ORIGINAL FORM	Yes Mandatory	
a)GENERAL		
i. Standard production of 6x4 , 10 ton payload,20m ³ refuse collection compactor truck of latest design robust construction ,in current production ,marketed in Kenya.	Yes	
ii. Designed for heavy duty export specification ,capable of operating in tropical condition over paved and unpaved roads	Yes	
iii. Suitable for collecting compacting and transporting refuse	Yes	
iv. Control forward/normal	Specify	
b)DIMENSION AND WEIGHT		
i. Overall length ,min.	10,000mm	
ii. Overall width, approx.	2,500mm	
iii. Overall height, approx.	3,400mm	
iv. Wheelbase ,approx.	4,300+1300mm	
v. Length of chassis aft of cab approx.	4,500mm	
vi. Kerb weight(excluding body), approx.	14,900kg	
vii. General vehicle weight ,approx.	25,000kg	
viii. Payload ,approx.	10,000kg	
c)ENGINE		
i. Make	—	
ii. Model	—	
iii. Country of origin	—	
iv. Engine performance curve supplied	Yes	
v. 4 stroke, in line,Diesel engine, water cooled,	Yes .yes .yes ,yes	
vi. Mode of aspiration	Turbo charged	
vii. Piston displacement ,approx	8.5L	
viii. Number of cylinders min.	6	
ix. Maximum power output /rpm min.	280HP/2100rpm	
x. Maximum torque/rpm min	1500NM/1500rpm	
xi. Air cleaner , Disposable ,oil bath	Specify	
xii. Oil and fuel filter	Disposable	
xiii. Average fuel consumption (on full load)	Specify	
d)BODY CONSTRUCTION		
Chassis frame I section approx.,	280x90x8mm	

e)CLUTCH AND TRANSMISSION		
i. Clutch , Dry type ,single plate	Yes ,yes	
ii. Clutch system actuation ,hydraulic	Yes	
iii. Gearbox , synchromesh	Yes	
iv. Number of speeds ,min	8F,1R	
v. Drive configuration	6X4	
f)BRAKES ,TYRES AND SUSPENSION		
i. Brakes ,pneumatic assisted	Yes	
ii. Mechanical parking brakes to act on transmission	Yes	
iii. Rear tyres	Dual	
iv. Tyres size locally available	Yes	
v. Optimum tire size	12R22.5	
vi. Tyre ply rating min	16	
vii. Suspension ,front and rear heavy duty leaf springs with telescopic shock absorbers at front	Yes ,yes	
g)STEERING CONTROL AND CAB		
i. Right hand drive steering	Yes	
ii. Steering type ,manual/assisted	Assisted	
iii. All steel ,spacious cab seat 2 passengers comfortably	Yes	
iv. Adjustable driver seat	Yes	
v. Seat belts to conform to KEBS 06-664:1985 STARDARD	Yes	
h)ELECTRICAL SYSTEM AND INSTRUMENT		
i. System voltage ,negative earth	24V,yes	
ii. Battery capacity and size	specify	
iii. Full lighting to conform to Cap 403 Subs.23-Kenya traffic act.	Yes	
iv. Standard instruments, gages and warning lights for charging circuit, oil pressure ,coolant temperature e.t.c.	Yes	
i)BODY FINISH		
All body steel work to be thoroughly cleaned before painting. Should be painted with Luminous green on the body and county colours on the cabin as instructed by chief Mechanical and transport Engineer.	Yes	
2.REFUSE COLLECTION AND COMPACTING BODY		
a)GENERAL		
i. Vehicle supplier to build body or sub contract to a reputable body builder	yes	
ii. If work is sub-contracted name sub-contractor	yes	
iii. All body construction and fitments comply with Kenya Traffic Act ,Cap 403	yes	
iv. All body construction and installation to comply with manufacturers specifications	yes	
b)BODY CONSTRUCTION		

