REPUBLIC OF KENYA

4423 NANDI - COUNTY ASSEMBLY

TENDER NAME:

FRAMEWORK FOR SUPPLY OF FUEL

TENDER NO:

CANPE/1288/0048/2026-27

Procurement Method:

Framework Agreement

PE Complete Address

KAPSABET, EMGWEN, NANDI, Kenya, 673, 30300

INFO@NANDIASSEMBLY.GO.KE

Table of Contents

1. ITT
2. TDS
3. Evaluation and Qualification Criteria
4. Mandatory Evaluation Requirements
5. Bidding Form
6. Schedule of Requirement
7. GCC
8. SCC

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SECTION I - INSTRUCTIONS TO TENDERERS (ITT)

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Detail
PART 1 - TENDERING PROCEDURES # SECTION I: INSTRUCTIONS TO TENDERERS
A. GENERAL PROVISIONS

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1. SCOPE OF TENDER

1.1 THE PROCURING ENTITY AS DEFINED IN THE **TDS** INVITES TENDERS FOR SUPPLY OF GOODS AND, IF APPLICABLE, ANY RELATED SERVICES INCIDENTAL THERETO, AS SPECIFIED IN SECTION V, SUPPLY REQUIREMENTS. THE REFERENCE NUMBER AND DESCRIPTION OF THE TENDER, NUMBER AND IDENTIFICATION
OF LOTS (CONTRACTS) OF THIS TENDER DOCUMENT ARE SPECIFIED IN THE **TDS**.

1.2 THROUGHOUT THIS TENDER DOCUMENT:
A) THE TERM "IN WRITING" MEANS COMMUNICATED IN WRITTEN FORM (E.G. BY MAIL, E-MAIL, FAX, INCLUDING IF SPECIFIED IN THE TDS, DISTRIBUTED OR RECEIVED THROUGH THE ELECTRONIC-
PROCUREMENT SYSTEM USED BY THE PROCURING ENTITY) WITH PROOF OF DISPATCH;

B) IF THE CONTEXT SO REQUIRES, "SINGULAR" MEANS "PLURAL" AND VICE VERSA;
C) "DAY" MEANS CALENDAR DAY, UNLESS OTHERWISE SPECIFIED AS "BUSINESS DAY". A BUSINESS
DAY IS ANY DAY THAT IS AN OFFICIAL WORKING DAY OF THE PROCURING ENTITY. IT EXCLUDES OFFICIAL PUBLIC HOLIDAYS.

1.3 USE OF ELECTRONIC PROCUREMENT SYSTEM
WHERE APPLICABLE, THE PROCURING ENTITY SHALL USE AN ELECTRONIC-PROCUREMENT SYSTEM TO MANAGE THE TENDERING PROCESS AS SPECIFIED IN THE TDS

2. FRAUD AND CORRUPTION

2.1 THE PROCURING ENTITY REQUIRES COMPLIANCE WITH THE PROVISIONS OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT, 2015, SECTION 62 "DECLARATION NOT TO ENGAGE IN CORRUPTION". THE TENDER SUBMITTED BY A PERSON SHALL INCLUDE A DECLARATION THAT THE PERSON SHALL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE AND A DECLARATION THAT THE PERSON OR HIS OR HER SUB-CONTRACTORS ARE NOT DEBARRED FROM PARTICIPATING IN PUBLIC PROCUREMENT PROCEEDINGS.

2.2 THE PROCURING ENTITY REQUIRES COMPLIANCE WITH THE PROVISIONS OF THE COMPETITION ACT, CAP 504, REGARDING COLLUSIVE PRACTICES IN CONTRACTING. ANY TENDERER FOUND TO HAVE ENGAGED IN COLLUSIVE CONDUCT SHALL BE DISQUALIFIED AND CRIMINAL AND /OR CIVIL SANCTIONS MAY BE IMPOSED. TO THIS EFFECT, TENDERS SHALL BE REQUIRED TO COMPLETE AND SIGN THE "CERTIFICATE OF INDEPENDENT TENDER DETERMINATION" ANNEXED TO THE FORM OF TENDER.

2.3 UNFAIR COMPETITIVE ADVANTAGE - FAIRNESS AND TRANSPARENCY IN THE TENDER PROCESS REQUIRE THAT THE FIRMS OR THEIR AFFILIATES COMPETING FOR A SPECIFIC ASSIGNMENT DO NOT DERIVE A COMPETITIVE ADVANTAGE FROM HAVING PROVIDED CONSULTING SERVICES RELATED TO THIS TENDER. TO THAT END, THE PROCURING ENTITY SHALL INDICATE IN THE **TDS** AND MAKE AVAILABLE TO ALL THE FIRMS TOGETHER WITH THIS TENDER DOCUMENT ALL INFORMATION THAT WOULD IN THAT RESPECT GIVE SUCH FIRM ANY UNFAIR COMPETITIVE ADVANTAGE OVER COMPETING FIRMS.

3. ELIGIBLE TENDERERS

3.1 A TENDERER MAY BE A FIRM THAT IS A PRIVATE ENTITY, AN INDIVIDUAL, A STATE-OWNED ENTERPRISE OR INSTITUTION SUBJECT TO ITT3.7, OR ANY COMBINATION OF SUCH ENTITIES IN THE FORM OF A JOINT VENTURE (JV) UNDER AN EXISTING AGREEMENT OR WITH THE INTENT TO ENTER INTO SUCH AN AGREEMENT SUPPORTED BY A LETTER OF INTENT. PUBLIC OFFICERS OF THE PROCURING ENTITY AND THEIR CLOSE RELATIVES (SPOUSES, CHILDREN, BROTHERS, SISTERS AND UNCLES AND AUNTS) ARE NOT ELIGIBLE TO PARTICIPATE IN THE TENDER.

IN THE CASE OF A JOINT VENTURE, ALL MEMBERS SHALL BE JOINTLY AND SEVERALLY LIABLE FOR THE EXECUTION OF THE ENTIRE CONTRACT IN ACCORDANCE WITH THE CONTRACT TERMS. THE JV SHALL NOMINATE A REPRESENTATIVE WHO SHALL HAVE THE AUTHORITY TO CONDUCT ALL BUSINESS FOR AND ON BEHALF OF ANY AND ALL THE MEMBERS OF THE JV DURING THE TENDERING PROCESS AND, IN THE EVENT THE JV IS AWARDED THE CONTRACT, DURING CONTRACT EXECUTION. THE MAXIMUM NUMBER OF JV MEMBERS TO BE ALLOWED SHALL BE SPECIFIED IN THE **TDS.**

3.2 PUBLIC OFFICERS
OF THE PROCURING ENTITY, THEIR SPOUSE, CHILD, PARENT, BROTHER OR SISTER CHILD, PARENT,
BROTHER OR SISTER OF A SPOUSE THEIR BUSINESS ASSOCIATES OR AGENTS AND FIRMS/ORGANIZATIONS IN WHICH THEY HAVE A SUBSTANTIAL OR CONTROLLING INTEREST SHALL NOT BE ELIGIBLE TO TENDER OR BE AWARDED A CONTRACT. PUBLIC OFFICERS
ARE ALSO NOT ALLOWED TO PARTICIPATE IN ANY PROCUREMENT PROCEEDINGS

3.3 A TENDERER SHALL NOT HAVE A CONFLICT OF INTEREST. ANY TENDERER
FOUND TO HAVE A CONFLICT OF INTEREST SHALL BE DISQUALIFIED. A TENDERER MAY BE CONSIDERED TO HAVE A CONFLICT OF INTEREST FOR THE PURPOSE OF THIS TENDERING PROCESS, IF THE TENDERER:
A) DIRECTLY OR INDIRECTLY CONTROLS, IS CONTROLLED BY OR IS UNDER COMMON CONTROL WITH ANOTHER TENDERER; OR
B) RECEIVES OR HAS RECEIVED ANY DIRECT OR INDIRECT SUBSIDY FROM ANOTHER TENDERER; OR
C) HAS THE SAME - REPRESENTATIVE OR OWNERSHIP AS ANOTHER TENDERER; OR
D) HAS A RELATIONSHIP WITH ANOTHER TENDERER, DIRECTLY OR THROUGH COMMON THIRD PARTIES, THAT PUTS IT IN A POSITION TO INFLUENCE THE TENDER OF ANOTHER TENDERER, OR INFLUENCE THE DECISIONS OF THE PROCURING ENTITY REGARDING THIS TENDERING PROCESS; OR
E) OR ANY OF ITS AFFILIATES PARTICIPATED AS A CONSULTANT IN THE PREPARATION OF THE DESIGN OR TECHNICAL SPECIFICATIONS OF THE GOODS THAT ARE THE SUBJECT OF THE TENDER; OR
F) OR ANY OF ITS AFFILIATES HAS BEEN HIRED (OR IS PROPOSED TO BE HIRED) BY THE PROCURING ENTITY OR PROCURING ENTITY FOR THE CONTRACT IMPLEMENTATION; OR

G) WOULD BE PROVIDING GOODS, WORKS, OR NON-CONSULTING SERVICES RESULTING FROM OR DIRECTLY RELATED TO CONSULTING SERVICES FOR THE PREPARATION OR IMPLEMENTATION OF THE PROJECT SPECIFIED IN THE TDS ITT 1.1 THAT IT PROVIDED OR WERE PROVIDED BY ANY AFFILIATE THAT DIRECTLY OR INDIRECTLY CONTROLS, IS CONTROLLED BY, OR IS UNDER COMMON CONTROL WITH THAT FIRM; OR HAS A CLOSE BUSINESS OR FAMILY RELATIONSHIP WITH A PROFESSIONAL STAFF OF THE PROCURING ENTITY (OR OF THE PROJECT IMPLEMENTING AGENCY, WHO:
(I) ARE DIRECTLY OR INDIRECTLY INVOLVED IN THE PREPARATION OF THE TENDERING DOCUMENT OR SPECIFICATIONS OF THE CONTRACT, AND
/OR THE TENDER EVALUATION PROCESS OF SUCH CONTRACT; OR

(II) WOULD BE INVOLVED IN THE IMPLEMENTATION OR SUPERVISION OF SUCH CONTRACT UNLESS THE CONFLICT STEMMING FROM SUCH RELATIONSHIP HAS BEEN RESOLVED IN A MANNER ACCEPTABLE TO THE PROCURING ENTITY THROUGHOUT THE TENDERING PROCESS AND EXECUTION OF THE CONTRACT.

3.4 A TENDERER SHALL NOT BE INVOLVED IN CORRUPT, COERCIVE, OBSTRUCTIVE, COLLUSIVE OR FRAUDULENT PRACTICE. A TENDERER THAT IS PROVEN TO HAVE BEEN INVOLVED IN ANY OF THESE PRACTICES SHALL BE AUTOMATICALLY DISQUALIFIED.

3.5 A FIRM THAT IS A TENDERER (EITHER INDIVIDUALLY OR AS A JV MEMBER) SHALL NOT SUBMIT MORE THAN ONE TENDER, EXCEPT FOR PERMITTED ALTERNATIVE TENDERS. THIS INCLUDES PARTICIPATION AS A SUBCONTRACTOR. SUCH PARTICIPATION SHALL RESULT IN THE DISQUALIFICATION OF ALL TENDERS IN WHICH THE FIRM IS INVOLVED. A FIRM THAT IS NOT A TENDERER OR A JV MEMBER, MAY PARTICIPATE AS A SUBCONTRACTOR IN MORE THAN ONE TENDER. MEMBERS OF A JOINT VENTURE MAY NOT ALSO MAKE AN INDIVIDUAL TENDER, BE A SUBCONTRACTOR IN A SEPARATE TENDER OR BE PART OF ANOTHER JOINT VENTURE FOR THE PURPOSES OF THE SAME TENDER.

3.6 A TENDERER MAY HAVE THE NATIONALITY OF ANY COUNTRY, SUBJECT TO THE RESTRICTIONS PURSUANT TO ITT3.9. A TENDERER SHALL BE DEEMED TO HAVE THE NATIONALITY OF A COUNTRY IF THE TENDERER IS CONSTITUTED, INCORPORATED OR REGISTERED IN AND OPERATES IN CONFORMITY WITH THE PROVISIONS OF THE LAWS OF THAT COUNTRY, AS EVIDENCED BY ITS ARTICLES OF INCORPORATION (OR EQUIVALENT DOCUMENTS OF CONSTITUTION OR ASSOCIATION) AND ITS REGISTRATION DOCUMENTS, AS THE CASE MAY BE. THIS CRITERION ALSO SHALL APPLY TO THE DETERMINATION OF THE NATIONALITY OF PROPOSED SUBCONTRACTORS OR SUB CONSULTANTS FOR ANY PART OF THE CONTRACT INCLUDING RELATED SERVICES.

3.7 A TENDERER THAT HAS BEEN DEBARRED BY PPRA FROM PARTICIPATING IN PUBLIC PROCUREMENT SHALL BE INELIGIBLE TO TENDER OR BE AWARDED A CONTRACT. THE LIST OF DEBARRED FIRMS AND INDIVIDUALS IS AVAILABLE FROM THE PPRA'S WEBSITE WWW.PPRA.GO.KE

3.8 TENDERERS THAT ARE STATE-OWNED ENTERPRISES OR INSTITUTIONS MAY BE ELIGIBLE TO COMPETE AND BE AWARDED A CONTRACT(S) ONLY IF THEY ARE:
(I) A LEGAL PUBLIC ENTITY OF THE STATE GOVERNMENT AND
/OR PUBLIC ADMINISTRATION;
(II) FINANCIALLY AUTONOMOUS AND NOT RECEIVING ANY SIGNIFICANT SUBSIDIES OR BUDGET SUPPORT FROM ANY PUBLIC ENTITY OR GOVERNMENT; AND
(III) OPERATING UNDER COMMERCIAL LAW AND VESTED WITH LEGAL RIGHTS AND LIABILITIES SIMILAR TO ANY COMMERCIAL ENTERPRISE TO ENABLE IT COMPETE WITH FIRMS IN THE PRIVATE SECTOR ON AN EQUAL BASIS. PUBLIC EMPLOYEES
AND THEIR CLOSE RELATIVES ARE NOT ELIGIBLE TO PARTICIPATE IN THE TENDER.

3.9 TENDERERS MAY BE INELIGIBLE IF THEIR COUNTRIES OF ORIGIN (A) AS A MATTER OF LAW OR OFFICIAL REGULATIONS, KENYA PROHIBITS COMMERCIAL RELATIONS WITH THAT COUNTRY, OR(B) BY AN ACT OF COMPLIANCE WITH A DECISION OF THE UNITED NATIONS SECURITY COUNCIL TAKEN UNDER CHAPTER VII OF THE CHARTER OF THE UNITED NATIONS, KENYA PROHIBITS ANY IMPORT OF GOODS OR CONTRACTING FOR SUPPLY OF GOODS OR SERVICES FROM THAT COUNTRY, OR ANY PAYMENTS TO ANY COUNTRY, PERSON, OR ENTITY IN THAT COUNTRY. A TENDERER SHALL PROVIDE SUCH DOCUMENTARY EVIDENCE OF ELIGIBILITY SATISFACTORY TO THE PROCURING ENTITY, AS THE PROCURING ENTITY SHALL REASONABLY REQUEST.

3.10 TENDERERS SHALL PROVIDE THE QUALIFICATION INFORMATION STATEMENT THAT THE TENDERER (INCLUDING ALL MEMBERS OF A JOINT VENTURE AND SUBCONTRACTORS) IS NOT ASSOCIATED, OR HAVE BEEN ASSOCIATED IN THE PAST, DIRECTLY OR INDIRECTLY, WITH A FIRM OR ANY OF ITS AFFILIATES WHICH HAVE BEEN ENGAGED BY THE PROCURING ENTITY TO PROVIDE CONSULTING SERVICES FOR THE PREPARATION OF THE DESIGN, SPECIFICATIONS, AND OTHER DOCUMENTS TO BE USED FOR THE PROCUREMENT OF THE GOODS UNDER THIS INVITATION FOR TENDERS.

3.11 WHERE THE LAW REQUIRES TENDERERS TO BE REGISTERED WITH CERTAIN AUTHORITIES IN KENYA, SUCH REGISTRATION REQUIREMENTS SHALL BE DEFINED IN THE **TDS.**

3.12 THE COMPETITION ACT OF KENYA REQUIRES THAT FIRMS WISHING TO TENDER AS JOINT VENTURE UNDERTAKINGS WHICH MAY PREVENT, DISTORT OR LESSEN COMPETITION IN PROVISION OF SERVICES ARE PROHIBITED UNLESS THEY ARE EXEMPT IN ACCORDANCE WITH THE PROVISIONS OF SECTION 25 OF THE COMPETITION ACT, 2010. JVS WILL BE REQUIRED TO SEEK FOR EXEMPTION FROM THE COMPETITION AUTHORITY. EXEMPTION SHALL NOT BE A CONDITION FOR TENDER, BUT IT SHALL BE A CONDITION OF CONTRACT AWARD AND SIGNATURE. A JV TENDERER SHALL BE GIVEN OPPORTUNITY TO SEEK SUCH EXEMPTION AS A CONDITION OF AWARD AND SIGNATURE OF CONTRACT. APPLICATION FOR EXEMPTION FROM THE COMPETITION AUTHORITY OF KENYA MAY BE ACCESSED FROM THE WEBSITE WWW.CAK.GO.KE.

3.13 A TENDERER SHALL ENSURE THEY HAVE FULFILLED THEIR TAX OBLIGATIONS IN KENYA.

4. ELIGIBLE GOODS AND RELATED SERVICES

4.1 ALL THE GOODS AND RELATED SERVICES TO BE SUPPLIED UNDER THE CONTRACT SHALL HAVE THEIR ORIGIN IN ANY COUNTRY THAT IS ELIGIBLE IN ACCORDANCE WITH ITT 3.9.

4.2 FOR PURPOSES OF THIS ITT, THE TERM "GOODS" INCLUDES COMMODITIES, RAW MATERIAL, MACHINERY, EQUIPMENT, AND INDUSTRIAL PLANTS; AND "RELATED SERVICES" INCLUDE SERVICES SUCH AS INSURANCE, INSTALLATION, TRAINING, AND INITIAL MAINTENANCE.

4.3 THE TERM "ORIGIN" MEANS THE COUNTRY WHERE THE GOODS HAVE BEEN MINED, GROWN, CULTIVATED, PRODUCED, MANUFACTURED OR PROCESSED; OR, THROUGH MANUFACTURE, PROCESSING, OR ASSEMBLY, ANOTHER COMMERCIALLY RECOGNIZED ARTICLE RESULTS THAT DIFFERS SUBSTANTIALLY IN ITS BASIC CHARACTERISTICS FROM ITS COMPONENTS.

4.4 A PROCURING ENTITY SHALL ENSURE THAT THE ITEMS LISTED BELOW SHALL BE SOURCED FROM KENYA AND THERE SHALL BE NO SUBSTITUTIONS FROM FOREIGN SOURCES. THE AFFECTED ITEMS ARE:

A) MOTOR VEHICLES, PLANT AND EQUIPMENT WHICH ARE ASSEMBLED IN KENYA;

B) FURNITURE, TEXTILE, FOODSTUFFS, OIL AND GAS, INFORMATION COMMUNICATION TECHNOLOGY, STEEL, CEMENT, LEATHER, AGRO-
PROCESSED PRODUCTS, SANITARY PRODUCTS, AND OTHER GOODS MADE IN KENYA; OR

C) GOODS MANUFACTURED, MINED, EXTRACTED OR GROWN IN KENYA.

4.5 ANY GOODS, WORKS AND PRODUCTION PROCESSES WITH CHARACTERISTICS THAT HAVE BEEN DECLARED BY THE RELEVANT NATIONAL ENVIRONMENTAL PROTECTION AGENCY OR BY OTHER COMPETENT AUTHORITY AS HARMFUL TO HUMAN BEINGS AND TO THE ENVIRONMENT SHALL NOT BE ELIGIBLE FOR PROCUREMENT.

5. SECTIONS OF TENDERING DOCUMENT

5.1 THE TENDERING DOCUMENT CONSIST OF PARTS 1, 2, AND 3, WHICH INCLUDE ALL TH E SECTIONS INDICATED BELOW, AND SHOULD BE READ IN CONJUNCTION WITH ANY ADDE NDA ISSUED IN ACCORDANCE WITH ITT 7.

PART 1: TENDERING PROCEDURES

I) SECTION I - INSTRUCTIONS TO TENDERERS (ITT)
II) SECTION II - TENDER DATA SHEET (TDS)
III) SECTION III - EVALUATION AND QUALIFICATION CRITERIA
IV) SECTION IV - TENDERING FORMS

PART 2: PROCURING ENTITY REQUIREMENT

V) SECTION V - SCHEDULE OF REQUIREMENTS

PART 3: CONTRACT

VI) SECTION VI - GENERAL CONDITIONS OF CONTRACT (GCC)
VII) SECTION VII - SPECIAL CONDITIONS OF CONTRACT (SCC)
VIII) SECTION VIII- CONTRACT FORMS

5.2 THE NOTICE OF INVITATION TO TENDER OR THE NOTICE TO THE PREQUALIFIED TENDE RERS ISSUED BY THE PROCURING ENTITY IS NOT PART OF THE TENDERING DOCUMENT.

5.3 UNLESS OBTAINED DIRECTLY FROM THE PROCURING ENTITY, THE PROCURING ENTITY I S NOT RESPONSIBLE FOR THE COMPLETENESS OF THE DOCUMENT, RESPONSES TO REQUES TS FOR CLARIFICATION, THE MINUTES OF THE PRE-TENDER MEETING (IF ANY), OR ADDEND A TO THE TENDERING DOCUMENT IN ACCORDANCE WITH ITT7.

5.4 THE TENDERER IS EXPECTED TO EXAMINE ALL INSTRUCTIONS, FORMS, TERMS, AND SPE CIFICATIONS IN THE TENDERING DOCUMENT AND TO FURNISH WITH ITS TENDER ALL INFO RMATION OR DOCUMENTATION AS IS REQUIRED BY THE TENDERING DOCUMENT.

6. CLARIFICATION OF TENDERING DOCUMENT AND PRE-TENDER MEETING

6.1 A TENDERER REQUIRING ANY CLARIFICATION OF THE TENDER DOCUMENT SHALL CONT ACT THE PROCURING ENTITY IN WRITING AT THE PROCURING ENTITY'S ADDRESS SPECIFIED IN THE **TDS** OR RAISE ITS ENQUIRIES DURING THE PRE-
TENDER MEETING IF PROVIDED FOR IN ACCORDANCE WITH ITT 6.4. THE PROCURING ENTITY WILL RESPOND IN WRITING TO ANY REQUEST FOR CLARIFICATION, PROVIDED THAT SUCH REQUEST IS RECEIVED NO LATER THAN THE PERIOD SPECIFIED IN THE TDS PRIOR TO THE DEADLINE FOR SUBMISSION OF TENDERS. THE PROCURING ENTITY SHALL FORWARD COPIES OF ITS RESPONSE TO ALL TENDERERS WHO HAVE ACQUIRED THE TENDER DOCUMENTS IN ACCORDANCE WITH ITT 5.3, INCLUDING A DESCRIPTION OF THE INQUIRY BUT WITHOUT ID ENTIFYING ITS SOURCE. IF SO SPECIFIED IN THE **TDS**, THE PROCURING ENTITY SHALL ALSO PROMPTLY PUBLISH ITS RESPONSE AT THE WEB PAGE IDENTIFIED IN THE TDS AND THE STATE TENDER PORTAL. SHOULD THE CLARIFICATION RESULT IN CHANGES TO THE ESSENTIAL ELEMENTS OF THE TENDER DOCUMENTS, THE PROCURING ENTITY SHALL AMEND THE TEN DER DOCUMENTS FOLLOWING THE PROCEDURE UNDER ITT 7.