i.	The equipment is fabricated 20m ³ capacity refuse collection compactor body type to be mounted on the cab/chassis	Yes ,yes	
ii.	Designed to suit the given truck chassis with minimum capacity	Yes	
iii.	Pressure of hydraulic system min	20Mpa	
iv.	Standard manufactures shape	Yes	
v.	High tensile steel fabricated smooth sided full width refuse collection body.	Yes	
vi.	Fitted with under floor sump to prevent liquid seepage and to allow clean discharge of any liquid content.	Yes	
c)HOPPER			
i.	Fitted with a suitable high tensile abrasion resistant steel hopper for loading/unloading refuse	Yes	
ii.	Swept volume capacity min.	2.2m ³	
iii.	Front sewage tank volume ,min .	250L	
iv.	Rear sewage tank volume ,min.	150L	
v.	Compression force min.	25000kg	
vi.	Low rail height for manual loading bin lift mounting	Yes	
vii.	Bolt on rail adaptor for bin lifts	Yes	
viii.	With pressed side plates forming integral channels to guide the packing mechanism	Yes	
ix.	With integral full height body/hopper seal to prevent liquid leakage from the bottom edge and hopper sides	Yes	
x.	Reduced overhang for improved weight distribution and maneuverability	Yes	
c)PACKING MECHANISM			
i.	Fitted with suitable high tensile abrasion resistant steel packing mechanism	Yes	
ii.	Two plate fabricated packer/sweeper design		
iii.	Slides within hopper channels on low friction self-lubricating bearing	Yes	
iv.	With heavy duty packer and sweeper cylinders	Yes	
v.	Cycle time max.	25seconds	
vi.	Lifting time min	8seconds	
vii.	Manually operated compacting system	Mandatory	
d)REFUSE EJECTION BARRIER			
i.	Fitted with a barrier face of suitable hydraulic system with PTO mounted close coupled pump ,	Yes	
ii.	Body mounted 1 tank with remote pressure fill with return line filter	Yes	
iii.	Engine speed is maintained by electronic throttle control system	Specify	

	when hydraulic consumption increases		
iv.	Separate spool electro-pneumatic operated valves control all system functions	Specify	
v.	With heavy duty inverted sweeping cylinders fitted with maintenance free spherical bearings	Specify	
vi.	With heavy duty inverted packing cylinders mounted outside the hopper ,clear of the loading area.	Specify	
vii.	With roof mounted hopper lift cylinders	Specify	
e)ELECTRICAL AND ACCESSORIES			
i.	Printed circuit board located in cab for easy access and maintenance	Yes	
ii.	Fully integrated system logic ,fully water proofed side mounted junction box contained within a locker	Yes	
iii.	Color coded wiring	Yes	
iv.	Weather proof switch ,plug ,socket connectors	Yes	
v.	With interlocks i.e. automatic body/hopper to prevent mechanism from working unless the hopper is fully lowered,/automatic gear box, load holding valves ,operation indicator and high level rear lights etc to enhance safety	Specify	
vi.	Any other equipment	Specify	
3.EQUIPMENT ETC		Yes	
a)	Heavy duty type ,front fender	Yes	
b)	Laminated windshield	Yes	
c)	Sun visor supplied	Yes	
d)	Rear view mirror(external both sides and internal) supplied	Yes	
e)	Full size spare tyre with rim and carrier mounted under truck	Yes	
f)	Hydraulic (telescopic) jack ,wheel brace and manufactures standard tools supplied	Yes ,yes, yes	
g)	Any other equipment (or accessories) supplied	Specify	
h)	Vehicle to be fitted with electronic speed governor	Yes ,mandatory	
i)	Governor to limit maximum speed to 80km/hr	Yes ,mandatory	
j)	Governor to be tamper proof	Yes ,mandatory	
4.WARRANTY			
a)	Specimen of vehicle warranty to be submitted when tendering	Yes	
b)	Each vehicle supplied to carry a statement of warranty	Yes ,mandatory	

c) Warranty duration min, 12 months ,or 40,000km whichever occurs first	Specify	
5.MANUALS		
a) All literature in English language	Yes	
b) Shop manuals/cd supplied	1 per vehicle mandatory	
c) Parts catalogue supplied	1 per vehicle mandatory	
d) Drivers handbook and service schedule supplied	1 per vehicle mandatory	
6.ADDITIONAL REQUIREMENTS		
a) Truck to be the with the Registrar of Motor Vehicles	Yes Mandatory	
b) Truck to be inspected by Chief Mechanical and Transport Engineer for compliance with the specification throughout the construction stages and prior to delivery to the user	Yes Mandatory	
c) Franchise holder(representative in Kenya) If not ,specify relation with franchise holder	Yes specify whether dealer /agent	
d) Availability of spare parts	Indicate motor dealer who stock spare parts	
e) Names and address of dealers /agents where back up service can be obtained indicating the location of the workshop facilities	Specify	

6.1.6 Accompanying Delivery Requirements

(i.) Warranty guarantee (Mandatory)

- a) Warranty period of not less than one year or 50000 Km whichever comes last.
- b) Detailed defects liability support plan for the truck and carrier side.