6.2 THE PROCURING ENTITY SHALL SPECIFY IN THE **TDS** IF A PRE-TENDER MEETING WILL BE HELD, WHEN AND WHERE. THE TENDERER'S
DESIGNATED REPRESENTATIVE IS INVITED TO ATTEND A PRE-TENDER MEETING. THE PURPOSE OF THE MEETING WILL BE TO CLARIFY ISSUES AND TO ANSWER QUESTIONS ON ANY MATTER THAT MAY BE RAISED AT THAT STAGE.

6.3 THE TENDERER IS REQUESTED TO SUBMIT ANY QUESTIONS IN WRITING, TO REACH THE PROCURING ENTITY NOT LATER THAN THE PERIOD SPECIFIED IN THE **TDS** BEFORE THE PRE-TENDER MEETING

6.4 MINUTES OF THE PRE-TENDER MEETING, IF APPLICABLE, INCLUDING THE TEXT OF THE QUESTIONS ASKED BY TENDERERS AND THE RESPONSES GIVEN, TOGETHER WITH ANY RESP ONSES PREPARED AFTER THE MEETING, WILL BE TRANSMITTED PROMPTLY TO ALL TENDER ERS WHO HAVE ACQUIRED THE TENDER DOCUMENTS IN ACCORDANCE WITH INVITATION TO TENDER . MINUTES SHALL NOT IDENTIFY THE SOURCE OF THE QUESTIONS ASKED

6.5 THE PROCURING ENTITY SHALL ALSO PROMPTLY PUBLISH ANONYMIZED (NO NAMES) MINUTES OF THE PRE-TENDER MEETING AT THE STATE TENDER PORTAL AND THE WEBSITE SPECIFIED IN THE TDS . ANY MODIFICATION
TO THE TENDER DOCUMENTS THAT MAY BECOME NECESSARY AS A RESULT OF THE PRE-TENDER MEETING SHALL BE MADE BY THE PROCURING ENTITY EXCLUSIVELY THROUGH THE ISSUE OF AN ADDENDUM PURSUANT TO ITT 7 AND NOT THROUGH THE MINUTES OF THE PRE-TENDER MEETING. NONATTENDANCE AT
THE PRE- TENDER MEETING WILL NOT BE A CAUSE FOR DISQUALIFICATION OF A TENDERER

7. AMENDMENT OF TENDERING DOCUMENT

7.1 AT ANY TIME PRIOR TO THE DEADLINE FOR SUBMISSION OF TENDERS, THE PROCURING ENTITY MAY AMEND THE TENDERING DOCUMENT BY ISSUING ADDENDA.

7.2 ANY ADDENDUM ISSUED SHALL BE PART OF THE TENDERING DOCUMENT AND SHALL BE COMMUNICATED IN WRITING TO ALL WHO HAVE OBTAINED THE TENDER DOCUMENT FROM THE PROCURING ENTITY IN ACCORDANCE WITH IN ACCORDANCE WITH INVITATION TO TENDER. THE PROCURING ENTITY SHALL ALSO PROMPTLY PUBLISH THE ADDENDUM ON THE PROCURING ENTITY'S WEB PAGE IN ACCORDANCE WITH ITT 7.1.

7.3 TO GIVE PROSPECTIVE TENDERERS REASONABLE TIME IN WHICH TO TAKE AN ADDENDUM INTO ACCOUNT IN PREPARING THEIR TENDERS, THE PROCURING ENTITY MAY, AT ITS DISCRETION, EXTEND THE DEADLINE FOR THE SUBMISSION OF TENDERS, PURSUANT TO ITT 21.2

C. PREPARATION OF TENDERS

8. COST OF TENDERING

8.1 THE TENDERER SHALL BEAR ALL COSTS ASSOCIATED WITH THE PREPARATION AND SUBMISSION OF ITS TENDER, AND THE PROCURING ENTITY SHALL NOT BE RESPONSIBLE OR LIABLE FOR THOSE COSTS, REGARDLESS OF THE CONDUCT OR OUTCOME OF THE TENDERING PROCESS.

9. LANGUAGE OF TENDER

9.1 THE TENDER, AS WELL AS ALL CORRESPONDENCE AND DOCUMENTS RELATING TO THE TENDER EXCHANGED BY THE TENDERER AND THE PROCURING ENTITY, SHALL BE WRITTEN IN ENGLISH LANGUAGE. SUPPORTING DOCUMENTS AND PRINTED LITERATURE THAT ARE PA RT OF THE TENDER MAY BE IN ANOTHER LANGUAGE PROVIDED THEY ARE ACCOMPANIED BY AN ACCURATE TRANSLATION OF THE RELEVANT PASSAGES INTO THE ENGLISH LANGUA GE, IN WHICH CASE, FOR PURPOSES OF INTERPRETATION OF THE TENDER, SUCH TRANSLAT ION SHALL GOVERN.

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10. DOCUMENTS COMPRISING THE TENDER

10.1 THE TENDER SHALL COMPRISE THE FOLLOWING:

A) FORM OF TENDER PREPARED IN ACCORDANCE WITH ITT11;

B) PRICE SCHEDULES: COMPLETED IN ACCORDANCE WITH ITT 11 AND ITT 13;

C) TENDER SECURITY OR TENDER-SECURING DECLARATION, IN ACCORDANCE WITH ITT 18.1;

D) ALTERNATIVE TENDER: IF PERMISSIBLE, IN ACCORDANCE WITH ITT 12;

E) AUTHORIZATION: WRITTEN CONFIRMATION AUTHORIZING THE SIGNATORY OF THE TENDER TO COMMIT THE TENDERER, IN ACCORDANCE WITH ITT19.3;

F) QUALIFICATIONS: DOCUMENTARY EVIDENCE IN ACCORDANCE WITH ITT 16.2 ESTABLISHING THE TENDERER QUALIFICATIONS TO PERFORM THE CONTRACT IF ITS TENDER IS ACCEPTED;

G) TENDERER ELIGIBILITY: DOCUMENTARY EVIDENCE IN ACCORDANCE WITH ITT 16.1 ESTABLISHING THE TENDERER ELIGIBILITY TO TENDER;

H) ELIGIBILITY OF GOODS AND RELATED SERVICES: DOCUMENTARY EVIDENCE IN ACCORDANCE WITH ITT 15, ESTABLISHING THE ELIGIBILITY OF THE GOODS AND RELATED SERVICES TO BE SUPPLIED BY THE TENDERER;

I) CONFORMITY: DOCUMENTARY EVIDENCE IN ACCORDANCE WITH ITT15.
2 THAT THE GOODS AND RELATED SERVICES CONFORM TO THE TENDER DOCUMENT; AND

J) ANY OTHER DOCUMENT REQUIRED IN THE TDS

10.2 IN ADDITION TO THE REQUIREMENTS UNDER ITT 10.1, TENDERS SUBMITTED BY A JV SHALL INCLUDE A COPY OF THE JOINT VENTURE AGREEMENT ENTERED INTO BY ALL MEMBERS. ALTERNATIVELY, A LETTER OF INTENT TO EXECUTE A JOINT VENTURE AGREEMENT IN THE EVENT OF A SUCCESSFUL TENDER SHALL BE SIGNED BY ALL MEMBERS AND SUBMITTED WITH THE TENDER, TOGETHER WITH A COPY OF THE PROPOSED AGREEMENT.

10.3 THE TENDERER SHALL FURNISH IN THE FORM OF TENDER INFORMATION ON COMMISSIONS GRATUITIES, AND FEES, IF ANY, PAID OR TO BE PAID TO AGENTS OR ANY OTHER PARTY RELATING TO THIS TENDER.

11. FORM OF TENDER AND PRICE SCHEDULES

11.1 THE FORM OF TENDER AND PRICE SCHEDULES SHALL BE PREPARED USING THE RELEV ANT FORMS FURNISHED IN SECTION IV, TENDERING FORMS. THE FORMS MUST BE COMPLETED WITHOUT ANY ALTERATIONS TO THE TEXT. ALL BLANK SPACES SHALL BE FILLED IN WITH THE INFORMATION REQUESTED. THE TENDERER SHALL CHRONOLOGICALLY SERIALIZE PAGES OF ALL TENDER DOCUMENTS SUBMITTED.

12. ALTERNATIVE TENDERS

12.1 UNLESS OTHERWISE SPECIFIED IN THE **TDS,** ALTERNATIVE TENDERS SHALL NOT BE CONSIDERED.

13. TENDER PRICES AND DISCOUNTS

13.1 THE PRICES QUOTED BY THE TENDERER IN THE FORM OF TENDER AND IN THE PRICE SCHEDULES SHALL CONFORM TO THE REQUIREMENTS SPECIFIED BELOW.

13.2 ALL LOTS (CONTRACTS) AND ITEMS MUST BE LISTED AND PRICED SEPARATELY IN THE PRICE SCHEDULES.

13.3 THE PRICE TO BE QUOTED IN THE FORM OF TENDER IN ACCORDANCE WITH ITT13. 1 SHALL BE THE TOTAL PRICE OF THE TENDER, INCLUDING ANY DISCOUNTS OFFERED.

13.4 THE TENDERER SHALL QUOTE ANY DISCOUNTS AND INDICATE THE METHODOLOGY FO R THEIR APPLICATION IN THE PRICE SCHEDULE. CONDITIONAL DISCOUNTS WILL BE REJECTED.

13.5 PRICES QUOTED BY THE TENDERER SHALL BE FIXED DURING THE PERFORMANCE OF T HE CONTRACT AND NOT SUBJECT TO VARIATION ON ANY ACCOUNT, UNLESS OTHERWISE S PECIFIED IN THE **TDS**. A TENDER SUBMITTED WITH AN ADJUSTABLE PRICE QUOTATION SHALL BE TREATED AS NON-RESPONSIVE AND SHALL BE REJECTED, PURSUANT TO ITT 28. HOWEVER, IF IN ACCORDANCE WITH THE TDS, PRICES QUOTED BY THE TENDERER SHALL BE SUBJECT TO ADJUSTMENT D URING THE PERFORMANCE OF THE CONTRACT, A TENDER SUBMITTED WITH A FIXED PRICE QUOTATION SHALL NOT BE REJECTED, BUT THE PRICE ADJUSTMENT SHALL BE TREATED AS ZERO.

13.6 IF SPECIFIED IN ITT 1.1, TENDERS ARE BEING INVITED FOR INDIVIDUAL LOTS (CONTRACTS) OR FOR ANY COMBINATION OF LOTS (PACKAGES). UNLESS OTHERWISE SPECIFIED IN THE **TDS**, PRICES QUOTED SHALL CORRESPOND TO 100 % OF THE ITEMS SPECIFIED FOR EACH LOT AND TO 100% OF THE QUANTITIES SPECIFIED FOR EACH ITEM OF A LOT. TENDERERS WISHING TO OFFER DISCOUNTS FOR THE AWARD OF MORE THAN ONE CONTRACT SHALL SPECIFY IN THEIR TENDER THE PRICE REDUCTIONS APPLICABLE TO EACH PACKAGE, OR ALTERNATIVELY, TO INDIVIDUAL CONTRACTS WITHIN THE PACKAGE. DISCOUNTS SHALL BE SUBMITTED IN ACCORDANCE WITH ITT 13.4 PROVIDED THE TENDERS FOR ALL LOTS (CONTRACTS) ARE OPENED AT THE SAME TIME.

13.7 THE TERMS EXW, CIP, CIF, DDP AND OTHER SIMILAR TERMS SHALL BE GOVERNED BY THE RULES PRESCRIBED IN THE CURRENT EDITION OF INCOTERMS, PUBLISHED BY THE INTERNATIONAL CHAMBER OF COMMERCE.

13.8 PRICES SHALL BE QUOTED AS SPECIFIED IN EACH PRICE SCHEDULE INCLUDED IN SECTION IV, TENDERING FORMS. THE DISAGGREGATION OF PRICE COMPONENTS IS REQUIRED SOLELY FOR THE PURPOSE OF FACILITATING THE COMPARISON OF TENDERS BY THE PROCURING ENTITY. THIS SHALL NOT IN ANY WAY LIMIT THE PROCURING ENTITY'S RIGHT TO CONTRACT ON ANY OF THE TERMS OFFERED. IN QUOTING PRICES, THE TENDERER SHALL BE FREE TO USE TRANSPORTATION THROUGH CARRIERS REGISTERED IN ANY ELIGIBLE COUNTRY. SIMILARLY, THE TENDERER MAY OBTAIN INSURANCE SERVICES FROM A COMPANY REGISTERED IN KENYA IN ACCORDANCE WITH ITT 3.6. ELIGIBLE TENDERS. PRICES SHALL BE ENTERED IN THE FOLLOWING MANNER:

A) FOR GOODS MANUFACTURED IN KENYA:

I) THE PRICE OF THE GOODS QUOTED EXW (EX-WORKS, EX-FACTORY, EX WAREHOUSE, EX SHOWROOM, OR OFF-THE- SHELF, AS APPLICABLE) FINAL DESTINATION POINT INDICATED IN THE **TDS**, INCLUDING ALL CUSTOMS DUTIES AND OTHER TAXES ALREADY PAID OR PAYABLE ON THE COMPONENTS AND RAW MATERIAL USED IN THE MANUFACTURE OR ASSEMBLY OF THE GOODS;

II) ANY OTHER TAXES WHICH WILL BE PAYABLE IN KENYA ON THE GOODS IF THE CONTRACT IS AWARDED TO THE TENDERER; AND

THE PRICE FOR INLAND TRANSPORTATION, INSURANCE, AND OTHER LOCAL SERVICES REQUIRED TO CONVEY THE GOODS TO THEIR FINAL DESTINATION SPECIFIED IN THE **TDS.**

B) FOR GOODS MANUFACTURED OUTSIDE KENYA, TO BE IMPORTED:

I) THE PRICE OF THE GOODS, QUOTED CIP NAMED PLACE OF DESTINATION, IN KENYA, AS SPECIFIED IN THE **TDS;**

THE PRICE FOR INLAND TRANSPORTATION, INSURANCE, AND OTHER LOCAL SERVICES REQUI RED TO CONVEY THE GOODS FROM THE NAMED PLACE OF DESTINATION TO THEIR FINAL DESTINATION SPECIFIED IN THE **TDS;**

C) FOR GOODS MANUFACTURED OUTSIDE KENYA, ALREADY IMPORTED:

I) THE PRICE OF THE GOODS, INCLUDING THE ORIGINAL IMPORT VALUE OF THE GOODS; P LUS, ANY MARK-UP (OR REBATE); PLUS, ANY OTHER RELATED LOCAL COST, AND CUSTOM DUTIES AND OTHER IMPORT TAXES ALREADY PAID OR TO BE PAID ON THE GOODS ALREA DY IMPORTED;

II) THE CUSTOM DUTIES AND OTHER IMPORT TAXES ALREADY PAID (NEED TO BE SUPPORT ED WITH DOCUMENTARY EVIDENCE) OR TO BE PAID ON THE GOODS ALREADY IMPORTED;

III) ANY SALES AND OTHER TAXES LEVIED IN KENYA WHICH WILL BE PAYABLE ON THE GO ODS IF THE CONTRACT IS AWARDED TO THE TENDERER; AND

IV) THE PRICE FOR INLAND TRANSPORTATION, INSURANCE, AND OTHER LOCAL SERVICES RE QUIRED TO CONVEY THE GOODS FROM THE NAMED PLACE OF DESTINATION TO THEIR FIN AL DESTINATION (PROJECT SITE) SPECIFIED IN THE **TDS**

D) FOR RELATED SERVICES, OTHER THAN INLAND TRANSPORTATION AND OTHER SERVICES REQUIRED TO CONVEY THE GOODS TO THEIR FINAL DESTINATION, WHENEVER SUCH RELAT ED SERVICES ARE SPECIFIED IN THE SCHEDULE OF REQUIREMENTS, THE PRICE OF EACH ITE M COMPRISING THE RELATED SERVICES (INCLUSIVE OF ANY APPLICABLE TAXES).

13.9 THE TENDER PRICE SHALL BE INCLUSIVE OF A CAPACITY BUILDING LEVY OF ZERO POINT ZERO THREE PER CENTUM (0.03%) OF THE TENDER SUM EXCLUSIVE OF ALL APPLICABLE TAXES.

14. CURRENCIES OF TENDER AND PAYMENT

14.1 THE CURRENCY (IES) OF THE TENDER, THE CURRENCY (IES) OF AWARD AND THE CURRENCY (IES) OF CONTRACT PAYMENTS SHALL BE THE SAME.

14.2 THE TENDERER SHALL QUOTE IN KENYA SHILLINGS. IF ALLOWED IN THE **TDS**, THE TENDERER MAY EXPRESS THE TENDER PRICE IN ANY CURRENCY, PROVIDED IT SHALL USE NO MORE THAN TWO FOREIGN CURRENCIES IN ADDITION TO THE KENYA SHILLING.

14.3 THE RATES OF EXCHANGE TO BE USED BY THE TENDERER SHALL BE BASED ON THE EXCHANGE RATES PROVIDED BY THE CENTRAL BANK OF KENYA ON THE DATE 30 DAYS PRIOR TO THE ACTUAL DATE OF TENDER OPENING.

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15. DOCUMENTS ESTABLISHING THE ELIGIBILITY AND CONFORMITY OF THE GOODS AND RELATED SERVICES

15.1 TO ESTABLISH THE ELIGIBILITY OF THE GOODS AND RELATED SERVICES IN ACCORDANCE WITH ITT 15, TENDERERS SHALL COMPLETE THE COUNTRY OF ORIGIN DECLARATIONS IN THE PRICE SCHEDULE FORMS, INCLUDED IN SECTION IV, TENDERING FORMS.

15.2 TO ESTABLISH THE CONFORMITY OF THE GOODS AND RELATED SERVICES TO THE TENDERING DOCUMENT, THE TENDERER SHALL FURNISH AS PART OF ITS TENDER THE DOCUMENTARY EVIDENCE THAT THE GOODS CONFORM TO THE TECHNICAL SPECIFICATIONS AND STANDARDS SPECIFIED IN SECTION V, SCHEDULE OF REQUIREMENTS.

15.3 THE DOCUMENTARY EVIDENCE MAY BE IN THE FORM OF LITERATURE, DRAWINGS OR DATA, AND SHALL CONSIST OF A DETAILED ITEM BY ITEM DESCRIPTION OF THE ESSENTIAL TECHNICAL AND PERFORMANCE CHARACTERISTICS OF THE GOODS AND RELATED SERVICES, DEMONSTRATING SUBSTANTIAL RESPONSIVENESS OF THE GOODS AND RELATED SERVICES TO THE TECHNICAL SPECIFICATION, AND IF APPLICABLE, A STATEMENT OF DEVIATIONS AND EXCEPTIONS TO THE PROVISIONS OF THE SECTION V, SCHEDULE OF REQUIREMENTS.

15.4 WHERE APPLICABLE THE TENDERER SHALL ALSO FURNISH A LIST GIVING FULL PARTICULARS, INCLUDING AVAILABLE SOURCES AND CURRENT PRICES OF SPARE PARTS, SPECIAL TOOLS, ETC., NECESSARY FOR THE PROPER AND CONTINUING FUNCTIONING OF THE GOODS DURING THE PERIOD SPECIFIED IN THE **TDS** FOLLOWING COMMENCEMENT OF THE USE OF THE GOODS BY THE PROCURING ENTITY.

15.5 STANDARDS FOR WORKMANSHIP, PROCESS, MATERIAL, AND EQUIPMENT, AS WELL AS REFERENCES TO BRAND NAMES OR CATALOGUE NUMBERS SPECIFIED BY THE PROCURING ENTITY IN THE SCHEDULE OF REQUIREMENTS, ARE INTENDED TO BE DESCRIPTIVE ONLY AND NOT RESTRICTIVE. THE TENDERER MAY OFFER OTHER STANDARDS OF QUALITY, BRAND NAMES, AND/OR CATALOGUE NUMBERS, PROVIDED THAT IT DEMONSTRATES, TO THE PROCURING ENTITY'S SATISFACTION, THAT THE SUBSTITUTIONS ENSURE SUBSTANTIAL EQUIVALENCE OR ARE SUPERIOR TO THOSE SPECIFIED IN THE SECTION V, SCHEDULE OF REQUIREMENTS.

16. DOCUMENTS ESTABLISHING THE ELIGIBILITY AND QUALIFICATIONS OF THE TENDERER

16.1 TO ESTABLISH TENDERER ELIGIBILITY IN ACCORDANCE WITH ITT 4, TENDERERS SHALL COMPLETE THE FORM OF TENDER, INCLUDED IN SECTION IV, TENDERING FORMS.

16.2 THE DOCUMENTARY EVIDENCE OF THE TENDERER QUALIFICATIONS TO PERFORM THE CONTRACT IF ITS TENDER IS ACCEPTED SHALL ESTABLISH TO THE PROCURING ENTITY'S SA TISFACTION:

A) THAT, IF REQUIRED IN THE **TDS,** A TENDERER THAT DOES NOT MANUFACTURE OR PROD UCE THE GOODS IT OFFERS TO SUPPLY SHALL SUBMIT THE MANUFACTURER'S AUTHORIZAT ION USING THE FORM INCLUDED IN SECTION IV, TENDERING FORMS TO DEMONSTRATE TH AT IT HAS BEEN DULY AUTHORIZED BY THE MANUFACTURER OR PRODUCER OF THE GOOD S TO SUPPLY THESE GOODS IN KENYA;

B) THAT, IF REQUIRED IN THE **TDS**, IN CASE OF A TENDERER NOT DOING BUSINESS WITHI N KENYA, THE TENDERER WILL BE (IF AWARDED THE CONTRACT) REPRESENTED BY AN AG ENT IN THE COUNTRY EQUIPPED AND ABLE TO CARRY OUT THE
SUPPLIER'S MAINTENANCE, REPAIR AND SPARE PARTS-
STOCKING OBLIGATIONS PRESCRIBED IN THE CONDITIONS OF CONTRACT AND
/OR TECHNICAL SPECIFICATIONS; AND

C) THAT THE TENDERER MEETS EACH OF THE QUALIFICATION CRITERION SPECIFIED IN SECT ION III, EVALUATION AND QUALIFICATION CRITERIA.

17. PERIOD OF VALIDITY OF TENDERS

17.1 TENDERS SHALL REMAIN VALID FOR THE TENDER VALIDITY PERIOD **SPECIFIED IN THE TDS**. THE TENDER VALIDITY PERIOD STARTS FROM THE DATE FIXED FOR THE TENDER SUBMISSION DEADLINE (AS PRESCRIBED BY THE PROCURING ENTITY IN ACCORDANCE WITH ITT 21.1. A TENDER VALID FOR A SHORTER PERIOD SHALL BE REJECTED BY THE PROCURING ENTITY AS NON-RESPONSIVE.

17.2 IN EXCEPTIONAL CIRCUMSTANCES, PRIOR TO THE EXPIRATION OF THE TENDER VALIDITY PERIOD, THE PROCURING ENTITY MAY REQUEST TENDERERS TO EXTEND THE PERIOD OF VALIDITY OF THEIR TENDERS. THE REQUEST AND THE RESPONSES SHALL BE MADE IN WRITING. IF A TENDER SECURITY IS REQUESTED IN ACCORDANCE WITH ITT 18, IT SHALL ALSO BE EXTENDED FOR A CORRESPONDING PERIOD. A TENDERER MAY REFUSE THE REQUEST WITHOUT FORFEITING ITS TENDER SECURITY. A TENDERER GRANTING THE REQUEST SHALL NOT BE REQUIRED OR PERMITTED TO MODIFY ITS TENDER.