(ii.) Manuals (Mandatory)

- a) Manuals shall be provided for each equipment on delivery: manuals in soft and hard copies (3 sets) for:
 - 1. Maintenance manual
 - 2. Parts manual

(iii.) Maintenance tools (cost to be included in the price schedule):

- a) suitable lifting jack included
- b) wheel spanner included
- c) oil filter wrench included
- d) oil gun included

(iv.) Installation, testing and commissioning (cost to be included in the price schedule):

- a) The compactor to be fully assembled and tested prior to delivery.
- b) Sufficient commissioning spares and tools to be delivered for the commissioning at the County Government of Mombasa.

SECTION VIII: TENDER FORMS

A. Form of Tender

Tender No:

Date:

To: Sir/Madam:

Having examined the Tender documents including Addenda Nos. *[insert addenda numbers]*, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to SUPPLY, TEST AND COMMISSION OF GARBAGE COLLECTION COMPACTOR TRUCK 20M³ in conformity with the said Tender documents for the sum of _____ *[total Tender amount in words and figures]* or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

We undertake, if our Tender is accepted, to deliver the Goods in accordance with the delivery schedule specified in the Schedule of Requirements.

If our Tender is accepted, we undertake to provide a performance security in the form, in the amounts, and within the times specified in the Tender documents.

We agree to abide by this Tender for the Tender validity period specified in Clause 18.1 of the Tender Data Sheet, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

We are not participating, as Tenderers, in more than one Tender in this Tendering process.

Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.

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

We certify/confirm that we comply with the eligibility requirements as per ITT Clause 3 of the Tender documents

Dated this _____ day of _____ 20_____.

(Name)

[signature]

[in the capacity of]

Duly authorized to sign Tender for and on behalf of _____

Price Schedules for Goods and Related Services (use as format)

Name of Tenderer IFB Number Page of

A. To be filled by Foreign Firms

Item	Description	Unit	Quantity	Unit price CIF Mombasa	Total Price CIF Mombasa	Delivery Offered - weeks
1	SUPPLY, TEST AND COMMISSION OF GARBAGE COLLECTION COMPACTOR TRUCK 20M ³	Each	1			
2	Special Tools	Lot				
3	Optional extras (if any)					

Namein the capacity of

Signature of Tenderer.....

Duly authorized to sign the Tender for and on behalf of

Dated on day of 20

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

The filled price schedule shall itemize the pricing of contents of Financial Bid – Envelope B

B. To be filled by Local Agents

Item	Description	Unit	Qty	Unit price CIF Mombasa	Total Price CIF Mombasa	Duty to be paid	Other overheads (specify)	Total Price DDP Mombasa inclusive of taxes	Delivery Offered -weeks
1	SUPPLY, TEST AND COMMISSION OF GARBAGE COLLECTION COMPACTOR TRUCK 20M3	Each	1						
2	Special Tools	Lot							
3	Optional extras (if any)								

Namein the capacity of

Signature of Tenderer.....

Duly authorized to sign the Tender for and on behalf of

Dated on day of 20

Note: In case of discrepancy between unit price and total, the unit price shall prevail.
The filled price schedule shall itemize the pricing of contents of Financial Bid – Envelope B

unit price shall prevail.

B. Confidential Business Questionnaire

You are requested to give the particulars indicated in Part 1 and either Part 2 (a), 2 (b) or 2 (c) and 2 (d) whichever applies to your type of business.

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

Part 1 – General

Business Name

Location of business premises; Country/Town.....

Plot No. Street/Road

Postal Address..... Tel No.....

Nature of Business.....

Current Trade Licence No..... Expiring date.....

Maximum value of business which you can handle at any time: Kenya shillings.....

Name of your bankers.....

Branch.....

Part 2 (a) – Sole Proprietor

Your name in full..... Age.....

Nationality..... Country of Origin.....

*Citizenship details

Part 2 (b) – Partnership

Give details of partners as follows:

Name in full	Nationality	Citizenship	Details	Shares
1.....				
2.....				
3.....				

Part 2(c) – Registered Company:

Private or public.....

State the nominal and issued capital of the Company-

Nominal Kshs.....

Issued Kshs.....

Give details of all directors as follows:

Name in full . Nationality. Citizenship Details*. Shares.

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

Part 2(d) – Interest in the Firm:

Is there any person / persons in(Name of Employer) who has interest in this firm?
Yes/No.....(Delete as necessary).

I certify that the information given above is correct.

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

* Attach proof of citizenship

DECLARATION FORM

Date

To _____

The tenderer i.e. (name and address)_____ declare the following:

- a) Has not been debarred from participating in public procurement.
- b) Has not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement.

_____ Title	_____ Signature	_____ Date
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(To be signed by authorized representative and officially stamped)

C. Integrity Declaration

UNDERTAKING BY TENDERER ON ANTI – BRIBERY POLICY / CODE OF CONDUCT AND COMPLIANCE PROGRAMME

1. Each Tenderer must submit a statement, as part of the Tender documents, in the given format which must be signed personally by the Chief Executive Officer or other appropriate senior corporate officer of the Tendering company and, where relevant, of its subsidiary in the Kenya. If a Tender is submitted by a subsidiary, a statement to this effect will also be required of the parent company, signed by its Chief Executive Officer or other appropriate senior corporate officer.
2.
 - a) Payment to agents and other third parties shall be limited to appropriate compensation for legitimate services.
 - b) Each Tenderer will make full disclosure in the Tender documentation of the beneficiaries and amounts of all payments made, or intended to be made, to agents or other third parties (including political parties or electoral candidates) relating to the Tender and, if successful, the implementation of the contract.
 - c) The successful Tenderer will also make full disclosure [quarterly or semi- annually] of all payments to agents and other third parties during the execution of the contract.
 - d) Upon completion of the performance of the contract, the successful Tenderer will formally certify that no bribes or other illicit commissions have been paid. The final accounting shall include brief details of the goods and services provided that they are sufficient to establish the legitimacy of the payments made.
 - e) Statements required according to subparagraphs (b) and (d) of this paragraph will have to be certified by the company's Chief Executive Officer, or other appropriate senior corporate officer.
4. Tenders which do not conform to these requirements shall not be considered.
5. If the successful Tenderer fails to comply with its No-bribery commitment, significant sanctions will apply. The sanctions may include all or any of the following:
 - a) Cancellation of the contract;
 - b) Liability for damages to the procuring entity and/or the unsuccessful competitors in the tendering process.
6. Tenderers shall make available, as part of their Tender, copies of their anti-Bribery Policy/Code of Conduct, if any, and of their general or project-specific Compliance Program.
7. The Government of Kenya has made special arrangements for adequate oversight of the procurement process and the execution of the contract, and has invited civil society and other competent Government Departments to participate in the oversight. Those charged with the oversight responsibility will have full access to all documentation submitted by Tenderers for this contract, and to which in turn all Tenderers and other parties involved or affected by the project shall have full access (provided, however, that no proprietary information concerning a Tenderer may be disclosed to another Tenderer or to the public).

D. ANTI-CORRUPTION DECLARATION COMMITMENT/ PLEDGE

I/We/Messrs.....

of Street, Building, P O Box.....

.....

Contact/Phone/E mail.....

declare that Public Procurement is based on a free and fair competitive Tendering process which should not be open to abuse.

I/We

declare that I/We will not offer or facilitate, directly or indirectly, any inducement or reward to any public officer, their relations or business associates, in connection with

Tender name.....

Tender No

for or in the subsequent performance of the contract if I/We am/are successful.

Authorized Signature.....

Name and Title of Signatory.....

E. LETTER OF NOTIFICATION TO UNSUCCESSFUL BIDDERS

Dear Sir

This is to inform you in accordance with Section 87 of the Public Procurement and Disposal Act 2015 that your offer in relation to [*tender name and number*] has been determined to be unsuccessful upon evaluation. We intend to make a contract with [*name of successful tenderer*] for [*amount*]. Your tender security / tender security declaration will be discharged.

Thank you for your participation in the tendering process.

F. LETTER OF ACCEPTANCE

[Letterhead paper of the Procuring Entity]

[date]

Letter of Acceptance

To: *[name and address of the Service 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 Contract data sheet]* 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 hereby accepted by us and it is our intention to proceed to make a written contract in accordance with the terms of section 135 of the Public Procurement and Disposal Act 2015 after the 14 day period of notification has expired. The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.

Note: *Insert one of the 3 options for the second paragraph. The first option should be used if the Bidder has not objected the name proposed for Adjudicator. The second option if the Bidder has objected the proposed Adjudicator and proposed a name for a substitute, who was accepted by the Procuring Entity. And the third option if the Bidder has objected the proposed Adjudicator and proposed a name for a substitute, who was not accepted by the Procuring Entity.*

We confirm that *[insert name proposed by Procuring Entity in the Tender Data Sheet]*,

or

We accept that *[name proposed by Tenderer]* be appointed as the Adjudicator

or

We do not accept that *[name proposed by Tenderer]* be appointed as adjudicator, and by sending a copy of this letter of acceptance to *[insert the name of the Appointing Authority]*, we are hereby requesting *[name]*, the Appointing Authority, to appoint the Adjudicator in accordance with Clause 44.1 of the Instructions to Tenderers.