18. TENDER SECURITY

18.1 THE TENDERER SHALL FURNISH AS PART OF ITS TENDER, EITHER A TENDER SECURITY OR TENDER-SECURING DECLARATION , AS SPECIFIED IN THE TDS, IN ORIGINAL FORM (PHYSICAL OR ELECTRONIC) AND, IN THE CASE OF A TENDER SECURITY, IN THE AMOUNT AND CURRENCY SPECIFIED IN THE **TDS.**

18.1 THE TENDERER SHALL FURNISH AS PART OF ITS TENDER, EITHER A TENDER SECURITY OR TENDER-SECURING DECLARATION , AS SPECIFIED IN THE TDS, IN ORIGINAL FORM (PHYSICAL OR ELECTRONIC) AND, IN THE CASE OF A TENDER SECURITY, IN THE AMOUNT AND CURRENCY SPECIFIED IN THE TDS.

18.2 A TENDER SECURING DECLARATION SHALL USE THE FORM INCLUDED IN SECTION IV, TENDERING FORMS.

18.3 IF A TENDER SECURITY IS SPECIFIED PURSUANT TO ITT 18.1, THE TENDER SECURITY S HALL BE A DEMAND GUARANTEE IN ANY OF THE FOLLOWING FORMS AT THE TENDERER' S OPTION:

I) CASH;

II) A BANK GUARANTEE;

III) A GUARANTEE BY AN INSURANCE COMPANY REGISTERED AND LICENSED BY THE INSURA NCE REGULATORY AUTHORITY LISTED BY THE AUTHORITY; OR

IV) A LETTER OF CREDIT; OR

V) GUARANTEE BY A DEPOSIT-TAKING MICRO-FINANCE INSTITUTION LICENSED BY THE CENTRAL BANK OF KENYA. IF AN UNCONDITIONAL GUARANTEE IS ISSUED BY A NON-BANK FINANCIAL INSTITUTION LOCATED OUTSIDE KENYA, THE ISSUING NON-BANK FINANCIA L INSTITUTION SHALL HAVE A CORRESPONDENT FINANCIAL INSTITUTION LOCATED IN KENY A TO MAKE IT ENFORCEABLE UNLESS THE PROCURING ENTITY HAS AGREED IN WRITING, P RIOR TO TENDER SUBMISSION, THAT A CORRESPONDENT FINANCIAL INSTITUTION IS NOT R EQUIRED. IN THE CASE OF A BANK GUARANTEE, THE TENDER SECURITY SHALL BE SUBMITTED USING THE TENDER SECURITY FORM INCLUDED IN SECTION IV, TENDERING FORMS. THE TENDER SECURITY SHALL BE VALID FOR THIRTY (30) DAYS BEYOND THE ORIGINAL VALIDITY P ERIOD OF THE TENDER, OR BEYOND ANY PERIOD OF EXTENSION IF REQUESTED UNDER ITT 17.2.

18.4 IF A TENDER SECURITY IS SPECIFIED PURSUANT TO ITT 18.1, ANY TENDER NOT ACCO MPANIED BY A SUBSTANTIALLY RESPONSIVE TENDER SECURITY SHALL BE REJECTED BY THE PROCURING ENTITY AS NON-RESPONSIVE

18.5 IF A TENDER SECURITY IS SPECIFIED PURSUANT TO ITT 18.1, THE TENDER SECURITY OF UNSUCCESSFUL TENDERERS SHALL BE RETURNED WITHIN 14 DAYS UPON THE SUCCESSFUL TENDERER SIGNING THE CONTRACT .THE PROCURING ENTITY SHALL ALSO PROMPTLY RETURN THE TENDER SECURITY TO THE TENDERERS WHERE THE P ROCUREMENT PROCEEDINGS ARE TERMINATED, OR A BIDDER DECLINES TO EXTEND TEND ER VALIDITY PERIOD.

18.6 THE TENDER SECURITY OF THE SUCCESSFUL TENDERER SHALL BE RETURNED WITHIN 14 DAYS ONCE THE SUCCESSFUL TENDERER HAS SIGNED THE CONTRACT AND FURNISHED THE REQUIRED PERFORMANCE SECURITY.

18.7 THE TENDER SECURITY MAY BE FORFEITED OR THE TENDER SECURING DECLARATION EXECUTED:

A) IF A TENDERER WITHDRAWS ITS TENDER DURING THE PERIOD OF TENDER VALIDITY SPE CIFIED BY THE TENDERER IN THE FORM OF TENDER, OR ANY EXTENSION THERETO PROVID ED BY THE TENDERER; OR

B) IF THE SUCCESSFUL TENDERER FAILS TO:
I) SIGN THE CONTRACT IN ACCORDANCE WITH ITT 46; OR
II) FURNISH A PERFORMANCE SECURITY IN ACCORDANCE WITH ITT 47.

18.8 WHERE TENDER SECURING DECLARATION IS EXECUTED, THE PROCURING ENTITY MAY DECLARE THE TENDERER INELIGIBLE TO BE AWARDED A CONTRACT BY THE PROCURING ENTITY FOR A PERIOD OF NOT EXCEEDING SIX (6) MONTHS AND REPORT THE MATTER TO THE AUTHORITY WITHIN 14 DAYS OF THE SUSPENSION.

18.9 THE TENDER SECURITY OR TENDER- SECURING DECLARATION OF A JV MUST BE IN TH E NAME OF THE JV THAT SUBMITS THE TENDER. IF THE JV HAS NOT BEEN LEGALLY CONSTI TUTED INTO A LEGALLY ENFORCEABLE JV AT THE TIME OF TENDERING, THE TENDER SECUR ITY OR TENDER-SECURING DECLARATION SHALL BE IN THE NAMES OF ALL FUTURE MEMBE RS AS NAMED IN THE LETTER OF INTENT REFERRED TO IN ITT3.1 AND ITT 10.2.

18.10 A TENDERER SHALL NOT ISSUE A TENDER SECURITY TO GUARANTEE ITSELF.

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19. FORMAT AND SIGNING OF TENDER

19.1 THE TENDERER SHALL PREPARE ONE ORIGINAL OF THE DOCUMENTS COMPRISING THE TENDER AS DESCRIBED IN ITT 11 AND CLEARLY MARK IT “ORIGINAL.” ALTERNATIVE TENDERS, IF PERMITTED IN ACCORDANCE WITH ITT 12, SHALL BE CLEARLY MARKED “ALTER NATIVE.” IN ADDITION, THE TENDERER SHALL SUBMIT COPIES OF THE TENDER, IN THE NUM BER SPECIFIED IN THE TDS AND CLEARLY MARK THEM “COPY.” IN THE EVENT OF ANY DISCR EPANCY BETWEEN THE ORIGINAL AND THE COPIES, THE ORIGINAL SHALL PREVAIL. SUBMISSION OF COPIES OF THE TENDER SHALL NOT APPLY FOR ELECTRONIC PROCUREMENT SYSTEM.

19.2 TENDERERS SHALL MARK AS “CONFIDENTIAL” INFORMATION IN THEIR TENDERS WHICH IS CONFIDENTIAL TO THEIR BUSINESS. THIS MAY INCLUDE PROPRIETARY INFORMATION, TRA DE SECRETS, OR COMMERCIAL OR FINANCIALLY SENSITIVE INFORMATION.

19.3 THE ORIGINAL AND ALL COPIES OF THE TENDER SHALL BE TYPED OR WRITTEN IN IN DELIBLE INK AND SHALL BE SIGNED BY A PERSON DULY AUTHORIZED TO SIGN ON BEHAL F OF THE TENDERER. THIS AUTHORIZATION
SHALL CONSIST OF A WRITTEN CONFIRMATION AS SPECIFIED IN THE **TDS**
AND SHALL BE ATTACHED TO THE TENDER. THE NAME AND POSITION HELD BY EACH PERS ON SIGNING THE AUTHORIZATION MUST BE TYPED OR PRINTED BELOW THE SIGNATURE. A LL PAGES OF THE TENDER WHERE ENTRIES OR AMENDMENTS HAVE BEEN MADE SHALL BE SIGNED OR INITIALED BY THE PERSON SIGNING THE TENDER.

19.4 IN CASE THE TENDERER IS A JV, THE TENDER SHALL BE SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE JV ON BEHALF OF THE JV, AND SO AS TO BE LEGALLY BINDING ON ALL THE MEMBERS AS EVIDENCED BY A POWER OF ATTORNEY SIGNED BY EACH MEMB ERS' LEGALLY AUTHORIZED REPRESENTATIVES.

19.5 ANY INTER-LINEATION, ERASURES, OR OVERWRITING SHALL BE VALID ONLY IF THEY A RE SIGNED OR INITIALED BY THE PERSON SIGNING THE TENDER.

D. SUBMISSION AND OPENING OF TENDERS

20. SEALING AND MARKING OF TENDERS

20.1 DEPENDING ON THE SIZES OR QUANTITIES OR WEIGHT OF THE TENDER DOCUMENTS, A TENDERER MAY USE AN ENVELOPE, PACKAGE OR CONTAINER. THE TENDERER SHALL DELIVER THE TENDER IN A SINGLE SEALED ENVELOPE, OR IN A SINGLE SEALED PACKAGE, OR IN A SINGLE SEALED CONTAINER BEARING THE NAME AND REFERENCE NUMBER OF THE TENDER, ADDRESSED TO THE PROCURING ENTITY AND A WARNING NOT TO OPEN BEFORE THE TIME AND DATE FOR TENDER OPENING DATE. WITHIN THE SINGLE ENVELOPE, PACKAGE OR CONTAINER, THE TENDERER SHALL PLACE THE FOLLOWING SEPARATE, SEALED ENVELOPES:

A) IN AN ENVELOPE OR PACKAGE OR CONTAINER MARKED “ORIGINAL”, ALL DOCUMENTS COMPRISING THE TENDER, AS DESCRIBED IN ITT 10.1; AND

B) IN AN ENVELOPE OR PACKAGE OR CONTAINER MARKED “COPIES”, ALL REQUIRED COPIES OF THE TENDER; AND

C) IF ALTERNATIVE
TENDERS ARE PERMITTED IN ACCORDANCE WITH ITT 12, AND IF RELEVANT:

I) IN AN ENVELOPE OR PACKAGE OR CONTAINER MARKED “ORIGINAL – ALTERNATIVE TENDER”, THE ALTERNATIVE TENDER; AND

II) IN THE ENVELOPE OR PACKAGE OR CONTAINER MARKED “COPIES- ALTERNATIVE TENDER”, ALL REQUIRED COPIES OF THE ALTERNATIVE TENDER.

20.2 THE INNER ENVELOPES OR PACKAGES OR CONTAINERS SHALL:

A) BEAR THE NAME AND ADDRESS OF THE PROCURING ENTITY.
B) BEAR THE NAME AND ADDRESS OF THE TENDERER; AND
C) BEAR THE NAME AND REFERENCE NUMBER OF THE TENDER.

20.3 WHERE A TENDER PACKAGE OR CONTAINER CANNOT FIT IN THE TENDER BOX, THE PROCURING ENTITY SHALL:
A) SPECIFY IN THE **TDS** WHERE SUCH DOCUMENTS SHOULD BE RECEIVED.

B) MAINTAIN A RECORD OF TENDERS RECEIVED AND ISSUE ACKNOWLEDGEMENT RECEIPT NOTE TO EACH TENDERER SPECIFYING TIME AND DATE OF RECEIPT.

C) ENSURE ALL TENDERS RECEIVED ARE HANDED OVER TO THE TENDER OPENING COMMIT TEE FOR OPENING AT THE SPECIFIED OPENING PLACE AND TIME.

20.4 IF AN ENVELOPE OR PACKAGE OR CONTAINER IS NOT SEALED AND MARKED AS REQUI RED, THE PROCURING ENTITY WILL ASSUME NO RESPONSIBILITY FOR THE MISPLACEMENT OR PREMATURE OPENING OF THE TENDER. DEADLINE FOR SUBMISSION OF TENDERS

20.5 THE PROVISIONS OF CLAUSE 20 SHALL NOT APPLY TO TENDERS SUBMITTED ELECTRONICALLY.

21. DEADLINE FOR SUBMISSION OF TENDERS

21.1 TENDERS MUST BE RECEIVED BY THE PROCURING ENTITY AT THE ADDRESS AND NO L ATER THAN THE DATE AND TIME SPECIFIED IN THE **TDS.** WHEN SO SPECIFIED IN THE TDS, TENDERERS SHALL HAVE THE OPTION OF SUBMITTING THEIR TENDERS ELECTRONICALLY. TE NDERERS SUBMITTING TENDERS ELECTRONICALLY SHALL FOLLOW THE ELECTRONIC TENDER SUBMISSION PROCEDURES SPECIFIED IN THE **TDS**.

21.2 THE PROCURING ENTITY MAY, AT ITS DISCRETION, EXTEND THE DEADLINE FOR THE SU BMISSION OF TENDERS BY AMENDING THE TENDERING DOCUMENT IN ACCORDANCE WITH ITT 7, IN WHICH CASE ALL RIGHTS AND OBLIGATIONS OF THE PROCURING ENTITY AND TE NDERERS PREVIOUSLY SUBJECT TO THE DEADLINE SHALL THEREAFTER BE SUBJECT TO THE DEADLINE AS EXTENDED.

22. LATE TENDERS

22.1 THE PROCURING ENTITY SHALL NOT CONSIDER ANY TENDER THAT ARRIVES AFTER TH E DEADLINE FOR SUBMISSION OF TENDERS. ANY TENDER RECEIVED BY THE PROCURING EN TITY AFTER THE DEADLINE FOR SUBMISSION OF TENDERS SHALL BE DECLARED LATE, REJEC TED, AND RETURNED UNOPENED TO THE TENDERER.

23. WITHDRAWAL, SUBSTITUTION, AND MODIFICATION OF TENDERS

23.1 A TENDERER MAY WITHDRAW, SUBSTITUTE, OR MODIFY ITS TENDER AFTER IT HAS BEE N SUBMITTED BY SENDING A WRITTEN NOTICE, DULY SIGNED BY AN AUTHORIZED REPRESE NTATIVE, AND SHALL INCLUDE A COPY OF THE AUTHORIZATION (THE POWER OF ATTORNE Y) IN ACCORDANCE WITH ITT19.
3, (EXCEPT THAT WITHDRAWAL NOTICES DO NOT REQUIRE COPIES). THE CORRESPONDING S UBSTITUTION OR MODIFICATION OF THE TENDER MUST ACCOMPANY THE RESPECTIVE WRIT TEN NOTICE. ALL NOTICES MUST BE:

A) PREPARED AND SUBMITTED IN ACCORDANCE WITH ITT 20 AND 21 (EXCEPT THAT WITHD RAWAL NOTICES DO NOT REQUIRE COPIES), AND IN ADDITION, THE RESPECTIVE ENVELOPE S SHALL BE CLEARLY MARKED “WITHDRAWAL,” “SUBSTITUTION,” OR “MODIFICATION;” AND
B) RECEIVED BY THE PROCURING ENTITY PRIOR TO THE DEADLINE PRESCRIBED FOR SUBMI SSION OF TENDERS, IN ACCORDANCE WITH ITT 22.

23.3 TENDERS REQUESTED TO BE WITHDRAWN IN ACCORDANCE WITH ITT 23.1 SHALL BE R ETURNED UNOPENED TO THE TENDERERS.

23.4 NO TENDER MAY BE WITHDRAWN, SUBSTITUTED, OR MODIFIED IN THE INTERVAL BET WEEN THE DEADLINE FOR SUBMISSION OF TENDERS AND THE EXPIRATION OF THE PERIOD OF TENDER VALIDITY SPECIFIED BY THE TENDERER ON THE FORM OF TENDER OR ANY EX TENSION THEREOF.

23.5 TENDERERS SHALL BE ALLOWED TO SUBMIT MODIFICATIONS TO BIDS OR PROPOSALS OR WITHDRAW PREVIOUSLY SUBMITTED BIDS OR PROPOSALS ELECTRONICALLY UP TO, BUT NOT AFTER, THE BID SUBMISSION DEADLINE.

24. TENDER OPENING

24.1 EXCEPT AS IN THE CASES SPECIFIED IN ITT 23, THE PROCURING ENTITY SHALL, AT THE TENDER OPENING, PUBLICLY OPEN AND READ OUT ALL TENDERS RECEIVED BY THE DEADL INE AT THE DATE, TIME AND PLACE SPECIFIED IN THE TDS IN THE PRESENCE OF TENDERE RS' DESIGNATED REPRESENTATIVES WHO CHOOSE TO ATTEND, INCLUDING TO ATTEND ANY SPECIFIC ELECTRONIC TENDER OPENING PROCEDURES IF ELECTRONIC TENDERING IS PERMI TTED IN ACCORDANCE WITH ITT 21.1, SHALL BE AS SPECIFIED IN THE TDS.

24.2 FIRST, ENVELOPES MARKED “WITHDRAWAL” SHALL BE OPENED AND READ OUT AND TH E ENVELOPE WITH THE CORRESPONDING TENDER SHALL NOT BE OPENED, BUT RETURNED TO THE TENDERER. IF THE WITHDRAWAL ENVELOPE DOES NOT CONTAIN A COPY OF THE “ POWER OF ATTORNEY” CONFIRMING THE SIGNATURE AS A PERSON DULY AUTHORIZED TO SIGN ON BEHALF OF THE TENDERER, THE CORRESPONDING TENDER WILL BE OPENED. NO TENDER WITHDRAWAL SHALL BE PERMITTED UNLESS THE CORRESPONDING WITHDRAWAL N OTICE CONTAINS A VALID AUTHORIZATION TO REQUEST THE WITHDRAWAL AND IS READ O UT AT TENDER OPENING.

24.3 NEXT, ENVELOPES MARKED “SUBSTITUTION” SHALL BE OPENED AND READ OUT AND EX CHANGED WITH THE CORRESPONDING TENDER BEING SUBSTITUTED, AND THE SUBSTITUTE D TENDER SHALL NOT BE OPENED, BUT RETURNED TO THE TENDERER. NO TENDER SUBSTI TUTION SHALL BE PERMITTED UNLESS THE CORRESPONDING SUBSTITUTION NOTICE CONTA INS A VALID AUTHORIZATION TO REQUEST THE SUBSTITUTION AND IS READ OUT AT TEND ER OPENING.

24.4 NEXT, ENVELOPES MARKED “MODIFICATION” SHALL BE OPENED AND READ OUT WITH T HE CORRESPONDING TENDER. NO TENDER MODIFICATION SHALL BE PERMITTED UNLESS TH E CORRESPONDING MODIFICATION NOTICE CONTAINS A VALID AUTHORIZATION TO REQUES T THE MODIFICATION AND IS READ OUT AT TENDER OPENING.

24.5 NEXT, ALL REMAINING ENVELOPES SHALL BE OPENED ONE AT A TIME, READING OUT: THE NAME OF THE TENDERER AND WHETHER THERE IS A MODIFICATION; THE TOTAL TEND ER PRICES, PER LOT (CONTRACT) IF APPLICABLE, INCLUDING ANY DISCOUNTS AND ALTERN ATIVE TENDERS; THE PRESENCE OR ABSENCE OF A TENDER SECURITY, IF REQUIRED; AND A NY OTHER DETAILS AS THE PROCURING ENTITY MAY CONSIDER APPROPRIATE.

24.6 ONLY TENDERS, ALTERNATIVE TENDERS AND DISCOUNTS THAT ARE OPENED AND READ OUT AT TENDER OPENING SHALL BE CONSIDERED FURTHER FOR EVALUATION. THE FORM OF TENDER AND PAGES OF THE BILLS OF QUANTITIES ARE TO BE INITIALED BY THE MEMB ERS OF THE TENDER OPENING COMMITTEE ATTENDING THE OPENING.

24.7 THE PROCURING ENTITY SHALL NEITHER DISCUSS THE MERITS OF ANY TENDER NOR RE JECT ANY TENDER (EXCEPT FOR LATE TENDERS, IN ACCORDANCE WITH ITT 22.1).
24.8 THE PROCURING ENTITY SHALL PREPARE A RECORD OF THE TENDER OPENING THAT S HALL INCLUDE, AS A MINIMUM:

A) THE NAME OF THE TENDERER AND WHETHER THERE IS A WITHDRAWAL, SUBSTITUTION, OR MODIFICATION;

B) THE TENDER PRICE, PER LOT (CONTRACT) IF APPLICABLE, INCLUDING ANY DISCOUNTS;

C) ANY ALTERNATIVE TENDERS;

D) THE PRESENCE OR ABSENCE OF A TENDER SECURITY OR TENDER-SECURING DECLARATION, IF ONE WAS REQUIRED;

E) NUMBER OF PAGES OF EACH TENDER DOCUMENT SUBMITTED.

24.9 THE TENDERERS' REPRESENTATIVES WHO ARE PRESENT SHALL BE REQUESTED TO SIGN THE RECORD. THE OMISSION OF A TENDERER SIGNATURE ON THE RECORD SHALL NOT INVALIDATE THE CONTENTS AND EFFECT OF THE RECORD. A COPY OF THE TENDER OPENING REGISTER SHALL BE ISSUED TO A TENDERER UPON REQUEST.

E. EVALUATION AND COMPARISON OF TENDERS

25. CONFIDENTIALITY

25.1 INFORMATION RELATING TO THE EVALUATION OF TENDERS AND RECOMMENDATION OF CONTRACT AWARD, SHALL NOT BE DISCLOSED TO TENDERERS OR ANY OTHER PERSONS NOT OFFICIALLY CONCERNED WITH THE TENDERING PROCESS UNTIL THE INFORMATION ON INTENTION TO AWARD THE CONTRACT IS TRANSMITTED TO ALL TENDERERS IN ACCORDANCE WITH ITT 42.

25.2 ANY EFFORT BY A TENDERER TO INFLUENCE THE PROCURING ENTITY IN THE EVALUATION OR CONTRACT AWARD DECISIONS MAY RESULT IN THE REJECTION OF ITS TENDER.

25.3 NOTWITHSTANDING ITT 25.2, FROM THE TIME OF TENDER OPENING TO THE TIME OF CONTRACT AWARD, IF ANY TENDERER WISHES TO CONTACT THE PROCURING ENTITY ON ANY MATTER RELATED TO THE TENDERING PROCESS, IT SHOULD DO SO IN WRITING.

26. CLARIFICATION OF TENDERS

26.1 TO ASSIST IN THE EXAMINATION, EVALUATION, COMPARISON OF THE TENDERS, AND QUALIFICATION OF THE TENDERERS, THE PROCURING ENTITY MAY, AT ITS DISCRETION, ASK ANY TENDERER FOR A CLARIFICATION OF ITS TENDER. ANY CLARIFICATION SUBMITTED BY A TENDERER IN RESPECT TO ITS TENDER AND THAT IS NOT IN RESPONSE TO A REQUEST BY THE PROCURING ENTITY SHALL NOT BE CONSIDERED. THE PROCURING ENTITY'S REQUEST FOR CLARIFICATION AND THE RESPONSE SHALL BE IN WRITING. NO CHANGE, INCLUDING ANY VOLUNTARY INCREASE OR DECREASE, IN THE PRICES OR SUBSTANCE OF THE TENDER SHALL BE SOUGHT, OFFERED, OR PERMITTED EXCEPT TO CONFIRM THE CORRECTION OF ARITHMETIC ERRORS DISCOVERED BY THE PROCURING ENTITY IN THE EVALUATION OF THE TENDERS, IN ACCORDANCE WITH ITT 30.