You may proceed with the said Contract in accordance with the Contract documents once the written contract has been signed.

Please return the attached Contract duly signed

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Agency: _____

Attachment: Contract:

G. FORM OF CONTRACT

THIS AGREEMENT made the ____ day of _____ 20____ between *[name and address of PE]* of Kenya (hereinafter called “the Purchaser”) of the one part and *[name of Tenderer]* of *[city and country of Tenderer]* (hereinafter called “the Supplier”) of the other part:

WHEREAS the Purchaser invited Tenders for certain goods and ancillary services, viz., *[brief description of goods and services]* and has accepted a Tender by the Supplier for the supply of those goods and services in the sum of *[contract price in words and figures]* (hereinafter called “the Contract Price”).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

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

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the Laws of Kenya the day and year first above written.

Signed, sealed, delivered by _____ the _____ (for the Purchaser)

Witness to the signatures of the Purchaser: _____

Signed, sealed, delivered by _____ the _____ (for the Supplier)

Witness to the signatures of the supplier: _____

TENDER SECURITY

Whereas [name of the tenderer]
(hereinafter called “the tenderer”) has submitted its tender dated [date of submission
of tender] for the supply, installation and commissioning of[name and/or
description of the equipment] (hereinafter called “the Tender”)
..... KNOW ALL PEOPLE by these presents that WE
..... of having our registered office at
..... (hereinafter called “the Bank/Insurance Company”), are bound unto
..... [name of Procuring entity} (hereinafter called “the Procuring Entity”) in
the sum of for which payment well and truly to be made to the said
Procuring Entity, the Bank/Insurance Company binds itself, its successors, and assigns by these
presents.

Sealed with the Common Seal of the said Bank/Insurance Company this day of
20

THE CONDITIONS of this obligation are:-

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

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

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

[signature of the Bank/Insurance Company] _____
[seal]

H. PERFORMANCE BANK GUARANTEE [UNCONDITIONAL]

To
[name of Procuring entity]

WHEREAS [name of tenderer] (hereinafter called “the tenderer”) has undertaken , in pursuance of Contract No. [reference number of the contract] dated 20 to supply [description of goods] (hereinafter called “the Contract”).

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

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

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

This guarantee is valid until the day of 20

Signed and seal of the Guarantors

[name of Bank]

[address]

[date]

I. BANK GUARANTEE FOR ADVANCE PAYMENT

To
[name of Procuring entity]

[name of tender]

Gentlemen and/or Ladies:

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

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

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

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

Yours truly,

Signature and seal of the Guarantors

[name of Bank]

[address]

[date]

J. MANUFACTURER'S AUTHORIZATION FORM (MANDATORY IF THE BIDDER IS NOT THE MANUFACTURER)

To: *[name of the Purchaser]*

WHEREAS *[name of the Manufacturer]* who are established and reputable manufacturers of, and have the rights to manufacture, *[name and/or description of the goods]* having factories at *[address of factory]*

do hereby authorize *[name and address of Agent]* to submit a Tender, and subsequently negotiate and sign the Contract with you against IFB No. *[reference of the Invitation to Tender]* for the above goods manufactured by us.

We hereby extend our full guarantee and warranty as per Clause 17 of the General Conditions of Contract for the goods offered for supply by the above firm against this Invitation for Tenders.

[signature for and on behalf of Manufacturer]

Note: This letter of authority should be on the letterhead of the Manufacturer and should be signed by a person competent and having the power of attorney to bind the Manufacturer. It should be included by the Tenderer in its Tender.

FORM RB 1
REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO.....OF.....20.....
BETWEEN
.....APPLICANT
AND
.....RESPONDENT (*Procuring Entity*)

Request for review of the decision of the..... (*Name of the Procuring Entity*) of
.....dated the...day of20.....in the matter of Tender No.....of
.....20...

REQUEST FOR REVIEW

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

- 1.
- 2.
- etc.

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

- 1.
- 2.
- etc

SIGNED (Applicant)

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

FOR OFFICIAL USE ONLY

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

SIGNED
Board Secretary