IF A TENDERER DOES NOT PROVIDE CLARIFICATIONS OF ITS TENDER BY THE DATE AND TIME SET IN THE PROCURING ENTITY'S REQUEST FOR CLARIFICATION, ITS TENDER MAY BE REJECTED.

27. DEVIATIONS, RESERVATIONS, AND OMISSIONS

27.1 DURING THE EVALUATION OF TENDERS, THE FOLLOWING DEFINITIONS APPLY:

A) "DEVIATION"
IS A DEPARTURE FROM THE REQUIREMENTS SPECIFIED IN THE TENDERING DOCUMENT;
B) "RESERVATION" IS THE SETTING OF LIMITING CONDITIONS OR WITHHOLDING FROM COMPLETE ACCEPTANCE OF THE REQUIREMENTS SPECIFIED IN THE TENDERING DOCUMENT; AND
C) "OMISSION" IS THE FAILURE TO SUBMIT PART OR ALL OF THE INFORMATION OR DOCUMENTATION REQUIRED IN THE TENDERING DOCUMENT.

28. DETERMINATION OF RESPONSIVENESS

28.1 THE PROCURING ENTITY'S DETERMINATION OF A TENDER'S RESPONSIVENESS IS TO BE B ASED ON THE CONTENTS OF THE TENDER ITSELF, AS DEFINED IN ITT 28.2.

28.2 A SUBSTANTIALLY RESPONSIVE TENDER IS ONE THAT MEETS THE REQUIREMENTS OF T HE TENDERING DOCUMENT WITHOUT MATERIAL DEVIATION, RESERVATION, OR OMISSION. A MATERIAL DEVIATION, RESERVATION, OR OMISSION IS ONE THAT:

A) IF ACCEPTED, WOULD:
I) AFFECT IN ANY SUBSTANTIAL WAY THE SCOPE, QUALITY, OR PERFORMANCE OF THE GO ODS AND RELATED SERVICES SPECIFIED IN THE CONTRACT; OR
II) LIMIT IN ANY SUBSTANTIAL WAY, INCONSISTENT WITH THE TENDERING DOCUMENT, THE PROCURING ENTITY'S RIGHTS OR THE TENDERER OBLIGATIONS UNDER THE CONTRACT; OR

B) IF RECTIFIED, WOULD UNFAIRLY AFFECT THE COMPETITIVE POSITION OF OTHER TENDERE RS PRESENTING SUBSTANTIALLY RESPONSIVE TENDERS.

28.3 THE PROCURING ENTITY SHALL EXAMINE THE TECHNICAL ASPECTS OF THE TENDER SU BMITTED IN ACCORDANCE WITH ITT 15 AND ITT 16, IN PARTICULAR, TO CONFIRM THAT AL L REQUIREMENTS OF SECTION V, SCHEDULE OF REQUIREMENTS HAVE BEEN MET WITHOUT ANY MATERIAL DEVIATION OR RESERVATION, OR OMISSION.

28.4 IF A TENDER IS NOT SUBSTANTIALLY RESPONSIVE TO THE REQUIREMENTS OF TENDERI NG DOCUMENT, IT SHALL BE REJECTED BY THE PROCURING ENTITY AND SHALL NOT SUBS EQUENTLY BE MADE RESPONSIVE BY CORRECTION OF THE MATERIAL DEVIATION, RESERVATI ON, OR OMISSION.

29. NON-CONFORMITIES, ERRORS AND OMISSIONS

29.1 PROVIDED THAT
A TENDER IS SUBSTANTIALLY RESPONSIVE, THE PROCURING ENTITY MAY WAIVE ANY NON-CONFORMITIES IN THE TENDER.

29.2 PROVIDED THAT A TENDER IS SUBSTANTIALLY RESPONSIVE, THE PROCURING ENTITY MA Y REQUEST THAT THE TENDERER SUBMIT THE NECESSARY INFORMATION OR DOCUMENTATI ON, WITHIN A REASONABLE PERIOD OF TIME, TO RECTIFY NONMATERIAL NON- CONFORMI TIES OR OMISSIONS IN THE TENDER RELATED TO DOCUMENTATION REQUIREMENTS. SUCH OMISSION
SHALL NOT BE RELATED TO ANY ASPECT OF THE PRICE OF THE TENDER. FAILURE OF THE T ENDERER TO COMPLY WITH THE REQUEST MAY RESULT IN THE REJECTION OF ITS TENDER.

29.3 PROVIDED THAT A TENDER IS SUBSTANTIALLY RESPONSIVE, THE PROCURING ENTITY SH ALL RECTIFY QUANTIFIABLE IMMATERIAL NON-
CONFORMITIES RELATED TO THE TENDER PRICE.

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30. ARITHMETICAL ERRORS

30.1 THE TENDER SUM AS SUBMITTED AND READ OUT DURING THE TENDER OPENING SHAL L BE ABSOLUTE AND FINAL AND SHALL NOT BE THE SUBJECT OF CORRECTION, ADJUSTME NT OR AMENDMENT IN ANY WAY BY ANY PERSON OR ENTITY.

30.2 PROVIDED THAT THE TENDER IS SUBSTANTIALLY RESPONSIVE, THE PROCURING ENTITY S HALL HANDLE ERRORS ON THE FOLLOWING BASIS:

A) ANY ERROR DETECTED IF CONSIDERED A MAJOR DEVIATION THAT AFFECTS THE SUBSTAN CE OF THE TENDER, SHALL LEAD TO DISQUALIFICATION OF THE TENDER AS NON-RESPONSIVE.

B) ANY ERRORS IN THE SUBMITTED TENDER ARISING FROM A MISCALCULATION OF UNIT PR ICE, QUANTITY, SUBTOTAL AND TOTAL BID PRICE SHALL BE CONSIDERED AS A MAJOR DEVI ATION THAT AFFECTS THE SUBSTANCE OF THE TENDER AND SHALL LEAD TO DISQUALIFICA TION OF THE TENDER AS NON-RESPONSIVE. AND

C) IF THERE IS A DISCREPANCY BETWEEN WORDS AND FIGURES, THE AMOUNT IN WORDS S HALL PREVAIL.

30.3 TENDERERS SHALL BE NOTIFIED OF ANY ERROR DETECTED IN THEIR BID DURING THE NOTIFICATION OF INTENTION TO AWARD.

31. CONVERSION TO SINGLE CURRENCY

31.1 FOR EVALUATION AND COMPARISON PURPOSES, THE CURRENCY
(IES) OF THE TENDER SHALL BE CONVERTED TO A SINGLE CURRENCY AS SPECIFIED IN THE **TDS.**

32. MARGIN OF PREFERENCE AND RESERVATIONS

32.1 A MARGIN OF PREFERENCE MAY BE ALLOWED ON LOCALLY MANUFACTURED GOODS O NLY WHEN THE CONTRACT IS OPEN TO INTERNATIONAL TENDERING, WHERE THE TENDER I S LIKELY TO ATTRACT FOREIGN GOODS AND WHERE THE CONTRACT EXCEEDS THE THRESH OLD SPECIFIED IN THE REGULATIONS.

32.2 FOR PURPOSES OF GRANTING A MARGIN OF PREFERENCE ON LOCALLY MANUFACTURE D GOODS UNDER INTERNATIONAL COMPETITIVE TENDERING, A PROCURING ENTITY SHALL NOT SUBJECT THE ITEMS LISTED BELOW TO INTERNATIONAL TENDER AND HENCE NO MAR GIN OF PREFERENCE SHALL BE ALLOWED. THE AFFECTED ITEMS ARE:

A) MOTOR VEHICLES, PLANT AND EQUIPMENT WHICH ARE ASSEMBLED IN KENYA;
B) FURNITURE, TEXTILE, FOODSTUFFS, OIL AND GAS, INFORMATION COMMUNICATION TECH NOLOGY, STEEL, CEMENT, LEATHER, AGRO-
PROCESSING, SANITARY PRODUCTS, AND OTHER GOODS MADE IN KENYA; OR
C) GOODS MANUFACTURED, MINED, EXTRACTED OR GROWN IN KENYA.

32.3 THE MARGIN OF PREFERENCE AND THE APPLICATION METHODOLOGY SHALL BE DEFINED IN SECTION III - EVALUATION AND QUALIFICATION CRITERIA. CONTRACTS PROCURED ON BASIS OF INTERNATIONAL COMPETITIVE TENDERING SHALL NOT BE SUBJECT TO RESERVATIONS TO S PECIFIC GROUPS AS PROVIDED IN ITT 32.4.

32.4 WHERE IT IS INTENDED TO RESERVE A CONTRACT TO A SPECIFIC GROUP OF BUSINE SSES (THESE GROUPS ARE SMALL AND MEDIUM ENTERPRISES, WOMEN ENTERPRISES, YOUT H ENTERPRISES AND ENTERPRISES OF PERSONS LIVING WITH DISABILITY, AS THE CASE MAY BE), AND WHO ARE APPROPRIATELY REGISTERED TO BE SPECIFIED IN THE **TDS**, A PROCU RING ENTITY SHALL ENSURE THAT THE INVITATION TO TENDER SPECIFICALLY INDICATES TH AT ONLY BUSINESSES OR FIRMS BELONGING TO THE SPECIFIED GROUP ARE ELIGIBLE TO T ENDER AS SPECIFIED IN THE **TDS**. IF NOT SO STATED IN THE TENDER DOCUMENTS, THE INV ITATION TO TENDER WILL BE OPEN TO ALL INTERESTED TENDERERS.

33. EVALUATION OF TENDERS

33.1 THE PROCURING ENTITY SHALL USE THE CRITERIA AND METHODOLOGIES LISTED IN T HIS ITT AND SECTION III, EVALUATION AND QUALIFICATION CRITERIA. THE EVALUATION AND AWARD OF CONTRACTS WILL BE BASED ON PACKAGES. NO OTHER EVALUATION CRITERIA OR METHODOLOGIES SHALL BE PERMITTED. BY APPLYING THE CRITERIA AND METHODOLOGIES, T HE PROCURING ENTITY SHALL DETERMINE THE LOWEST EVALUATED TENDER. THIS IS THE TE NDER OF THE TENDERER THAT MEETS THE QUALIFICATION CRITERIA AND WHOSE TENDER HAS BEEN DETERMINED TO BE:

A) SUBSTANTIALLY RESPONSIVE TO TECHNICAL REQUIREMENTS IN THE TENDER DOCUMENTS;

B) SUBSTANTIALLY RESPONSIVE TO SUSTAINABILITY REQUIREMENTS AS SPECIFIED IN ITT 4.5;

C) THE LOWEST EVALUATED PRICE; OR

D) THE TENDER WITH THE LOWEST EVALUATED TOTAL COST OF OWNERSHIP

33.2 PRICE EVALUATION WILL BE DONE FOR ITEMS OR LOTS (CONTRACTS), SHALL BE DEFINED IN SECTION III - EVALUATION AND QUALIFICATION
CRITERIA.; AND THE TENDER PRICE AS QUOTED IN ACCORDANCE WITH ITT 14. TO EVALUATE A TENDER, THE PROCURING ENTITY SHALL CONSIDER THE FOLLOWING:

A) PRICE ADJUSTMENT
DUE TO UNCONDITIONAL DISCOUNTS OFFERED IN ACCORDANCE WITH ITT 13.4;

B) CONVERTING THE AMOUNT RESULTING FROM APPLYING (A) ABOVE, IF RELEVANT, TO A SINGLE CURRENCY IN ACCORDANCE WITH ITT 31;

C) PRICE ADJUSTMENT DUE TO QUANTIFIABLE IMMATERIAL NON-
CONFORMITIES IN ACCORDANCE WITH ITT 29.3; AND

D) ANY ADDITIONAL EVALUATION FACTORS SHALL BE SPECIFIED
IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA.

33.3 THE ESTIMATED EFFECT OF THE PRICE ADJUSTMENT PROVISIONS OF THE CONDITIONS OF CONTRACT, APPLIED OVER THE PERIOD OF EXECUTION OF THE CONTRACT, SHALL NOT BE CONSIDERED IN TENDER EVALUATION.

33.4 WHERE THE TENDER INVOLVES MULTIPLE LOTS OR CONTRACTS, THE TENDERER WILL BE ALLOWED TO TENDER FOR ONE OR MORE LOTS (CONTRACTS). EACH LOT OR CONTRACT WILL BE EVALUATED IN ACCORDANCE WITH ITT 33.2. THE METHODOLOGY TO DETERMINE THE LOWEST EVALUATED TENDERER OR TENDERERS BASED ONE LOT (CONTRACT) OR BASED ON A COMBINATION OF LOTS (CONTRACTS), WILL BE SPECIFIED IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA. IN THE CASE OF MULTIPLE LOTS OR CONTRACTS, PROCURING ENTITY WILL BE REQUIRED TO PREPARE THE ELIGIBILITY AND QUALIFICATION CRITERIA FORM FOR EACH LOT.

33.5 THE PROCURING ENTITY'S EVALUATION OF A TENDER WILL INCLUDE AND CONSIDER:

A) IN THE CASE OF GOODS MANUFACTURED IN KENYA, SALES AND OTHER SIMILAR TAXES, WHICH WILL BE PAYABLE ON THE GOODS IF A CONTRACT IS AWARDED TO THE TENDERER ;

B) IN THE CASE OF GOODS MANUFACTURED OUTSIDE KENYA, ALREADY IMPORTED OR TO BE IMPORTED, CUSTOMS DUTIES AND OTHER APPLICABLE TAXES LEVIED ON THE IMPORTED GOODS, WHICH WILL BE PAYABLE ON THE GOODS IF THE CONTRACT IS AWARDED TO THE TENDERER;

33.6 THE PROCURING ENTITY'S EVALUATION OF A TENDER MAY REQUIRE THE CONSIDERATION OF OTHER FACTORS, IN ADDITION TO THE TENDER PRICE QUOTED IN ACCORDANCE WITH ITT 14. THESE FACTORS MAY BE RELATED TO THE CHARACTERISTICS, PERFORMANCE, AND TERMS AND CONDITIONS OF PURCHASE OF THE GOODS AND RELATED SERVICES. THE EFFECT OF THE FACTORS SELECTED, IF ANY, SHALL BE EXPRESSED IN MONETARY TERMS TO FACILITATE COMPARISON OF TENDERS, UNLESS OTHERWISE SPECIFIED IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA. THE ADDITIONAL CRITERIA AND METHODOLOGIES TO BE USED SHALL BE AS SPECIFIED IN ITT 33.2(D).

34. COMPARISON OF TENDERS

34.1 THE PROCURING ENTITY SHALL COMPARE THE EVALUATED COSTS OF ALL SUBSTANTIALLY RESPONSIVE TENDERS ESTABLISHED IN ACCORDANCE WITH ITT 33.2 TO DETERMINE THE TENDER THAT HAS THE LOWEST EVALUATED COST. THE COMPARISON SHALL BE ON THE BASIS OF TOTAL COST (PLACE OF FINAL DESTINATION) PRICES FOR ALL GOODS AND ALL PRICES, PLUS COST OF INLAND TRANSPORTATION AND INSURANCE TO PLACE OF DESTINATION, FOR GOODS TOGETHER WITH PRICES FOR ANY REQUIRED INSTALLATION, TRAINING, COMMISSIONING, OPERATION, MAINTENANCE, DISPOSAL AND OTHER SERVICES.

35. ABNORMALLY LOW TENDERS

35.1 AN ABNORMALLY LOW TENDER IS ONE WHERE THE TENDER PRICE, IN COMBINATION WITH OTHER CONSTITUENT ELEMENTS OF THE TENDER, APPEARS UNREASONABLY LOW TO THE EXTENT THAT THE TENDER PRICE RAISES MATERIAL CONCERNS WITH THE PROCURING ENTITY AS TO THE CAPABILITY OF THE TENDERER TO PERFORM THE CONTRACT FOR THE OFFERED TENDER PRICE.

35.2 IN THE EVENT OF IDENTIFICATION OF A POTENTIALLY ABNORMALLY LOW TENDER BY THE EVALUATION COMMITTEE, THE PROCURING ENTITY SHALL SEEK WRITTEN CLARIFICATION FROM THE TENDERER, INCLUDING A DETAILED PRICE ANALYSES OF ITS TENDER PRICE IN RELATION TO THE SUBJECT MATTER OF THE CONTRACT, SCOPE, DELIVERY SCHEDULE, ALLOCATION OF RISKS AND RESPONSIBILITIES AND ANY OTHER REQUIREMENTS OF THE TENDERING DOCUMENT.

35.3 AFTER EVALUATION OF THE PRICE ANALYSIS, IN THE EVENT THAT THE PROCURING ENTITY DETERMINES THAT THE TENDERER HAS FAILED TO DEMONSTRATE ITS CAPABILITY TO PERFORM THE CONTRACT FOR THE OFFERED TENDER PRICE, THE PROCURING ENTITY SHALL REJECT THE TENDER.

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36. ABNORMALLY HIGH TENDERS

36.1 AN ABNORMALLY HIGH PRICE IS ONE WHERE THE TENDER PRICE, IN COMBINATION WIT H OTHER CONSTITUENT ELEMENTS OF THE TENDER, APPEARS UNREASONABLY TOO HIGH T O THE EXTENT THAT THE PROCURING ENTITY IS CONCERNED THAT IT (THE PROCURING EN TITY) MAY NOT BE GETTING VALUE FOR MONEY OR IT MAY BE PAYING TOO HIGH A PRICE FOR THE CONTRACT COMPARED WITH MARKET PRICES OR THAT GENUINE COMPETITION B ETWEEN TENDERERS IS COMPROMISED.

36.2 IN CASE OF AN ABNORMALLY HIGH TENDER PRICE, THE PROCURING ENTITY SHALL M AKE A SURVEY OF THE MARKET PRICES, CHECK IF THE ESTIMATED COST OF THE CONTRAC T IS CORRECT AND REVIEW THE TENDER DOCUMENTS TO CHECK IF THE SPECIFICATIONS, S COPE OF WORK AND CONDITIONS OF CONTRACT ARE CONTRIBUTORY TO THE ABNORMALL Y HIGH TENDERS. THE PROCURING ENTITY MAY ALSO SEEK WRITTEN CLARIFICATION FROM THE TENDERER ON THE REASON FOR THE HIGH TENDER PRICE. THE PROCURING ENTITY SHALL PROCEED AS FOLLOWS:

A) IF THE TENDER PRICE IS ABNORMALLY HIGH BASED ON WRONG ESTIMATED COST OF TH E CONTRACT, THE PROCURING ENTITY MAY ACCEPT OR NOT ACCEPT THE TENDER DEPENDI NG ON THE PROCURING ENTITY'S BUDGET CONSIDERATIONS.

B) IF SPECIFICATIONS, SCOPE OF WORK AND/OR CONDITIONS OF CONTRACT ARE CONTRIBUT ORY TO THE ABNORMALLY HIGH TENDER PRICES, THE PROCURING ENTITY SHALL REJECT A LL TENDERS AND MAY RETENDER FOR THE CONTRACT BASED ON REVISED ESTIMATES, SPE CIFICATIONS, SCOPE OF WORK AND CONDITIONS OF CONTRACT, AS THE CASE MAY BE.

36.3 IF THE PROCURING ENTITY DETERMINES THAT THE TENDER PRICE IS ABNORMALLY TO O HIGH BECAUSE GENUINE COMPETITION BETWEEN TENDERERS IS COMPROMISED (OFTEN DUE TO COLLUSION, CORRUPTION OR OTHER MANIPULATIONS), THE PROCURING ENTITY S HALL REJECT ALL TENDERS AND SHALL INSTITUTE OR CAUSE RELEVANT GOVERNMENT AGE NCIES TO INSTITUTE AN INVESTIGATION ON THE CAUSE OF THE COMPROMISE, BEFORE RET ENDERING.

37. POST-QUALIFICATION OF THE TENDERER

37.1 THE PROCURING ENTITY SHALL DETERMINE, TO ITS SATISFACTION, WHETHER THE ELIGIBLE TENDERER THAT IS SELECTED AS HAVING SUBMITTED THE LOWEST EVALUATED COST AND SUBSTANTIALLY RESPONSIVE TENDER, MEETS THE QUALIFYING CRITERIA SPECIFIED IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA.

37.2 THE DETERMINATION SHALL BE BASED ON VERIFICATION OF THE DOCUMENTARY EVIDENCE OF THE TENDERER QUALIFICATIONS SUBMITTED , PURSUANT TO ITT 15 AND 16. THE DETERMINATION SHALL NOT TAKE INTO CONSIDERATION THE QUALIFICATIONS OF OTHER FIRMS SUCH AS THE TENDERER SUBSIDIARIES, PARENT ENTITIES, AFFILIATES, SUBCONTRACTORS (OTHER THAN SPECIALIZED SUBCONTRACTORS IF PERMITTED IN THE TENDERING DOCUMENT), OR ANY OTHER FIRM(S) DIFFERENT FROM THE TENDERER.

37.3 AN AFFIRMATIVE DETERMINATION SHALL BE A PREREQUISITE FOR AWARD OF THE CONTRACT TO THE TENDERER. A NEGATIVE DETERMINATION SHALL RESULT IN DISQUALIFICATION OF THE TENDER, IN WHICH EVENT THE PROCURING ENTITY SHALL PROCEED TO THE TENDERER WHO OFFERS A SUBSTANTIALLY RESPONSIVE TENDER WITH THE NEXT LOWEST EVALUATED COST TO MAKE A SIMILAR DETERMINATION OF THAT TENDERER QUALIFICATIONS TO PERFORM SATISFACTORILY.

38. LOWEST EVALUATED TENDER

38.1 HAVING COMPARED THE EVALUATED PRICES OF TENDERS, THE PROCURING ENTITY SHALL DETERMINE THE LOWEST EVALUATED TENDER. THE LOWEST EVALUATED TENDER IS THE TENDER THAT MEETS THE QUALIFICATION CRITERIA AND HAS BEEN DETERMINED TO BE:

A) MOST RESPONSIVE TO THE TENDER DOCUMENT; AND
B) THE LOWEST EVALUATED PRICE; OR
C) THE TENDER WITH THE LOWEST EVALUATED TOTAL COST OF OWNERSHIP.

39. PROCURING ENTITY'S RIGHT TO ACCEPT ANY TENDER, AND TO REJECT ANY OR ALL TENDERS

39.1 THE PROCURING ENTITY RESERVES THE RIGHT TO ACCEPT OR REJECT ANY TENDER, AN D TO ANNUL THE TENDERING PROCESS AND REJECT ALL TENDERS AT ANY TIME PRIOR TO NOTIFICATION OF
AWARD, WITHOUT THEREBY INCURRING ANY LIABILITY TO TENDERERS. IN CASE
OF TERMINATION, ALL TENDERERS SHALL BE NOTIFIED WITH REASONS AND
ALL, TENDER SECURITIES SHALL BE RETURNED TO THE TENDERERS WITHIN FOURTEEN (14) DAYS FROM THE DATE OF TERMINATION OF AWARD OF CONTRACT.

40. AWARD CRITERIA

40.1 THE PROCURING ENTITY SHALL AWARD THE CONTRACT TO THE SUCCESSFUL TENDERER WHOSE TENDER HAS BEEN DETERMINED TO BE THE LOWEST EVALUATED TENDER IN ACC ORDANCE WITH PROCEDURES IN ITT 38.1 AND
IN SECTION 3: EVALUATION AND QUALIFICATION CRITERIA.

41. PROCURING ENTITY'S RIGHT TO VARY QUANTITIES AT TIME OF AWARD

41.1 THE PROCURING ENTITY MAY AT THE TIME OF CONTRACT AWARD INCREASE OR DECREASE THE QUANTITIES BY NOT MORE THAN TEN PER CENTUM (10%) FOR ITEMS AS INDICATED IN THE **TDS.**

42. NOTICE OF INTENTION TO ENTER INTO A CONTRACT

42.1 UPON AWARD OF THE CONTRACT AND PRIOR TO THE EXPIRY OF THE TENDER VALIDITY PERIOD THE PROCURING ENTITY SHALL ISSUE A NOTIFICATION OF INTENTION TO ENTER INTO A CONTRACT / NOTIFICATION OF AWARD TO ALL TENDERERS WHICH SHALL CONTAIN, AT A MINIMUM, THE FOLLOWING INFORMATION:

A) THE NAME AND ADDRESS OF THE TENDERER SUBMITTING THE SUCCESSFUL TENDER;

B) THE CONTRACT PRICE OF THE SUCCESSFUL TENDER;

C) A STATEMENT OF ALL THE REASON(S) THE TENDER OF THE UNSUCCESSFUL TENDERER TO WHOM THE LETTER IS ADDRESSED WAS UNSUCCESSFUL ;

D) THE EXPIRY DATE OF THE STANDSTILL PERIOD; AND

E) INSTRUCTIONS ON HOW TO REQUEST A DEBRIEFING DURING THE STANDSTILL PERIOD;

43. STANDSTILL PERIOD

43.1 THE CONTRACT SHALL NOT BE SIGNED EARLIER THAN THE EXPIRY OF A STANDSTILL PERIOD OF 14 DAYS TO ALLOW ANY DISSATISFIED CANDIDATE TO LAUNCH A COMPLAINT.

43.2 THE STANDSTILL PERIOD SHALL COMMENCE WHEN THE PROCURING ENTITY HAS TRANSMITTED TO EACH TENDERER THE NOTIFICATION OF INTENTION TO ENTER INTO A CONTRACT WITH THE SUCCESSFUL TENDERER.

44. DEBRIEFING BY THE PROCURING ENTITY

44.1 ON RECEIPT OF THE PROCURING ENTITY'S NOTIFICATION OF INTENTION TO ENTER INTO A CONTRACT REFERRED TO IN ITT 42, AN UNSUCCESSFUL TENDERER MAY MAKE A WRITTEN REQUEST TO THE PROCURING ENTITY FOR A DEBRIEFING ON SPECIFIC ISSUES OR CONCERNS REGARDING THEIR TENDER. THE PROCURING ENTITY SHALL PROVIDE THE DEBRIEFING WITHIN FIVE DAYS OF RECEIPT OF THE REQUEST.

44.2 DEBRIEFINGS OF UNSUCCESSFUL TENDERERS MAY BE DONE IN WRITING OR VERBALLY. WHERE THE DEBRIEFING IS VERBAL, IT SHOULD BE FOLLOWED UP IN WRITING. THE TENDERER SHALL BEAR ITS OWN COSTS OF ATTENDING SUCH A DEBRIEFING MEETING.

45. LETTER OF AWARD

45.1 PRIOR TO THE EXPIRY OF THE TENDER VALIDITY PERIOD AND UPON EXPIRY OF THE ST ANDSTILL PERIOD SPECIFIED IN ITT 42, THE PROCURING ENTITY SHALL TRANSMIT THE LETT ER OF AWARD TO THE SUCCESSFUL TENDERER. THE LETTER
OF AWARD SHALL REQUEST THE SUCCESSFUL TENDERER TO FURNISH THE PROCURING ENTITY WITH LETTER OF ACCEPTANCE OF THE OFFER, A DULY FILLED BENEFICIAL OWNERSHIP INFORMATION (BOI) FORM AND PERFORMANCE SECURITY (WHERE APPLICABLE) WITHIN 21 DAYS OF THE DATE OF THE LETTER.

46. SIGNING OF CONTRACT

46.1 UPON THE EXPIRY OF THE FOURTEEN DAYS OF THE NOTIFICATION OF INTENTION TO E NTER INTO CONTRACT AND UPON THE PARTIES MEETING THEIR RESPECTIVE STATUTORY RE QUIREMENTS, THE PROCURING ENTITY SHALL SEND THE SUCCESSFUL TENDERER THE CONT RACT AGREEMENT.

46.2 WITHIN FOURTEEN (14) DAYS OF RECEIPT OF THE CONTRACT AGREEMENT, THE SUCCES SFUL TENDERER SHALL SIGN, DATE, AND RETURN IT TO THE PROCURING ENTITY.

46.3 THE WRITTEN CONTRACT SHALL BE ENTERED INTO WITHIN THE PERIOD SPECIFIED IN T HE NOTIFICATION OF AWARD AND BEFORE EXPIRY OF THE TENDER VALIDITY PERIOD.

47. PERFORMANCE SECURITY

47.1 WITHIN TWENTY-ONE (21) DAYS OF THE RECEIPT OF LETTER OF AWARD FROM THE PRO CURING ENTITY, THE SUCCESSFUL TENDERER, IF REQUIRED, SHALL FURNISH THE PERFORMA NCE SECURITY IN ACCORDANCE WITH THE GCC 29, USING FOR THAT PURPOSE THE PERFO RMANCE SECURITY FORM INCLUDED IN SECTION X, CONTRACT FORMS. IF THE PERFORMANC E SECURITY FURNISHED BY THE SUCCESSFUL TENDERER IS IN THE FORM OF A BOND, IT S HALL BE ISSUED BY A BONDING OR INSURANCE COMPANY THAT HAS BEEN DETERMINED TO BE ACCEPTABLE BY THE PROCURING ENTITY. A FOREIGN INSTITUTION PROVIDING A BON D SHALL HAVE A CORRESPONDENT FINANCIAL INSTITUTION LOCATED IN KENYA, UNLESS T HE PROCURING ENTITY HAS AGREED IN WRITING THAT A CORRESPONDENT FINANCIAL INST ITUTION IS NOT REQUIRED.

47.2 FAILURE OF THE SUCCESSFUL TENDERER TO SUBMIT THE ABOVE-MENTIONED PERFOR MANCE SECURITY OR SIGN THE CONTRACT SHALL CONSTITUTE SUFFICIENT GROUNDS FOR THE ANNULMENT OF THE AWARD AND FORFEITURE OF THE TENDER SECURITY. IN THAT EVE NT THE PROCURING ENTITY MAY AWARD THE CONTRACT TO THE TENDERER OFFERING TH E NEXT LOWEST EVALUATED TENDER.

47.3 PERFORMANCE SECURITY SHALL BE REQUIRED FOR A CONTRACT, UNLESS OTHERWISE SPECIFIED IN THE **TDS.**

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48. PUBLICATION OF PROCUREMENT CONTRACT

48.1 WITHIN FOURTEEN DAYS AFTER SIGNING THE CONTRACT, THE PROCURING ENTITY SHALL PUBLISH AND PUBLICIZE THE AWARDED CONTRACT ON THE STATE TENDER PORTAL, ENTITY WEBSITE, ITS NOTICE BOARDS, ; IN MANNER AND FORMAT PRESCRIBED BY THE AUTHORITY. AT THE MINIMUM, THE NOTICE SHALL CONTAIN THE FOLLOWING INFORMATION:

A) NAME AND ADDRESS OF THE PROCURING ENTITY;
B) NAME AND REFERENCE NUMBER OF THE CONTRACT BEING AWARDED, A SUMMARY OF ITS SCOPE AND THE SELECTION METHOD USED;
C) THE NAME OF THE SUCCESSFUL TENDERER, THE FINAL TOTAL CONTRACT PRICE, THE CONTRACT DURATION;
D) DATES OF SIGNATURE, COMMENCEMENT AND COMPLETION OF CONTRACT; AND
E) NAMES OF ALL TENDERERS THAT SUBMITTED TENDERS, AND THEIR TENDER PRICES AS READ OUT AT TENDER OPENING.

49. PROCUREMENT RELATED COMPLAINTS AND ADMINISTRATIVE REVIEW

49.1 THE PROCEDURES FOR MAKING A PROCUREMENT-RELATED COMPLAINT ARE AVAILABLE ON THE PPRA WEBSITE WWW.PPRA.GO.KE.

49.2 A REQUEST FOR ADMINISTRATIVE REVIEW SHALL BE MADE IN THE FORM FOR REVIEW PROVIDED UNDER CONTRACT FORMS.

SECTION II - TENDER DATA SHEET (TDS)

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Tender Data Sheet (TDS)

	ITT Reference & TDS Detail	Filled By	Value to be Auto Populated in Tender Document
ITT Reference	**1. SCOPE OF TENDER** 1.1 THE PROCURING ENTITY AS DEFINED IN THE **TDS** INVITES TENDERS FOR SUPPLY OF GOODS AND, IF APPLICABLE, ANY RELATED SERVICES INCIDENTAL THERETO, AS SPECIFIED IN SECTION V, SUPPLY REQUIREMENTS. THE REFERENCE NUMBER AND DESCRIPTION OF THE TENDER, NUMBER AND IDENTIFICATION OF LOTS (CONTRACTS) OF THIS TENDER DOCUMENT ARE SPECIFIED IN THE **TDS**.	-	-
TDS Detail	THE NAME OF THE PROCURING ENTITY IS	Auto Populate	4423 NANDI - COUNTY ASSEMBLY
TDS Detail	THE REFERENCE NUMBER OF THE TENDERS IS	Auto Populate	CANPE/1288/0048/2026-27
TDS Detail	THE DESCRIPTION OF THE CONTRACT IS	Manual Input	FRAMEWORK FOR SUPPLY OF FUEL
TDS Detail	THE NUMBER AND IDENTIFICATION OF LOTS (CONTRACTS) COMPRISING THIS INVITATION FOR TENDERS IS:	Manual Input	NOT APPLICABLE

ITT Reference	**2. FRAUD AND CORRUPTION** 2.3 UNFAIR COMPETITIVE ADVANTAGE - FAIR NESS AND TRANSPARENCY IN THE TENDER PROCESS REQUIRE THAT THE FIRMS OR THE IR AFFILIATES COMPETING FOR A SPECIFIC A SSIGNMENT DO NOT DERIVE A COMPETITIVE ADVANTAGE FROM HAVING PROVIDED CON SULTING SERVICES RELATED TO THIS TENDE R. TO THAT END, THE PROCURING ENTITY S HALL INDICATE IN THE **TDS** AND MAKE AVAI LABLE TO ALL THE FIRMS TOGETHER WITH THIS TENDER DOCUMENT ALL INFORMATION THAT WOULD IN THAT RESPECT GIVE SUCH FIRM ANY UNFAIR COMPETITIVE ADVANTAG E OVER COMPETING FIRMS.	-	-
TDS Detail	THE INFORMATION MADE AVAILABLE ON COMPETING FIRMS IS AS FOLLOWS:	Manual Input	NOT APPLICABLE
TDS Detail	THE FIRMS THAT PROVIDED CONSULTING SERVICES FOR THE CONTRACT BEING TENDERED FOR ARE:	Manual Input	NOT APPLICABLE

ITT Reference	**3. ELIGIBLE TENDERERS** 3.1 A TENDERER MAY BE A FIRM THAT IS A PRIVATE ENTITY, AN INDIVIDUAL, A STATE-OWNED ENTERPRISE OR INSTITUTION SUBJECT TO ITT3.7, OR ANY COMBINATION OF SUCH ENTITIES IN THE FORM OF A JOINT VENTURE (JV) UNDER AN EXISTING AGREEMENT OR WITH THE INTENT TO ENTER INTO SUCH AN AGREEMENT SUPPORTED BY A LETTER OF INTENT. PUBLIC OFFICERS OF THE PROCURING ENTITY AND THEIR CLOSE RELATIVES (SPOUSES, CHILDREN, BROTHERS, SISTERS AND UNCLES AND AUNTS) ARE NOT ELIGIBLE TO PARTICIPATE IN THE TENDER. IN THE CASE OF A JOINT VENTURE, ALL MEMBERS SHALL BE JOINTLY AND SEVERALLY LIABLE FOR THE EXECUTION OF THE ENTIRE CONTRACT IN ACCORDANCE WITH THE CONTRACT TERMS. THE JV SHALL NOMINATE A REPRESENTATIVE WHO SHALL HAVE THE AUTHORITY TO CONDUCT ALL BUSINESS FOR AND ON BEHALF OF ANY AND ALL THE MEMBERS OF THE JV DURING THE TENDERING PROCESS AND, IN THE EVENT THE JV IS AWARDED THE CONTRACT, DURING CONTRACT EXECUTION. THE MAXIMUM NUMBER OF JV MEMBERS TO BE ALLOWED SHALL BE SPECIFIED IN THE **TDS.**	-	-
TDS Detail	MAXIMUM NUMBER OF MEMBERS ALLOWED IN THE JOINT VENTURE (JV) SHALL BE: ..... [INSERT A NUMBER]	Manual Input	NOT APPLICABLE

ITT Reference	3.11 WHERE THE LAW REQUIRES TENDERERS TO BE REGISTERED WITH CERTAIN AUTHORITIES IN KENYA, SUCH REGISTRATION REQUIREMENTS SHALL BE DEFINED IN THE **TDS.**	-	-
TDS Detail	TENDERERS SHALL BE REQUIRED TO BE REGISTERED WITH	Manual Input	ELECTRONIC GOVERNMENT PROCUREMENT

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ITT Reference	**6. CLARIFICATION OF TENDERING DOCUMENT AND PRE-TENDER MEETING** 6.1 A TENDERER REQUIRING ANY CLARIFICATION OF THE TENDER DOCUMENT SHALL CONTACT THE PROCURING ENTITY IN WRITING AT THE PROCURING ENTITY'S ADDRESS SPECIFIED IN THE **TDS** OR RAISE ITS ENQUIRIES DURING THE PRE-TENDER MEETING IF PROVIDED FOR IN ACCORDANCE WITH ITT 6.4. THE PROCURING ENTITY WILL RESPOND IN WRITING TO ANY REQUEST FOR CLARIFICATION, PROVIDED THAT SUCH REQUEST IS RECEIVED NO LATER THAN THE PERIOD SPECIFIED IN THE TDS PRIOR TO THE DEADLINE FOR SUBMISSION OF TENDERS. THE PROCURING ENTITY SHALL FORWARD COPIES OF ITS RESPONSE TO ALL TENDERERS WHO HAVE ACQUIRED THE TENDER DOCUMENTS IN ACCORDANCE WITH ITT 5.3, INCLUDING A DESCRIPTION OF THE INQUIRY BUT WITHOUT IDENTIFYING ITS SOURCE. IF SO SPECIFIED IN THE **TDS**, THE PROCURING ENTITY SHALL ALSO PROMPTLY PUBLISH ITS RESPONSE AT THE WEB PAGE IDENTIFIED IN THE TDS AND THE STATE TENDER PORTAL. SHOULD THE CLARIFICATION RESULT IN CHANGES TO THE ESSENTIAL ELEMENTS OF THE TENDER DOCUMENTS, THE PROCURING ENTITY SHALL AMEND THE TENDER DOCUMENTS FOLLOWING THE PROCEDURE UNDER ITT 7.	-	-
TDS Detail	ADDRESS WHERE TO SEND ENQUIRIES IS	Auto Populate	https://egpkenya.go.ke/login

ITT Reference	6.2 THE PROCURING ENTITY SHALL SPECIFY IN THE **TDS** IF A PRE-TENDER MEETING WILL BE HELD, WHEN AND WHERE. THE TENDERER'S DESIGNATED REPRESENTATIVE IS INVITED TO ATTEND A PRE-TENDER MEETING. THE PURPOSE OF THE ME ETING WILL BE TO CLARIFY ISSUES AND TO ANSWER QUESTIONS ON ANY MATTER THAT MAY BE RAISED AT THAT STAGE.	-	-
TDS Detail	A PRE-TENDER MEETING WILL BE HELD/NOT BE HELD (SELECT ONE) ON _____ (SPECIFY DATE AND TIME) AT _____ (SPECIFY CITY, STREET, BUILDING, FLOOR AND ROOM,OR A LINK IF THE MEETING WILL BE HELD VIRTUALLY)	Manual Input	WILL NOT BE HELD
ITT Reference	6.3 THE TENDERER IS REQUESTED TO SUBMI T ANY QUESTIONS IN WRITING, TO REACH T HE PROCURING ENTITY NOT LATER THAN T HE PERIOD SPECIFIED IN THE **TDS** BEFORE THE PRE-TENDER MEETING	-	-
TDS Detail	THE QUESTIONS TO REACH THE PROCURING ENTITY NOT LATER THAN _____ (SPECIFY DATE AND TIME).	Manual Input	AS PER THE NOTICE
ITT Reference	**10. DOCUMENTS COMPRISING THE TENDER** J) ANY OTHER DOCUMENT REQUIRED IN THE TDS	-	-

TDS Detail	THE TENDERER SHALL SUBMIT THE FOLLOWING ADDITIONAL DOCUMENTS IN ITS TENDER: ..... [LIST ANY ADDITIONAL DOCUMENTS NOT ALREADY LISTED IN ITT 11.1 THAT MUST BE SUBMITTED WITH THE TENDER]	Manual Input	NOT APPLICABLE
ITT Reference	**12. ALTERNATIVE TENDERS** 12.1 UNLESS OTHERWISE SPECIFIED IN THE **TDS,** ALTERNATIVE TENDERS SHALL NOT BE CONSIDERED.	-	-
TDS Detail	ALTERNATIVE TENDERS [INSERT "SHALL BE" OR "SHALL NOT BE"] _____ CONSIDERED. [IF ALTERNATIVES SHALL BE CONSIDERED, THE METHODOLOGY SHALL BE DEFINED IN SECTION III – EVALUATION AND QUALIFICATION CRITERIA. SEE SECTION III FOR FURTHER DETAILS]	Manual Input	SHALL NOT BE

ITT Reference	**13. TENDER PRICES AND DISCOUNTS** 13.5 PRICES QUOTED BY THE TENDERER SHALL BE FIXED DURING THE PERFORMANCE OF THE CONTRACT AND NOT SUBJECT TO VARIATION ON ANY ACCOUNT, UNLESS OTHERWISE SPECIFIED IN THE **TDS**. A TENDER SUBMITTED WITH AN ADJUSTABLE PRICE QUOTATION SHALL BE TREATED AS NON-RESPONSIVE AND SHALL BE REJECTED, PURSUANT TO ITT 28. HOWEVER, IF IN ACCORDANCE WITH THE TDS, PRICES QUOTED BY THE TENDERER SHALL BE SUBJECT TO ADJUSTMENT DURING THE PERFORMANCE OF THE CONTRACT, A TENDER SUBMITTED WITH A FIXED PRICE QUOTATION SHALL NOT BE REJECTED, BUT THE PRICE ADJUSTMENT SHALL BE TREATED AS ZERO.	-	-
TDS Detail	THE PRICES QUOTED BY THE TENDERER [INSERT "SHALL "OR "SHALL NOT"] _____BE SUBJECT TO ADJUSTMENT DURING THE PERFORMANCE OF THE CONTRACT.	Manual Input	SHALL NOT

ITT Reference	13.6 IF SPECIFIED IN ITT 1.1, TENDERS ARE BEING INVITED FOR INDIVIDUAL LOTS (CONTRACTS) OR FOR ANY COMBINATION OF LOTS (PACKAGES). UNLESS OTHERWISE SPECIFIED IN THE **TDS**, PRICES QUOTED SHALL CORRESPOND TO 100 % OF THE ITEMS SPECIFIED FOR EACH LOT AND TO 100% OF THE QUANTITIES SPECIFIED FOR EACH ITEM OF A LOT. TENDERERS WISHING TO OFFER DISCOUNTS FOR THE AWARD OF MORE THAN ONE CONTRACT SHALL SPECIFY IN THEIR TENDER THE PRICE REDUCTIONS APPLICABLE TO EACH PACKAGE, OR ALTERNATIVELY, TO INDIVIDUAL CONTRACTS WITHIN THE PACKAGE. DISCOUNTS SHALL BE SUBMITTED IN ACCORDANCE WITH ITT 13.4 PROVIDED THE TENDERS FOR ALL LOTS (CONTRACTS) ARE OPENED AT THE SAME TIME.	-	-
TDS Detail	PRICES QUOTED FOR EACH LOT (CONTRACT) SHALL CORRESPOND AT LEAST TO..... [INSERT FIGURE] PERCENT OF THE ITEMS SPECIFIED FOR EACH LOT (CONTRACT).	Manual Input	NOT APPLICABLE
TDS Detail	PRICES QUOTED FOR EACH ITEM OF A LOT SHALL CORRESPOND AT LEAST TO ..... [INSERT FIGURE] PERCENT OF THE QUANTITIES SPECIFIED FOR THIS ITEM OF A LOT.	Manual Input	NOT APPLICABLE

ITT Reference	13.8 PRICES SHALL BE QUOTED AS SPECIFIED IN EACH PRICE SCHEDULE INCLUDED IN SECTION IV, TENDERING FORMS. THE DISAGGREGATION OF PRICE COMPONENTS IS REQUIRED SOLELY FOR THE PURPOSE OF FACILITATING THE COMPARISON OF TENDERS BY THE PROCURING ENTITY. THIS SHALL NOT IN ANY WAY LIMIT THE PROCURING ENTITY'S RIGHT TO CONTRACT ON ANY OF THE TERMS OFFERED. IN QUOTING PRICES, THE TENDERER SHALL BE FREE TO USE TRANSPORTATION THROUGH CARRIERS REGISTERED IN ANY ELIGIBLE COUNTRY. SIMILARLY, THE TENDERER MAY OBTAIN INSURANCE SERVICES FROM A COMPANY REGISTERED IN KENYA IN ACCORDANCE WITH ITT 3.6. ELIGIBLE TENDERS. PRICES SHALL BE ENTERED IN THE FOLLOWING MANNER: A) FOR GOODS MANUFACTURED IN KENYA: I) THE PRICE OF THE GOODS QUOTED EXW (EX-WORKS, EX-FACTORY, EX WAREHOUSE, EX SHOWROOM, OR OFF-THE- SHELF, AS APPLICABLE) FINAL DESTINATION POINT INDICATED IN THE **TDS**, INCLUDING ALL CUSTOMS DUTIES AND OTHER TAXES ALREADY PAID OR PAYABLE ON THE COMPONENTS AND RAW MATERIAL USED IN THE MANUFACTURE OR ASSEMBLY OF THE GOODS;	-	-
TDS Detail	PLACE OF FINAL DESTINATION: ..... [INSERT NAMED PLACE OF DESTINATION]	Manual Input	NANDI COUNTY ASSEMBLY

ITT Reference	THE PRICE FOR INLAND TRANSPORTATION, IN SURANCE, AND OTHER LOCAL SERVICES REQ UIRED TO CONVEY THE GOODS TO THEIR FI NAL DESTINATION SPECIFIED IN THE **TDS.** B) FOR GOODS MANUFACTURED OUTSIDE K ENYA, TO BE IMPORTED:	-	-
TDS Detail	FINAL DESTINATION (PROJECT SITE): ..... [INSERT FINAL DESTINATION /PROJECT SITE, IF DIFFERENT FROM NAMED PLACE OF DESTINATION]	Manual Input	NOT APPLICABLE
ITT Reference	I) THE PRICE OF THE GOODS, QUOTED CIP NAMED PLACE OF DESTINATION, IN KENYA, AS SPECIFIED IN THE **TDS;**	-	-
TDS Detail	NAMED PLACE OF DESTINATION, IN KENYA IS _____	Manual Input	NANDI COUNTY ASSEMBLY
ITT Reference	THE PRICE FOR INLAND TRANSPORTATION, I NSURANCE, AND OTHER LOCAL SERVICES RE QUIRED TO CONVEY THE GOODS FROM THE NAMED PLACE OF DESTINATION TO THEIR FINAL DESTINATION SPECIFIED IN THE **TDS;**	-	-
TDS Detail	THE PRICE FOR INLAND TRANSPORTATION, INSURANCE, AND OTHER LOCAL SERVICES REQUIRED TO CONVEY THE GOODS FROM THE NAMED PLACE OF DESTINATION TO THEIR FINAL DESTINATION WHICH IS _____	Manual Input	NANDI COUNTY ASSEMBLY

ITT Reference	IV) THE PRICE FOR INLAND TRANSPORTATIO N, INSURANCE, AND OTHER LOCAL SERVICES REQUIRED TO CONVEY THE GOODS FROM THE NAMED PLACE OF DESTINATION TO TH EIR FINAL DESTINATION (PROJECT SITE) SPEC IFIED IN THE **TDS**	-	-
TDS Detail	HE PLACE OF FINAL DESTINATION (PROJECT SITE) IS _____	Manual Input	NANDI COUNTY ASSEMBLY
ITT Reference	**15. DOCUMENTS ESTABLISHING THE ELIGIBILIT Y AND CONFORMITY OF THE GOODS AND R ELATED SERVICES** 15.4 WHERE APPLICABLE THE TENDERER SHA LL ALSO FURNISH A LIST GIVING FULL PART ICULARS, INCLUDING AVAILABLE SOURCES A ND CURRENT PRICES OF SPARE PARTS, SPEC IAL TOOLS, ETC., NECESSARY FOR THE PROP ER AND CONTINUING FUNCTIONING OF THE GOODS DURING THE PERIOD SPECIFIED IN THE **TDS** FOLLOWING COMMENCEMENT OF THE USE OF THE GOODS BY THE PROCURIN G ENTITY.	-	-
TDS Detail	PERIOD OF TIME THE GOODS ARE EXPECTED TO BE FUNCTIONING (FOR THE PURPOSE OF SPARE PARTS): [INSERT DURATION]	Manual Input	NOT APPLICABLE

ITT Reference	**16. DOCUMENTS ESTABLISHING THE ELIGIBILITY AND QUALIFICATIONS OF THE TENDERER** A) THAT, IF REQUIRED IN THE **TDS,** A TENDERER THAT DOES NOT MANUFACTURE OR PRODUCE THE GOODS IT OFFERS TO SUPPLY SHALL SUBMIT THE MANUFACTURER'S AUTHORIZATION USING THE FORM INCLUDED IN SECTION IV, TENDERING FORMS TO DEMONSTRATE THAT IT HAS BEEN DULY AUTHORIZED BY THE MANUFACTURER OR PRODUCER OF THE GOODS TO SUPPLY THESE GOODS IN KENYA;	-	-
TDS Detail	MANUFACTURER'S AUTHORIZATION IS: [INSERT **REQUIRED/NOT REQUIRED]**	Manual Input	NOT REQUIRED
ITT Reference	B) THAT, IF REQUIRED IN THE **TDS**, IN CASE OF A TENDERER NOT DOING BUSINESS WITHIN KENYA, THE TENDERER WILL BE (IF AWARDED THE CONTRACT) REPRESENTED BY AN AGENT IN THE COUNTRY EQUIPPED AND ABLE TO CARRY OUT THE SUPPLIER'S MAINTENANCE, REPAIR AND SPARE PARTS-STOCKING OBLIGATIONS PRESCRIBED IN THE CONDITIONS OF CONTRACT AND /OR TECHNICAL SPECIFICATIONS; AND	-	-
TDS Detail	REPRESENTATION OF THE TENDERER BY AN AGENT IS: ..... [INSERT "REQUIRED" OR "NOT REQUIRED"]	Manual Input	NOT REQUIRED

ITT Reference	**17. PERIOD OF VALIDITY OF TENDERS** 17.1 TENDERS SHALL REMAIN VALID FOR TH E TENDER VALIDITY PERIOD **SPECIFIED IN THE TDS**. THE TENDER VALIDITY PERIOD STARTS FROM THE DATE FIXED FOR THE TENDER SUBMISSION DEADLINE (AS PR ESCRIBED BY THE PROCURING ENTITY IN AC CORDANCE WITH ITT 21.1. A TENDER VALID F OR A SHORTER PERIOD SHALL BE REJECTED BY THE PROCURING ENTITY AS NON-RESPONSIVE. 17.2 IN EXCEPTIONAL CIRCUMSTANCES, PRIO R TO THE EXPIRATION OF THE TENDER VALI DITY PERIOD, THE PROCURING ENTITY MAY REQUEST TENDERERS TO EXTEND THE PERIO D OF VALIDITY OF THEIR TENDERS. THE REQUEST AND THE RESPONSES SHALL BE MADE IN WRITING. IF A TENDER SECURITY IS REQUESTED IN ACCORDANCE WITH ITT 18, I T SHALL ALSO BE EXTENDED FOR A CORRES PONDING PERIOD. A TENDERER MAY REFUSE THE REQUEST WITHOUT FORFEITING ITS TENDER SECURITY. A TENDERER GRANTING T HE REQUEST SHALL NOT BE REQUIRED OR PERMITTED TO MODIFY ITS TENDER.	-	-
TDS Detail	THE TENDER VALIDITY PERIOD SHALL BE: [INSERT NUMBER OF DAYS COUNTING AS OF THE DEADLINE FOR TENDER SUBMISSION] DAYS	Auto Populate	147

ITT Reference	**18. TENDER SECURITY** 18.1 THE TENDERER SHALL FURNISH AS PAR T OF ITS TENDER, EITHER A TENDER SECUR ITY OR TENDER-SECURING DECLARATION , AS SPECIFIED IN THE TDS, IN ORIGINAL FORM (PHYSICAL OR ELECTRONIC) AND, IN THE CAS E OF A TENDER SECURITY, IN THE AMOUNT AND CURRENCY SPECIFIED IN THE **TDS.**	-	-
TDS Detail	[**IF A TENDER SECURITY SHALL BE REQUIRED, A TENDER-SECURING DECLARATION SHALL NOT BE REQUIRED, AND VICE VERSA**.] A TENDER SECURITY ..... [INSERT "SHALL BE" OR "SHALL NOT BE"] REQUIRED. A TENDER-SECURING DECLARATION ..... [INSERT "SHALL BE" OR "SHALL NOT BE"] REQUIRED. [NOTE: TENDER SECURITY IIS REQUIRED FOR EACH LOT AS PER AMOUNTS INDICATED AGAINST EACH LOT]	Manual Input	NOT REQUIRED
TDS Detail	THE TENDER SECURITY SHALL BE IN THE AMOUNT _____	Auto Populate	Not Applicable
TDS Detail	THE CURRENCY OF THE TENDER SECURITY SHALL BE _____	Auto Populate	Kenyan Shilling (KSH)

ITT Reference	**19. FORMAT AND SIGNING OF TENDER** 19.3 THE ORIGINAL AND ALL COPIES OF THE TENDER SHALL BE TYPED OR WRITTEN IN INDELIBLE INK AND SHALL BE SIGNED BY A PERSON DULY AUTHORIZED TO SIGN ON BEHALF OF THE TENDERER. THIS AUTHORIZATION SHALL CONSIST OF A WRITTEN CONFIRMATION AS SPECIFIED IN THE **TDS** AND SHALL BE ATTACHED TO THE TENDER. THE NAME AND POSITION HELD BY EACH PERSON SIGNING THE AUTHORIZATION MUST BE TYPED OR PRINTED BELOW THE SIGNATURE. ALL PAGES OF THE TENDER WHERE ENTRIES OR AMENDMENTS HAVE BEEN MADE SHALL BE SIGNED OR INITIALED BY THE PERSON SIGNING THE TENDER.	-	-
TDS Detail	THE WRITTEN CONFIRMATION OF AUTHORIZATION TO SIGN ON BEHALF OF THE TENDERER SHALL CONSIST OF: ..... [INSERT THE NAME AND DESCRIPTION OF THE DOCUMENTATION REQUIRED TO DEMONSTRATE THE AUTHORITY OF THE SIGNATORY TO SIGN THE TENDER]. IN CASE OF SOLE PROPRIETORSHIP, IT SHALL BE A DULY SIGNED SELF-DECLARATION.	Manual Input	POWER OF ATTORNEY

ITT Reference	**21. DEADLINE FOR SUBMISSION OF TENDERS** 21.1 TENDERS MUST BE RECEIVED BY THE PROCURING ENTITY AT THE ADDRESS AND NO LATER THAN THE DATE AND TIME SPECIFIED IN THE **TDS.** WHEN SO SPECIFIED IN THE TDS, TENDERERS SHALL HAVE THE OPTION OF SUBMITTING THEIR TENDERS ELECTRONICALLY. TENDERERS SUBMITTING TENDERS ELECTRONICALLY SHALL FOLLOW THE ELECTRONIC TENDER SUBMISSION PROCEDURES SPECIFIED IN THE **TDS**.	-	-
TDS Detail	FOR TENDER SUBMISSION PURPOSES ONLY, THE PROCURING ENTITY'S ADDRESS IS: ..... [THIS ADDRESS MAY BE THE SAME AS OR DIFFERENT FROM THAT SPECIFIED UNDER PROVISION ITT 7.1 FOR CLARIFICATIONS]	Auto Populate	4423 NANDI - COUNTY ASSEMBLY
TDS Detail	THE DEADLINE FOR TENDER SUBMISSION IS:	Auto Populate	27/11/2026 16:00:00
TDS Detail	THE ELECTRONIC TENDERING SUBMISSION PROCEDURES SHALL BE: [INSERT A DESCRIPTION OF THE ELECTRONIC TENDERING SUBMISSION PROCEDURES]	Auto Populate	https://egpkenya.go.ke/login

ITT Reference	**24. TENDER OPENING** 24.1 EXCEPT AS IN THE CASES SPECIFIED IN ITT 23, THE PROCURING ENTITY SHALL, AT THE TENDER OPENING, PUBLICLY OPEN AND READ OUT ALL TENDERS RECEIVED BY THE DEADLINE AT THE DATE, TIME AND PLACE SPECIFIED IN THE TDS IN THE PRESENCE OF TENDERERS' DESIGNATED REPRESENTATIVES WHO CHOOSE TO ATTEND, INCLUDING TO ATTEND ANY SPECIFIC ELECTRONIC TENDER OPENING PROCEDURES IF ELECTRONIC TENDERING IS PERMITTED IN ACCORDANCE WITH ITT 21.1, SHALL BE AS SPECIFIED IN THE TDS.	-	-

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TDS Detail	THE TENDER OPENING SHALL TAKE PLACE AT: PHYSICAL ADDRESS: CITY, STREET, BUILDING NAME, FLOOR NUMBER AND ROOM NUMBER. DATE: ..... [INSERT DAY, MONTH, AND YEAR, E.G. 15 JUNE, 2008] TIME: ..... [INSERT TIME, AND IDENTIFY IF A.M. OR P.M. E.G. 10:30 A.M.] [DATE AND TIME SHOULD BE THE SAME AS THOSE GIVEN FOR THE DEADLINE FOR SUBMISSION OF TENDERS (ITT 22).] [NOTE: THE FOLLOWING PROVISION SHOULD BE INCLUDED AND THE REQUIRED CORRESPONDING INFORMATION INSERTED ONLY IF TENDERERS HAVE THE OPTION OF SUBMITTING THEIR TENDERS ELECTRONICALLY. OTHERWISE OMIT.] THE ELECTRONIC TENDER OPENING PROCEDURES SHALL BE: ..... [INSERT A DESCRIPTION OF THE ELECTRONIC TENDER OPENING PROCEDURES.]	Manual Input	AS PER THE NOTICE
ITT Reference	**31. CONVERSION TO SINGLE CURRENCY** 31.1 FOR EVALUATION AND COMPARISON PU RPOSES, THE CURRENCY(IES) OF THE TENDE R SHALL BE CONVERTED TO A SINGLE CURR ENCY AS SPECIFIED IN THE **TDS.**	-	-

TDS Detail	THE CURRENCY THAT SHALL BE USED FOR TENDER EVALUATION AND COMPARISON PURPOSES TO CONVERT AT THE SELLING EXCHANGE RATE ALL TENDER PRICES EXPRESSED IN VARIOUS CURRENCIES INTO A SINGLE CURRENCY IS: ***[INSERT NAME OF CURRENCY]*** THE SOURCE OF EXCHANGE RATE SHALL BE: ***[INSERT NAME OF THE SOURCE OF EXCHANGE RATES (E.G., THE CENTRAL BANK IN KENYA]*** THE DATE FOR THE EXCHANGE RATE SHALL BE*:* ***[INSERT DAY, MONTH AND YEAR, E.G. 15 JUNE, 2008. THIS DATE SHALL BE THE DATE OF THE DEADLINE FOR SUBMISSION OF THE TENDERS]***	Manual Input	KENYA SHILLINGS CBK RATES AT THE TIME OF TENDER OPENING.

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ITT Reference	**32. MARGIN OF PREFERENCE AND RESERVATIONS** 32.4 WHERE IT IS INTENDED TO RESERVE A CONTRACT TO A SPECIFIC GROUP OF BUSINESSES (THESE GROUPS ARE SMALL AND MEDIUM ENTERPRISES, WOMEN ENTERPRISES, YOUTH ENTERPRISES AND ENTERPRISES OF PERSONS LIVING WITH DISABILITY, AS THE CASE MAY BE), AND WHO ARE APPROPRIATELY REGISTERED TO BE SPECIFIED IN THE **TDS**, A PROCURING ENTITY SHALL ENSURE THAT THE INVITATION TO TENDER SPECIFICALLY INDICATES THAT ONLY BUSINESSES OR FIRMS BELONGING TO THE SPECIFIED GROUP ARE ELIGIBLE TO TENDER AS SPECIFIED IN THE **TDS**. IF NOT SO STATED IN THE TENDER DOCUMENTS, THE INVITATION TO TENDER WILL BE OPEN TO ALL INTERESTED TENDERS.	-	-
TDS Detail	THE INVITATION TO TENDER IS EXTENDED TO THE FOLLOWING GROUP THAT QUALIFY FOR RESERVATIONS _____ WHO SHALL BE DULY REGISTERED WITH_____ (THESE GROUPS ARE SMALL AND MEDIUM ENTERPRISES, WOMEN ENTERPRISES, YOUTH ENTERPRISES AND ENTERPRISES OF PERSONS LIVING WITH DISABILITY, AS THE CASE MAY BE; DESCRIBE PRECISELY WHICH GROUP QUALIFIES).	Manual Input	COUNTY RESIDENTS ONLY

ITT Reference	**41. PROCURING ENTITY'S RIGHT TO VARY QUANTITIES AT TIME OF AWARD** 41.1 THE PROCURING ENTITY MAY AT THE TIME OF CONTRACT AWARD INCREASE OR DECREASE THE QUANTITIES BY NOT MORE THAN TEN PER CENTUM (10%) FOR ITEMS AS INDICATED IN THE **TDS.**	-	-
TDS Detail	THE PROCURING ENTITY SHALL INCREASE OR DECREASE THE QUANTITY OF GOODS AND RELATED SERVICES BY _____% AND WITHOUT ANY CHANGE IN THE UNIT PRICES OR OTHER TERMS AND CONDITIONS OF THE TENDER AND THE TENDERING DOCUMENT.	Manual Input	NOT APPLICABLE
ITT Reference	**47. PERFORMANCE SECURITY** 47.3 PERFORMANCE SECURITY SHALL BE REQUIRED FOR A CONTRACT, UNLESS OTHERWISE SPECIFIED IN THE **TDS.**	-	-
TDS Detail	PERFORMANCE SECURITY SHALL BE (REQUIRED)/(NOT REQUIRED) _____.	Manual Input	NOT REQUIRED
TDS Detail	WHERE REQUIRED THE PERFORMANCE SECURITY SHALL BE _____% OF THE CONTRACT AMOUNT.	Manual Input	NOT APPLICABLE

SECTION III - EVALUATION AND QUALIFICATION CRITERIA

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Evaluation and Qualification Criteria

Detail

SECTION III - EVALUATION AND QUALIFICATION CRITERIA

Evaluation Type :-

1. GENERAL PROVISIONS

Evaluation Type :-

1.1 WHEREVER A TENDERER IS REQUIRED TO STATE A MONETARY AMOUNT, TENDERERS SH OULD INDICATE THE KENYA SHILLING EQUIVALENT USING THE RATE OF EXCHANGE DETER MINED AS FOLLOWS:

A) FOR BUSINESS TURNOVER OR FINANCIAL DATA REQUIRED FOR EACH YEAR - EXCHANGE RATE PREVAILING ON THE LAST DAY OF THE RESPECTIVE FINANCIAL YEARS (IN WHICH THE REPORT RELATES) WAS ORIGINALLY ESTABLISHED.

B) VALUE OF SINGLE CONTRACT - EXCHANGE RATE PREVAILING ON THE DATE OF THE CONT RACT SIGNATURE.

C) EXCHANGE RATES SHALL BE TAKEN FROM THE PUBLICLY AVAILABLE SOURCE IDENTIFIED I N THE ITT 14.3. ANY ERROR IN DETERMINING THE EXCHANGE RATES IN THE TENDER MAY B E CORRECTED BY THE PROCURING ENTITY.

1.2 THIS SECTION CONTAINS THE CRITERIA THAT THE PROCURING ENTITY SHALL USE TO E VALUATE TENDER AND QUALIFY TENDERERS. NO OTHER FACTORS, METHODS OR CRITERIA S HALL BE USED OTHER THAN THOSE SPECIFIED IN THIS TENDER DOCUMENT. THE TENDERER SHALL PROVIDE ALL THE INFORMATION REQUESTED IN THE FORMS INCLUDED I N SECTION IV, TENDERING FORMS. THE PROCURING EN;MMTITY SHOULD USE THE STANDAR D TENDER EVALUATION REPORT FOR GOODS AND WORKS FOR EVALUATING TENDERS.

Evaluation Type : -

2. EVALUATION OF TENDERS (ITT 33)

Evaluation Type :-

2.1. SUCCESSFUL TENDER(S)

Evaluation Type :-

THE PROCURING ENTITY SHALL USE THE CRITERIA AND METHODOLOGIES LISTED IN THIS SE CTION TO EVALUATE TENDERS. BY APPLYING THESE CRITERIA AND METHODOLOGIES, THE P ROCURING ENTITY SHALL DETERMINE THE SUCCESSFUL TENDER OR TENDERS WHICH HAS /HAVE BEEN DETERMINED TO:

A) BE SUBSTANTIALLY RESPONSIVE TO THE TENDER DOCUMENTS;

B) OFFER THE LOWEST EVALUATED COST TO THE PROCURING ENTITY FOR ALL ITEMS OF G OODS TO BE PROCURED BASED ON EITHER A SINGLE CONTRACT OR ALL MULTIPLE CONTR ACTS COMBINED, AS THE CASE MAY BE, IN ACCORDANCE WITH THE ITT 13.6 ;

C) BE OFFERED BY TENDERER(S) THAT SUBSTANTIALLY MEET THE QUALIFICATION CRITERIA A PPLICABLE FOR CONTRACT OR COMBINED CONTRACTS FOR WHICH THEY ARE SELECTED; AND
D) THE TENDER WITH THE LOWEST EVALUATED TOTAL COST OF OWNERSHIP.

Evaluation Type : -

2.2. EVALUATION OF TENDERS

Evaluation Type :-

2.2.1. PRELIMINARY EXAMINATION FOR DETERMINATION OF RESPONSIVENESS

Evaluation Type :-

THE PROCURING ENTITY WILL START BY EXAMINING ALL TENDERS TO ENSURE THEY MEET IN ALL RESPECTS THE ELIGIBILITY CRITERIA AND OTHER MANDATORY REQUIREMENTS IN THE ITT, AND THAT THE TENDER IS COMPLETE IN ALL ASPECTS IN MEETING THE REQUIREMENTS PROVIDED FOR IN THE PRELIMINARY EVALUATION CRITERIA OUTLINED BELOW. TENDERS THAT DO NOT PASS THE PRELIMINARY EXAMINATION WILL BE CONSIDERED NON-RESPONSIVE AND WILL NOT BE CONSIDERED FURTHER.

PRELIMINARY EVALUATION CRITERIA

1.VALID TAX COMPLIANCE CERTIFICATE

2.VALID CERTIFICATE OF REGISTRATION/INCORPORATION

3.CR 12 CERTIFICATE

4.VALID BUSINESS PERMIT

5.VALID LICENCE BY THE ENERGY AND PETROLEUM REGULATORY AUTHORITY

6.DULLY FILLED,SIGNED AND STAMPED FORM OF TENDER

Evaluation Type : -

2.2.2. EVALUATION OF TECHNICAL ASPECTS OF THE TENDER

Evaluation Type :-

THE PROCURING ENTITY SHALL EVALUATE THE TECHNICAL ASPECTS OF THE TENDER TO DETERMINE COMPLIANCE WITH THE PROCURING ENTITY'S REQUIREMENTS UNDER SECTION V 'SCHEDULE OF REQUIREMENT' AND WHETHER THE TENDERS ARE SUBSTANTIALLY RESPONSIVE TO THE TECHNICAL SPECIFICATIONS AND OTHER REQUIREMENTS.

TECHNICAL EVALUATION CRITERIA

SERIAL NO.	ITEM DESCRIPTION	EVALUATION CRITERIA	MAXIMUM SCORE (MARKS)	SUPPLIER RESPONSE

1	EXPERIENCE	ATTACH A LIST OF 4 CORPORATE CLIENTS SERVED IN A SIMILAR ASSIGNMENT IN THE LAST 2 YEARS(ATTACH COPIES OF RECOMMENDATION LETTERS, AWARDS,LPOS AND CONTRACT AGREEMENTS .EACH LETTER -5 MARKS	20	
2	FINANCIAL CAPACITY	LINE OF CREDIT-ATTACH A LETTER FROM A BANK OR FINANCIAL INSTITUTION RECOGNIZED BY THE CBK	15	
3	FUEL STATION /NETWORK COVERAG	PROVIDE EVIDENCE OF OWNERSHIP OR LEASE OF AT LEAST ONE FULLY OPERATIONAL FUEL STATION WITHIN THE COUNTY (WITHIN A RADIUS OF 4 KM FROM THE COUNTY ASSEMBLY OFFICES)	15	
4	STAFF QUALIFICATION	ATTACH EVIDENCE BY PROVIDING CVS AND ACADEMIC CERTIFICATES FOR ATLEAST 4 PERSONNEL TO BE HANDLING THIS WORK :1 SUPERVISOR AND 3 OPERATIONAL STAFF (EACH QUALIFIED PERSONNEL -5 MARKS)	20	

5	CREDIT TO PROCURING ENTITY	PROVIDE STATEMENT ON MAXIMUM CREDIT TO BE GIVEN TO THE PROCURING ENTITY	15	
6	FINANCIAL STATEMENTS	ATTACH PROOF OF AUDITED ACCOUNTS:CURRENT ASSETS/CURRENT LIABILITIES FOR THE LAST 3 YEARS 2023,2024 AND 2025.EACH YEAR-5 MARKS	15	

Evaluation Type : -

2.2.3 FINANCIAL EVALUATION

Evaluation Type :-

UPON COMPLETION OF THE TECHNICAL EVALUATION, THE PROCURING ENTITY SHALL, IN CONSISTENT WITH THE PROVISIONS SET OUT UNDER ITT 29.3, ITT 33.2, ITT 33.3, AND ITT 34 CONDUCT THE FINANCIAL EVALUATION AND COMPARISON TO DETERMINE THE EVALUATED PRICE OF EACH TENDER, AS OUTLINED BELOW.

2.2.3.1 THE EVALUATED PRICE FOR EACH BID SHALL BE DETERMINED BY TAKING INTO CONSIDERATION:
(A) THE BID PRICE IN THE TENDER FORM;
(B) ANY MINOR DEVIATION FROM THE REQUIREMENTS ACCEPTED BY A PROCURING ENTITY;
(C) WHERE APPLICABLE, CONVERTING ALL TENDERS TO THE SAME CURRENCY, USING THE CENTRAL BANK OF KENYA EXCHANGE RATE PREVAILING AT THE TENDER OPENING DATE; AND
(D) ANY MARGIN OF PREFERENCE INDICATED IN THE TENDER DOCUMENT.

Evaluation Type : -

2.2.3.2. EVALUATION OF COMMERCIAL TERMS AND CONDITIONS OF THE TENDER (ITT 33.1 (A)):

Evaluation Type :-

THE PROCURING ENTITY SHALL DETERMINE WHETHER THE TENDERS ARE SUBSTANTIALLY RE SPONSIVE TO THE COMMERCIAL AND CONTRACTUAL TERMS AND CONDITIONS (E. G. PAYMENT AND DELIVERY SCHEDULES).

FINANCIAL EVALUATION CRITERIA

LOWEST EVALUATED RESPONSIVE BIDDER

Evaluation Type : -

2.2.3.3. EVALUATION CRITERIA (OTHER FACTORS) (ITT 33.6)

Evaluation Type :-

THE PROCURING ENTITY'S EVALUATION CRITERIA MAY TAKE INTO ACCOUNT, IN ADDITION T O THE TENDER PRICE QUOTED IN ACCORDANCE WITH ITT 13.8, ONE OR MORE OF THE FO LLOWING FACTORS AS SPECIFIED IN ITT 33.2
(D) AND IN TDS ITT 33.6, THE FOLLOWING CRITERIA AND METHODOLOGIES:

A) DELIVERY SCHEDULE

THE GOODS SPECIFIED IN THE LIST OF GOODS ARE REQUIRED TO BE DELIVERED WITHIN TH E ACCEPTABLE TIME RANGE (AFTER THE EARLIEST AND BEFORE THE FINAL DATE, BOTH DA TES INCLUSIVE) SPECIFIED IN SECTION V, SCHEDULE OF REQUIREMENTS. NO CREDIT WILL BE GIVEN TO DELIVERIES BEFORE THE EARLIEST DATE, AND TENDERS OFFERING DELIVERY AFT ER THE FINAL DATE SHALL BE TREATED AS NON-RESPONSIVE. WITHIN THIS ACCEPTABLE PER IOD, AN ADJUSTMENT OF [INSERT THE ADJUSTMENT FACTOR], WILL BE ADDED, FOR EVALU ATION PURPOSES ONLY, TO THE TENDER PRICE OF TENDERS OFFERING DELIVERIES LATER THAN THE "EARLIEST DELIVERY DATE" SPECIFIED IN SECTION V, SCHEDULE OF REQUIREMEN TS.

Evaluation Type : -

B) DEVIATION IN PAYMENT SCHEDULE.

I. TENDERERS SHALL STATE THEIR TENDER PRICE FOR THE PAYMENT SCHEDULE OUTLINED I N THE SCC. TENDERS SHALL
BE EVALUATED ON THE BASIS OF THIS BASE PRICE. TENDERERS ARE, HOWEVER, PERMITTED TO STATE AN ALTERNATIVE PAYMENT SCHEDULE AND INDICATE THE REDUCTION IN TENDE R PRICE THEY WISH TO OFFER FOR SUCH ALTERNATIVE PAYMENT SCHEDULE. THE PROCURING ENTITY MAY CONSIDER THE ALTERNATIVE PAYMENT SCHEDULE AND THE REDU CED TENDER PRICE OFFERED BY THE TENDERER SELECTED ON THE BASIS OF THE BASE PRI CE FOR THE PAYMENT SCHEDULE OUTLINED IN THE SCC.
OR

II. THE SCC STIPULATES THE PAYMENT SCHEDULE SPECIFIED BY THE PROCURING ENTITY. IF A TENDER DEVIATE FROM THE SCHEDULE AND IF SUCH DEVIATION IS CONSIDERED ACCEPTAB LE TO THE PROCURING ENTITY, THE TENDER WILL BE EVALUATED BY CALCULATING INTERE ST EARNED FOR ANY EARLIER PAYMENTS INVOLVED IN THE TERMS OUTLINED IN THE TEND ER AS COMPARED WITH THOSE STIPULATED IN THE SCC, AT THE RATE PER ANNUM .... [INSERT ADJUSTMENT RATE. THIS ADJUSTMENT RATE SHOULD BE BASED ON THE PREVAILING CBK BASE LENDING RATE ON THE DATE OF TENDER OPENING].

Evaluation Type : -

C) COST OF MAJOR REPLACEMENT COMPONENTS, MANDATORY SPARE PARTS, AND SERVICE.

THE LIST OF ITEMS AND QUANTITIES OF MAJOR ASSEMBLIES, COMPONENTS, AND SELECTED SPARE PARTS, LIKELY TO BE REQUIRED DURING THE INITIAL PERIOD OF OPERATION SPECIF IED IN THE TDS 15.4, IS IN THE LIST OF GOODS. AN ADJUSTMENT EQUAL TO THE TOTAL C OST OF THESE ITEMS, AT THE UNIT PRICES QUOTED IN EACH TENDER, SHALL BE ADDED T O THE TENDER PRICE, FOR EVALUATION PURPOSES ONLY.

OR
THE PROCURING ENTITY WILL DRAW UP A LIST OF HIGH-USAGE AND HIGH-VALUE ITEMS OF COMPONENTS AND SPARE PARTS, ALONG WITH ESTIMATED QUANTITIES OF USAGE IN THE INITIAL PERIOD OF OPERATION SPECIFIED IN THE TDS 15.4. THE TOTAL COST OF THESE ITE MS AND QUANTITIES WILL BE COMPUTED FROM SPARE PARTS UNIT PRICES SUBMITTED BY THE TENDERER AND ADDED TO THE TENDER PRICE, FOR EVALUATION PURPOSES ONLY.

OR

TENDERER SHALL PROVIDE ALONG WITH ITS TENDER, THE LIST OF RECOMMENDED SPARE PARTS FOR GOODS OFFERED INDICATING FOR EACH ITEM OF SPARE PART THE RECOMMENDED QUANTITY AND UNIT, AND TOTAL CIP FINAL DESTINATION PRICES REQUIRED DURING THE INITIAL PERIOD OF OPERATION SPECIFIED IN THE TDS 15.4. THE PRICES OFFERED SHALL NOT EXCEED THE PREVAILING PRICES CHARGED TO OTHER PARTIES BY THE TENDERER. THE COST OF SUCH SPARE PARTS WILL NOT BE TAKEN INTO ACCOUNT FOR TENDER EVALUATION. THE PROCURING ENTITY MAY AWARD THE CONTRACT FOR SPARE PARTS TO THE TENDERER THAT IS SUCCESSFUL FOR THE SUPPLY OF GOODS, BY SELECTING AT ITS OPTION, FROM THE TENDER'S LIST OF RECOMMENDED SPARE PARTS, SUCH ITEMS AND QUANTITIES AGAINST EACH AS THE PROCURING ENTITY MAY DEEM APPROPRIATE AT THE UNIT PRICES INDICATED BY THE TENDERER BUT NOT EXCEEDING ----

% (PERCENT) OF THE COST OF GOODS [*NORMALLY NOT MORE THAN 10% OR 15%.]*

Evaluation Type : -

D) **AVAILABILITY IN KENYA OF SPARE PARTS AND AFTER SALES SERVICES FOR EQUIPMENT OFFERED IN THE TENDER**.

AN ADJUSTMENT EQUAL TO THE COST TO THE PROCURING ENTITY OF ESTABLISHING THE MINIMUM SERVICE FACILITIES AND PARTS INVENTORIES IF QUOTED SEPARATELY, SHALL BE ADDED TO THE TENDER PRICE, FOR EVALUATION PURPOSES ONLY.

Evaluation Type : -

E) LIFE CYCLE COSTS

IF SPECIFIED IN TDS 33.6, AN ADJUSTMENT TO CONSIDER THE ADDITIONAL LIFE CYCLE COSTS FOR THE PERIOD SPECIFIED BELOW, SUCH AS THE OPERATING AND MAINTENANCE COSTS OF THE GOODS, WILL BE ADDED TO THE TENDER PRICE, FOR EVALUATION PURPOSES ONLY. THE ADJUSTMENT WILL BE EVALUATED IN ACCORDANCE WITH THE METHODOLOGY SPECIFIED BELOW AND THE FOLLOWING INFORMATION:

NOTE TO PROCURING ENTITY: LIFE CYCLE COSTING SHOULD BE USED WHEN THE COSTS OF OPERATION AND/OR MAINTENANCE OVER THE SPECIFIED LIFE OF THE GOODS ARE ESTIMATED TO BE CONSIDERABLE IN COMPARISON WITH THE INITIAL COST AND MAY VARY AMONG DIFFERENT TENDERS. LIFE CYCLE COSTS SHALL BE EVALUATED ON A NET PRESENT VALUE BASIS. IF LIFE CYCLE COSTS APPLY, THEN SPECIFY THE FACTORS REQUIRED TO DETERMINE THEM FOR EVALUATION PURPOSES.

[EITHER AMEND THE FOLLOWING TEXT AS REQUIRED, OR DELETE IF LIFE CYCLE COST IS N OT APPLICABLE].

Evaluation Type : -

I) NUMBER OF YEARS FOR LIFE CYCLE COST DETERMINATION [INSERT THE NUMBER OF YEA RS OF ECONOMIC LIFE OF GOODS];

Evaluation Type : -

II) THE DISCOUNT
RATE TO BE APPLIED TO DETERMINE THE NET PRESENT VALUE OF THE LIFE-CYCLE-COST IS [INSERT THE DISCOUNT RATE];

Evaluation Type : -

III) THE ANNUAL OPERATING AND MAINTENANCE COSTS (RECURRENT COSTS) SHALL BE DET ERMINED ON THE BASIS OF THE FOLLOWING METHODOLOGY:

Evaluation Type : -

IV) AND THE FOLLOWING INFORMATION IS REQUIRED FROM TENDERERS.

Evaluation Type : -

F) PERFORMANCE AND PRODUCTIVITY OF THE EQUIPMENT:

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I) PERFORMANCE AND PRODUCTIVITY OF THE EQUIPMENT. AN ADJUSTMENT REPRESENTING THE CAPITALIZED COST OF ADDITIONAL OPERATING COSTS OVER THE LIFE OF THE GOODS WIL L BE ADDED TO THE TENDER PRICE, FOR EVALUATION PURPOSES IF SPECIFIED IN THE TDS 33.6. THE ADJUSTMENT WILL BE EVALUATED BASED ON THE DROP IN THE GUARANTEED PE RFORMANCE OR EFFICIENCY OFFERED IN THE TENDER BELOW THE NORM OF 100, USING T HE METHODOLOGY SPECIFIED BELOW.
[INSERT THE METHODOLOGY AND CRITERIA IF APPLICABLE E.G. THE FOLLOWING ASPECTS COU LD BE CONSIDERED IN THE FORMULATION OF THIS METHODOLOGY AND CRITERIA: (I) TEN DER PRICE FOR THE EQUIPMENT; II) PRICE OF SPARE PARTS REQUIRED FOR AAA YEARS OF OPERATIONS, III) ADJUSTMENTS TO TENDER PRICE FOR OMISSIONS, DEVIATIONS AND EXCE PTIONS TO TECHNICAL AND COMMERCIAL CONDITIONS IN THE TENDER DOCUMENTS; IV) C APITALIZED COST SAVINGS DUE TO THE EQUIPMENT EFFICIENCY AT THE RATE OF XXX (SPE CIFY CURRENCY AND AMOUNT) FOR EACH YYY % (PERCENT) ABOVE THE MINIMUM ZZZ % (PERCENT) EFFICIENCY; V) CAPITALIZED COST FOR THE AUXILIARY POWER CONSUMPTION AT PPP (SPECIFY CURRENCY AND AMOUNT) PER KW FOR AAA YEARS; AND VI) APPLICABLE DIS COUNT RATE OF BBB%.]
OR

II) AN ADJUSTMENT TO CONSIDER THE PRODUCTIVITY OF THE GOODS OFFERED IN THE TEN DER WILL BE ADDED TO THE TENDER PRICE, FOR EVALUATION PURPOSES ONLY, IF SPECIFI ED IN ITT 33.6. THE ADJUSTMENT WILL BE EVALUATED BASED ON THE COST PER UNIT OF THE ACTUAL PRODUCTIVITY OF GOODS OFFERED IN THE TENDER WITH RESPECT TO MINIM UM REQUIRED VALUES, USING THE METHODOLOGY SPECIFIED BELOW.
[INSERT THE METHODOLOGY AND CRITERIA IF APPLICABLE E.G. THE EVALUATION AND COMPARI SON OF RESPONSIVE TENDERS SHALL BE BASED ON THE TOTAL LIFE CYCLE COST FOR XXX YEARS, PER UNIT OF OUTPUT. THE LIFE CYCLE COST SHALL BE THE SUM OF THE INITIAL P URCHASE PRICE OF THE EQUIPMENT AND THE COST OF OPERATION IN ELECTRIC ENERGY FOR XXX YEARS OF OPERATION AT UNIT COST OF AAA (SPECIFY CURRENCY AND AMOUNT) PER KWH, DISCOUNTED TO NET PRESENT VALUE AT YYY PERCENT.]

Evaluation Type : -

G) SUSTAINABLE PROCUREMENT TECHNICAL REQUIREMENTS

FOR THE SPECIFIC SUSTAINABLE PROCUREMENT TECHNICAL REQUIREMENTS THAT HAVE BEEN SPECIFIED IN SECTION V- SPECIFICATION, EITHER STATE THAT (I) THOSE REQUIREMENTS WI LL BE EVALUATED ON A PASS/FAIL (COMPLIANCE BASIS) OR OTHERWISE (II) IN ADDITION T O EVALUATING THOSE REQUIREMENTS ON A PASS/FAIL (COMPLIANCE BASIS), IF APPLICABLE , SPECIFY THE MONETARY ADJUSTMENTS TO BE APPLIED TO TENDER PRICES FOR COMPARI SON PURPOSES ON ACCOUNT OF TENDERS THAT EXCEED THE SPECIFIED MINIMUM SUSTAI NABLE PROCUREMENT TECHNICAL REQUIREMENTS.]

H) SPECIFIC ADDITIONAL CRITERIA

OTHER SPECIFIC ADDITIONAL CRITERIA TO BE CONSIDERED IN THE EVALUATION, AND THE EVALUATION METHOD SHALL BE DETAILED IN TDS 33.6

Evaluation Type : -

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2.3. MULTIPLE CONTRACTS (ITT 33.4)

Evaluation Type :-

TENDERS ARE INVITED FOR INDIVIDUAL LOTS, THE CONTRACT WILL BE AWARDED TO THE TENDERER OFFERING A SUBSTANTIALLY RESPONSIVE TENDER(S) AND THE LOWEST EVALUATED COST FOR INDIVIDUAL LOTS, SUBJECT TO THE SELECTED TENDERER(S) MEETING THE REQUIRED QUALIFICATION CRITERIA (THIS SECTION III, SUB-SECTION ITT 36 QUALIFICATION REQUIREMENTS) FOR EACH LOT. IN DETERMINING TENDERER THAT OFFER THE LOWEST EVALUATED COST TO THE PROCURING ENTITY FOR EACH LOT, THE PROCURING ENTITY SHALL APPLY THE FOLLOWING STEPS IN SEQUENCE:

(A) EVALUATE INDIVIDUAL LOTS TO DETERMINE THE SUBSTANTIALLY RESPONSIVE TENDERS AND CORRESPONDING EVALUATED COSTS;

(B) FOR EACH LOT, RANK THE SUBSTANTIALLY RESPONSIVE TENDERS STARTING FROM THE LOWEST EVALUATED COST FOR THE LOT;

(C) APPLY TO THE EVALUATED COSTS LISTED IN (B) ABOVE, ANY APPLICABLE DISCOUNTS/PRICE REDUCTIONS OFFERED BY A TENDERER (S) FOR THE AWARD OF EACH LOT BASED ON THE DISCOUNTS AND THE METHODOLOGY FOR THEIR APPLICATION OFFERED BY THE RESPECTIVE TENDERER; AND

(D) DETERMINE CONTRACT AWARD BASED ON THE LOTS THAT OFFER THE TENDER OFFERS EACH OF WHICH HAS THE LOWEST EVALUATED COST TO THE PROCURING ENTITY.

Evaluation Type : -

2.4. ALTERNATIVE TENDERS

Evaluation Type :-

"A TENDERER MAY SUBMIT AN ALTERNATIVE TENDER ONLY WITH A TENDER FOR THE BASE CASE. THE PROCURING ENTITY SHALL ONLY CONSIDER THE ALTERNATIVE TENDERS OFFERED BY THE TENDERER WHOSE TENDER FOR THE BASE CASE WAS DETERMINED TO BE THE LO WEST EVALUATED TENDER."
OR
"A TENDERER MAY SUBMIT AN ALTERNATIVE TENDER WITH OR WITHOUT A TENDER FOR TH E BASE CASE. THE PROCURING ENTITY SHALL CONSIDER TENDERS OFFERED FOR ALTERNATIV ES AS SPECIFIED IN THE TECHNICAL SPECIFICATIONS OF SECTION V, SCHEDULE OF REQUIRE MENTS. ALL TENDERS RECEIVED, FOR THE BASE CASE, AS WELL AS ALTERNATIVE TENDERS MEETING THE SPECIFIED REQUIREMENTS, SHALL BE EVALUATED ON THEIR OWN MERITS IN ACCORDANCE WITH THE SAME PROCEDURES, AS SPECIFIED IN THE ITT 33."

Evaluation Type : -

3. MARGIN OF PREFERENCE

Evaluation Type :-

3.1 IF THE
TDS SO SPECIFIES, THE PROCURING ENTITY WILL GRANT A MARGIN OF PREFERENCE AS FOLLOWS;
(A) TWENTY PERCENT (20%) MARGIN OF PREFERENCE OF THE EVALUATED PRICE OF THE TENDER GIVEN TO CANDIDATES OFFERING GOODS MANUFACTURED, MINED, EXTRACTED, GROWN, ASSEMBLED OR SEMIPROCESSED IN KENYA AND THE PERCENTAGE OF SHAREHOLDING OF KENYAN CITIZENS IS MORE THAN FIFTY PERCENT (50%);
(B) FIFTEEN PERCENT (15%) MARGIN OF PREFERENCE OF THE EVALUATED PRICE OF THE TENDER GIVEN TO CANDIDATES OFFERING GOODS MANUFACTURED, MINED, EXTRACTED, GROWN, ASSEMBLED OR SEMIPROCESSED IN KENYA;
(C) TEN PERCENT (10%) MARGIN OF PREFERENCE OF THE EVALUATED PRICE OF THE TENDER, WHERE THE PERCENTAGE OF SHAREHOLDING OF KENYAN CITIZENS IS MORE THAN FIFTY PERCENT (50%);

(D) EIGHT PERCENT (8%) MARGIN OF PREFERENCE OF THE EVALUATED PRICE OF THE TENDER, WHERE THE PERCENTAGE OF SHAREHOLDING OF KENYAN CITIZENS IS LESS THAN FIFTY PERCENT (50%) BUT ABOVE TWENTY PERCENT (20%); AND

(E) SIX PERCENT (6%) MARGIN OF PREFERENCE OF THE EVALUATED PRICE OF THE TENDER, WHERE PERCENTAGE OF SHAREHOLDING OF KENYAN CITIZENS IS ABOVE FIVE PERCENT (5%) AND LESS THAN TWENTY PERCENT (20%).

3.2 GOODS ASSEMBLED OR SEMI-
PROCESSED IN KENYA SHALL HAVE A LOCAL CONTENT OF NOT LESS THAN 40%.

3.3 THE MARGIN OF PREFERENCE WILL BE APPLIED IN ACCORDANCE WITH, AND SUBJECT TO, THE FOLLOWING PROVISIONS:

A) TENDERERS APPLYING FOR SUCH PREFERENCE ON GOODS OFFERED SHALL PROVIDE, AS PART OF THE DATA FOR QUALIFICATION, SUCH INFORMATION, INCLUDING DETAILS OF THE GOODS PRODUCED IN KENYA, SO AS TO DETERMINE WHETHER, ACCORDING TO THE CLASSIFICATION ESTABLISHED BY THE PROCURING ENTITY, A PARTICULAR CATEGORY OF GOODS OR GROUP OF GOODS QUALIFIES FOR A MARGIN OF PREFERENCE.

B) AFTER TENDERS HAVE BEEN RECEIVED AND REVIEWED BY THE PROCURING ENTITY, GOODS OFFERED IN THE RESPONSIVE TENDERS SHALL BE ASSESSED TO ASCERTAIN THEY ARE MANUFACTURED, MINED, EXTRACTED, GROWN, ASSEMBLED OR SEMI- PROCESSED IN KENYA. RESPONSIVE TENDERS SHALL BE CLASSIFIED INTO THE FOLLOWING GROUPS:

I) GROUP A: TENDERS OFFERING GOODS MANUFACTURED IN KENYA, FOR WHICH (A) LABOUR, RAW MATERIALS, AND COMPONENTS FROM WITHIN KENYA ACCOUNT FOR MORE THAN FORTY (40) PERCENT OF THE EX-WORKS PRICE; AND

(B) THE PRODUCTION FACILITY IN WHICH THEY WILL BE MANUFACTURED OR ASSEMBLED HAS BEEN
ENGAGED IN
MANUFACTURING OR ASSEMBLING SUCH GOODS AT LEAST SINCE THE DATE OF TENDER SUBMISSION DATE;

II) GROUP B: ALL OTHER TENDERS OFFERING GOODS MANUFACTURED IN KENYA;

III) GROUP C: TENDERS OFFERING GOODS MANUFACTURED OUTSIDE KENYA THAT HAVE BEEN ALREADY IMPORTED OR THAT WILL BE IMPORTED.

C) TO FACILITATE THIS CLASSIFICATION BY THE PROCURING ENTITY, THE TENDERER SHALL COMPLETE WHICHEVER VERSION OF THE PRICE SCHEDULE FURNISHED IN THE TENDER DOCUMENTS IS APPROPRIATE. INCORRECT CLASSIFICATION MAY RENDER THE TENDER NON-RESPONSIVE AS NO RECLASSIFICATION WILL BE PERMITTED AFTER TENDER OPENING. TENDERERS SHALL
PROVIDE CORRECT INFORMATION ESPECIALLY WITH RESPECT TO DUTIES, TAXES ETC. PAID ON PREVIOUSLY IMPORTED GOODS AND PERCENTAGE OF LOCAL LABOUR, MATERIALS AND

COMPONENTS FOR GOODS MANUFACTURED IN KENYA AS ANY FALSE INFORMATION WHIC H CANNOT BE SUPPORTED BY DOCUMENTATION MAY RENDER THE TENDER NON-RESPONSIVE BESIDES OTHER SANCTIONS FOR PROVIDING FALSIFIED INFORMATION.
D) THE PROCURING ENTITY WILL FIRST REVIEW THE TENDERS TO CONFIRM THE APPROPRIA TENESS OF THE TENDER GROUP CLASSIFICATION TO WHICH TENDERERS ASSIGNED THEIR T ENDERS IN PREPARING THEIR TENDER FORMS AND PRICE SCHEDULES.
E) ALL EVALUATED TENDERS IN EACH GROUP WILL THEN BE COMPARED TO DETERMINE T HE LOWEST EVALUATED TENDER OF EACH GROUP. SUCH LOWEST EVALUATED TENDERS SHA LL BE COMPARED WITH EACH OTHER AND IF AS A RESULT OF THIS COMPARISON A TEND ER FROM GROUP A OR GROUP B IS THE LOWEST, IT SHALL BE SELECTED FOR THE AWARD .
F) IF AS A RESULT OF THE PRECEDING COMPARISON, THE LOWEST EVALUATED TENDER IS A TENDER FROM GROUP C, ALL TENDERS FROM GROUP C SHALL BE FURTHER COMPARED WITH THE LOWEST EVALUATED TENDER FROM GROUP A AFTER ADDING TO THE EVALUATE D PRICE OF GOODS OFFERED IN EACH TENDER FROM GROUP C, FOR THE PURPOSE OF TH IS FURTHER COMPARISON ONLY, AN AMOUNT EQUAL TO 15% (FIFTEEN PERCENT) OF THE RESPECTIVE CIP TENDER PRICE FOR GOODS TO BE IMPORTED AND ALREADY IMPORTED GO ODS. BOTH PRICES SHALL INCLUDE UNCONDITIONAL DISCOUNTS AND BE CORRECTED FOR ARITHMETICAL ERRORS. IF THE
TENDER FROM GROUP A IS THE LOWEST, IT SHALL BE SELECTED FOR AWARD. IF NOT, THE LOWEST EVALUATED TENDER FROM GROUP C SHALL BE SELECTED AS PER PARAGRAPH (E) ABOVE."

Evaluation Type : -

4. POST-QUALIFICATION OF TENDERERS (ITT 37)

Evaluation Type :-

4.1 POST-QUALIFICATION CRITERIA (ITT 37.1)

IN CASE THE TENDER WAS NOT SUBJECT TO PRE-QUALIFICATION, THE TENDER THAT HAS BE EN DETERMINED TO BE THE LOWEST EVALUATED TENDERER SHALL BE CONSIDERED FOR C ONTRACT AWARD, SUBJECT TO MEETING EACH OF THE FOLLOWING CONDITIONS (POST QU ALIFICATION CRITERIA APPLIED ON A GO/NO GO BASIS). THE PROCURING ENTITY SHALL CAR RY OUT THE POST- QUALIFICATION OF THE TENDERER IN ACCORDANCE WITH ITT 37, USIN G ONLY THE REQUIREMENTS SPECIFIED HEREIN. REQUIREMENTS NOT INCLUDED IN THE TEX T BELOW SHALL NOT BE USED IN THE EVALUATION OF THE TENDERER'S QUALIFICATIONS. THE MINIMUM QUALIFICATION REQUIREMENTS FOR MULTIPLE CONTRACTS WILL BE THE SU M OF THE MINIMUM REQUIREMENTS FOR RESPECTIVE INDIVIDUAL CONTRACTS, UNLESS OT HERWISE SPECIFIED.

Evaluation Type : -

4.2 IF THE TENDERER IS A MANUFACTURER

A) FINANCIAL CAPABILITY

I) THE TENDERER SHALL DEMONSTRATE THAT IT HAS ACCESS TO, OR HAS AVAILABLE, LIQUI D ASSETS, UNENCUMBERED REAL ASSETS, LINES OF CREDIT, AND OTHER FINANCIAL MEANS (INDEPENDENT OF ANY CONTRACTUAL ADVANCE PAYMENT) SUFFICIENT TO MEET THE SUP PLY CASH FLOW OF KENYA SHILLINGS [OR EQUIVALENT].

Evaluation Type : -

II) MINIMUM AVERAGE ANNUAL SUPPLY TURNOVER OF KENYA SHILLINGS _____ OR EQUIV ALENT CALCULATED AS TOTAL CERTIFIED PAYMENTS RECEIVED FOR CONTRACTS OF GOODS MANUFACTURED AND SUPPLIED WITHIN THE LAST ..... [INSERT NUMBER OF YEARS). IN CASE OF MULTIPLE CONTRACTS, LIMITATION WILL BE PLACED ON THE NUMBER OF ITEM (S) THAT WILL BE AWARDED TO THE TENDERER.

Evaluation Type : -

B) EXPERIENCE AND TECHNICAL CAPACITY

THE TENDERER SHALL FURNISH DOCUMENTARY EVIDENCE TO DEMONSTRATE THAT IT MEETS THE FOLLOWING EXPERIENCE REQUIREMENT

(S) USING THE FORM PROVIDED IN SECTION IV. IN CASE THE TENDERER IS A JV, EXPERIENCE AND DEMONSTRATED TECHNICAL CAPACITY OF ONLY THE JV SHALL BE TAKEN INTO ACCO UNT AND NOT OF INDIVIDUAL MEMBERS NOR THEIR INDIVIDUAL EXPERIENCE/CAPACITY WI LL BE AGGREGATED UNLESS ALL MEMBERS OF THE JV HAVE BEEN MANUFACTURING AND SUPPLYING GOODS OFFERED IN THE TENDER TO THE SAME TECHNOLOGY, PROCESSING, D ESIGN, MATERIALS, SPECIFICATIONS, MODEL NUMBER, ETC. IN ALL RESPECTS SUCH THAT GO ODS MANUFACTURED HAVE THE SAME FUNCTIONAL CHARACTERISTICS, PERFORMANCE PAR AMETERS, OUTPUTS AND OTHER GUARANTEES AND FULLY INTERCHANGEABLE WHICH SHAL L BE DOCUMENTED ALONG WITH OTHER REQUIRED DOCUMENTS DEMONSTRATING CAPACI TY TO THE SATISFACTION OF THE PROCURING ENTITY IN CASE INDIVIDUAL MEMBERS CLAI M EXPERIENCE. OTHERWISE, DOCUMENTS EVIDENCING EXPERIENCE AND TECHNICAL CAPACIT Y SHALL BE IN THE NAME OF THE JV THAT SUBMITTED THE TENDER. WHEREVER THE WORD S “SIMILAR GOODS” HAVE BEEN USED IT INCLUDES UPGRADES, LATEST AND IMPROVED VE RSIONS OR MODELS OF SIMILAR SPECIFICATIONS AND TECHNOLOGY. REFER TO FORM EXP-1 TO PROVIDE THE REQUIRED INFORMATION.

Evaluation Type : -

I) THE TENDERER SHALL BE MANUFACTURING SIMILAR GOODS FOR THE LAST _____

Evaluation Type : -

II) THE TENDERER SHALL FURNISH DOCUMENTARY EVIDENCE TO DEMONSTRATE SUCCESSFU L COMPLETION OF AT LEAST _____ (INSERT NUMBER) OF CONTRACTS OF SIMILAR GOODS IN THE LAST _____ (SPECIFY NUMBER) YEARS EACH CONTRACT COSTING AT LEAST KENYA SHILLINGS _____ OR EQUIVALENT AND INVOLVING A SUPPLY OF AT LEAST _____ PERCENTAGE OF REQUIRED QUANTITY.

Evaluation Type : -

USUALLY THE PERCENTAGE IS ABOUT 70-80 PERCENT) IN SOME CASES WHERE PROCURING ENTITY REQUIRES DELIVERIES IN A SCHEDULED MANNER OVER A SPECIFIED TIME, INCLUDE ITEM (III) BELOW.

III) THE INSTALLED CAPACITY TO MANUFACTURE NUMBER OF ITEMS (SPECIFY THE RELEVANT ITEM NUMBER) SHALL NOT BE LESS THAN UNITS PER (SPECIFY WEEK OR MONTH).

Evaluation Type : -

C) DOCUMENTARY EVIDENCE OF USAGE OF GOODS (WHEN APPROPRIATE)

THE TENDERER SHALL FURNISH DOCUMENTARY EVIDENCE SATISFACTORY TO THE PROCURING ENTITY TO DEMONSTRATE THAT SIMILAR GOODS AS OFFERED IN THE TENDER HAVE BEEN IN SUCCESSFUL USE OR OPERATION FOR THE LAST ____ YEARS. IF THE TENDERER IS A JV, THE EVIDENCE OF DEMONSTRATED USAGE OF GOODS SUPPLIED IN THE PAST SHALL BE IN THE NAME OF THE JV.

Evaluation Type : -

4.3 IF TENDERER IS A SUPPLIER:

IF A TENDERER IS A SUPPLIER OFFERING THE GOODS ON BEHALF OF OR FROM A MANUFACTURER UNDER MANUFACTURER'S AUTHORIZATION FORM (SECTION IV, TENDERING FORMS), THE MANUFACTURER SHALL DEMONSTRATE THE ABOVE QUALIFICATIONS 4.2 (B) (I), (II), AND (III) AND THE TENDERER SHALL DEMONSTRATE IT MEETS THE FOLLOWING CRITERIA.

I) THE TENDERER SHALL DEMONSTRATE THAT IT HAS ACCESS TO, OR HAS AVAILABLE, LIQUID ASSETS, UNENCUMBERED REAL ASSETS, LINES OF CREDIT, AND OTHER FINANCIAL MEANS (INDEPENDENT OF ANY CONTRACTUAL ADVANCE PAYMENT) SUFFICIENT TO MEET THE SUPPLY CASH FLOW OF KENYA SHILLINGS _____

II) MINIMUM AVERAGE ANNUAL SUPPLY TURNOVER OF KENYA SHILLINGS [INSERT AMOUNT] OR EQUIVALENT CALCULATED AS TOTAL CERTIFIED PAYMENTS RECEIVED FOR CONTRACTS IN PROGRESS AND/OR COMPLETED WITHIN THE LAST [INSERT OF YEAR] YEARS, DIVIDED BY [INSERT NUMBER OF YEARS] YEARS.

III) HAS SATISFACTORILY AND SUBSTANTIALLY COMPLETED AT LEAST ____ (SPECIFY NUMBER) CONTRACT(S) OF A SIMILAR NATURE EITHER WITHIN KENYA, THE EAST AFRICAN COMMUNITY OR ABROAD, AS A PRIME SUPPLIER OR A JOINT VENTURE MEMBER, EACH OF A MINIMUM VALUE IN KENYA SHILLINGS _____ EQUIVALENT.

4.4 HISTORY OF NON-PERFORMING CONTRACTS:

TENDERER (SUPPLIER OR/AND MANUFACTURER, AND EACH MEMBER OF JV IN CASE THE TENDERER IS A JV, SHALL DEMONSTRATE THAT NON-PERFORMANCE OF A CONTRACT DID NOT OCCUR AS A RESULT OF THE DEFAULT OF THE TENDERER, MANUFACTURER OR THE MEMBER OF JV AS THE CASE MAY BE, IN THE LAST (SPECIFY YEARS). THE REQUIRED INFORMATION SHALL BE FURNISHED AS PER FORM CON-2].

4.5 PENDING LITIGATION

FINANCIAL POSITION AND PROSPECTIVE LONG-TERM PROFITABILITY OF THE SINGLE TENDERER, AND IN THE CASE THE TENDERER IS A JV, OF EACH MEMBER OF THE JV, SHALL REMAIN SOUND ACCORDING TO CRITERIA ESTABLISHED WITH RESPECT TO FINANCIAL CAPABILITY UNDER PARAGRAPH I (I) ABOVE ASSUMING THAT ALL PENDING LITIGATION WILL BE RESOLVED AGAINST THE TENDERER. TENDERER SHALL
PROVIDE INFORMATION ON PENDING LITIGATIONS AS PER FORM CON-2.

4.6 LITIGATION HISTORY

THERE SHALL BE NO CONSISTENT HISTORY OF COURT/ARBITRAL AWARD DECISIONS AGAINST THE TENDERER, IN THE LAST_____(SPECIFY YEARS). ALL PARTIES
TO THE CONTRACT SHALL FURNISH THE INFORMATION ON THE RELATED FORM (CON-2) ABOUT ANY LITIGATION OR ARBITRATION RESULTING FROM CONTRACTS COMPLETED OR ONGOING UNDER ITS EXECUTION OVER THE YEARS SPECIFIED. A CONSISTENT HISTORY OF AWARDS AGAINST THE TENDERER OR ANY MEMBER OF A JV MAY RESULT IN REJECTION OF THE TENDER

Evaluation Type : -

MANDATORY REQUIREMENTS

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Mandatory Evaluation Requirement

Evaluation Requirement	Is Document Required from Supplier ?
SELF - DECLARATION FORM - SD 1&2	Yes
VALID TAX COMPLIANCE CERTIFICATE	Yes
VALID CERTIFICATE OF REGISTRATION /INCORPORATION	Yes
CR 12 CERTIFICATE	Yes
VALID BUSINESS PERMIT	Yes
VALID LICENSE BY THE ENERGY AND PETROLEUM REGULATORY AUTHORITY	Yes
DULLY FILLED,SIGNED AND STAMPED FORM OF TENDER	Yes

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SECTION IV – TENDERING FORMS

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TENDERER'S DECLARATION : FORM OF TENDER

Technical Evaluation Process : No

Table Header : -

TENDERER'S COMMITMENT	TENDERER'S RESPONSE
) NO RESERVATIONS: WE HAVE EXAMINED AND HAVE NO RESERVATIONS TO THE TENDERING DOCUMENT INCLUDING ADDENDA ISSUED IN ACCORDANCE WITH INSTRUCTIONS TO TENDERERS (ITT 7);	
B) ELIGIBILITY: WE MEET THE ELIGIBILITY REQUIREMENTS AND HAVE NO CONFLICT OF INTEREST IN ACCORDANCE WITH ITT 3;	
) TENDER/PROPOSAL-SECURING DECLARATION: WE HAVE NOT BEEN SUSPENDED NOR DECLARED INELIGIBLE BY THE PROCURING ENTITY BASED ON EXECUTION OF A TENDER-SECURING DECLARATION. OR PROPOSAL-SECURING DECLARATION IN KENYA IN ACCORDANCE WITH ITT 3.6;	
D) CONFORMITY: WE OFFER TO SUPPLY IN CONFORMITY WITH THE TENDERING DOCUMENT AND IN ACCORDANCE WITH THE DELIVERY SCHEDULES SPECIFIED IN THE SCHEDULE OF REQUIREMENTS.	

E) TENDER VALIDITY PERIOD: OUR TENDER SHALL BE VALID FOR THE PERIOD SPECIFIED IN TDS 17.1 (AS AMENDED, IF APPLICABLE) FROM THE DATE FIXED FOR THE TENDER SUBMISSION DEADLINE SPECIFIED IN TDS 21.1 (AS AMENDED, IF APPLICABLE), AND IT SHALL REMAIN BINDING UPON US AND MAY BE ACCEPTED AT ANY TIME BEFORE THE EXPIRATION OF THAT PERIOD;	
F) PERFORMANCE SECURITY: IF OUR TENDER IS ACCEPTED, WE COMMIT TO OBTAIN A PERFORMANCE SECURITY IN ACCORDANCE WITH THE TENDER DOCUMENT;	
G) ONE TENDER PER TENDERER: WE ARE NOT SUBMITTING ANY OTHER TENDER(S) AS AN INDIVIDUAL TENDERER, AND WE ARE NOT PARTICIPATING IN ANY OTHER TENDER(S) AS A JOINT VENTURE MEMBER, OR AS A SUBCONTRACTOR, AND MEET THE REQUIREMENTS OF ITT 3.5, OTHER THAN ALTERNATIVE TENDERS SUBMITTED IN ACCORDANCE WITH ITT 12;	

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H) SUSPENSION AND DEBARMENT: WE, ALONG WITH ANY OF OUR SUBCONTRACTORS, SUPPLIERS, CONSULTANTS, MANUFACTURERS, OR SERVICE PROVIDERS FOR ANY PART OF THE CONTRACT, ARE NOT SUBJECT TO, AND NOT CONTROLLED BY ANY ENTITY OR INDIVIDUAL THAT IS SUBJECT TO, A TEMPORARY SUSPENSION BY THE PROCURING ENTITY OR A DEBARMENT IMPOSED BY THE PUBLIC PROCUREMENT REGULATORY AUTHORITY. FURTHER, WE ARE NOT INELIGIBLE UNDER THE KENYA LAWS OR OFFICIAL REGULATIONS OR PURSUANT TO A DECISION OF INTERNATIONAL ORGANIZATIONS TO WHICH KENYA IS A MEMBER;	
I) BINDING CONTRACT: WE UNDERSTAND THAT THIS TENDER, TOGETHER WITH YOUR WRITTEN ACCEPTANCE THEREOF INCLUDED IN YOUR LETTER OF AWARD, SHALL NOT CONSTITUTE A BINDING CONTRACT BETWEEN US, UNTIL A FORMAL CONTRACT IS PREPARED AND EXECUTED;	
J) PROCURING ENTITY NOT BOUND TO ACCEPT: WE UNDERSTAND THAT YOU ARE NOT BOUND TO ACCEPT THE LOWEST EVALUATED COST TENDER, THE BEST EVALUATED TENDER OR ANY OTHER TENDER THAT YOU MAY RECEIVE;	

K) FRAUD AND CORRUPTION: WE HEREBY CERTIFY THAT WE HAVE TAKEN STEPS TO ENSURE THAT NO PERSON ACTING FOR US OR ON OUR BEHALF ENGAGES IN ANY TYPE OF FRAUD AND CORRUPTION. FURTHER, WE CONFIRM THAT WE HAVE READ AND UNDERSTOOD THE FULL CONTENT AND SCOPE OF FRAUD AND CORRUPTION AS INFORMED IN “APPENDIX 1- FRAUD AND CORRUPTION” .	
L) CODE OF ETHICAL CONDUCT: WE HAVE READ AND UNDERSTOOD THE CONTENTS OF THE CODE OF ETHICS FOR PERSONS PARTICIPATING IN PUBLIC PROCUREMENT AND ASSET DISPOSAL AND MY RESPONSIBILITIES UNDER THE CODE AND WE COMMIT TO ABIDE BY THE PROVISIONS OF THE CODE OF ETHICS COPY AVAILABLE FROM WWW.PPRA.GO.KE DURING THE PROCUREMENT PROCESS AND THE EXECUTION OF ANY RESULTING CONTRACT;	

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M) ANTI-COMPETITIVE AND COLLUSIVE PRACTICES: WE HEREBY CERTIFY AND CONFIRM THAT THE TENDER IS GENUINE, NON-COLLUSIVE AND MADE WITH THE INTENTION OF ACCEPTING THE CONTRACT IF AWARDED. WE HAVE ARRIVED AT THE TENDER INDEPENDENTLY WITHOUT CONSULTATION, COMMUNICATION, AGREEMENT OR ARRANGEMENT WITH, ANY COMPETITOR ON BUT NOT LIMITED TO PRICES; METHODS, FACTORS OR FORMULAS USED TO CALCULATE PRICES; THE INTENTION OR DECISION TO SUBMIT, OR NOT TO SUBMIT, A TENDER; OR THE SUBMISSION OF A TENDER WHICH DOES NOT MEET THE SPECIFICATIONS OF THE REQUEST FOR TENDERS EXCEPT AS DISCLOSED IN THE TENDERER'S ELIGIBILITY - CONFIDENTIAL BUSINESS QUESTIONNAIRE. FURTHER, WE CONFIRM THAT THE TERMS OF THE TENDER HAVE NOT BEEN, AND WILL NOT BE, KNOWINGLY DISCLOSED BY THE TENDERER, DIRECTLY OR INDIRECTLY TO ANY COMPETITOR, PRIOR TO THE DATE AND TIME OF THE OFFICIAL TENDER OPENING, OR OF THE AWARDING OF THE CONTRACT, WHICHEVER COMES FIRST, UNLESS OTHERWISE REQUIRED BY LAW OR AS SPECIFICALLY DISCLOSED ABOVE.;	

N) BENEFICIAL OWNERSHIP INFORMATION: WE COMMIT TO PROVIDE TO THE PROCURING ENTITY THE BENEFICIAL OWNERSHIP INFORMATION IN CONFORMITY WITH THE BENEFICIAL OWNERSHIP DISCLOSURE FORM UPON RECEIPT OF NOTIFICATION OF INTENTION TO ENTER INTO A CONTRACT IN THE EVENT WE ARE THE SUCCESSFUL TENDERER IN THIS SUBJECT PROCUREMENT PROCEEDING; AND	
O) WE, THE TENDERER, HAVE DULY COMPLETED, SIGNED AND STAMPED THE FOLLOWING FORMS AS PART OF OUR TENDER:	
I) TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE	
II) SELF-DECLARATION OF THE TENDERER (FORM SD 1 & SD 2)	
Table Footer : -	

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OPTION 1: TENDER PRICE (ONE LOT) : FORM OF TENDER

Technical Evaluation Process : No

Table Header : THE PRICE OF OUR TENDER, INCLUDING ANY DISCOUNTS OFFERED IS:			
ITEM DESCRIPTION	**UNIT PRICE INCLUSIVE OF APPLICABLE TAXES AND LEVIES IN FIGURES**	**UNIT PRICE INCLUSIVE OF APPLICABLE TAXES AND LEVIES IN WORDS**	**CURRENCY**
Table Footer : -			

Sr no.	Formula
1	UNIT PRICE INCLUSIVE OF APPLICABLE TAXES AND LEVIES IN WORDS=UNIT PRICE INCLUSIVE OF APPLICABLE TAXES AND LEVIES IN FIGURES

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OPTION 2; IN CASE OF MULTIPLE LOTS: : FORM OF TENDER

Technical Evaluation Process : No

Table Header : -			
LOT DESCRIPTION	**TOTAL PRICE INCLUSIVE OF APPLICABLE TAXES AND LEVIES IN FIGURES**	**TOTAL PRICE INCLUSIVE OF APPLICABLE TAXES AND LEVIES IN WORDS**	**CURRENCY**
Table Footer :			

Sr no.	Formula
1	TOTAL PRICE INCLUSIVE OF APPLICABLE TAXES AND LEVIES IN WORDS=TOTAL PRICE INCLUSIVE OF APPLICABLE TAXES AND LEVIES IN FIGURES

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COMMISSIONS, GRATUITIES, FEES : FORM OF TENDER

Technical Evaluation Process : No

Table Header : Q) WE HAVE PAID, OR WILL PAY THE FOLLOWING COMMISSIONS, GRATUITIES, OR FEES WITH RESPECT TO THE TENDERING PROCESS OR IMPLEMENTATION OF THE CONTRACT:			
NAME OF RECEPIENT	**ADDRESS**	**REASON**	**AMOUNT**
Table Footer : -			

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STATE OWNED ENTERPRISE OR INSTITUTION OWNERSHIP : FORM OF TENDER

Technical Evaluation Process : No

Table Header : -	
DESCRIPTION	**TENDERER'S RESPONSE**
WE ARE NOT A STATE- OWNED ENTERPRISE OR INSTITUTION	
WE ARE A STATE-OWNED ENTERPRISE OR INSTITUTION BUT MEET THE REQUIREMENTS OF ITT 3.1 & 3.8	
Table Footer : -	

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SIGN OFF : FORM OF TENDER

Technical Evaluation Process : No

Table Header : -

NAME OF THE TENDERER	NAME OF THE PERSON DULY AUTHORIZED	TITLE OF THE PERSON SIGNING THE TENDER	SIGNATURE	DATE

Table Footer : NOTE: **: IN THE CASE OF THE TENDER SUBMITTED BY A JOINT VENTURE SPECIFY THE NAME OF THE JOINT VENTURE AS TENDERER. **PERSON SIGNING THE TENDER SHALL HAVE THE POWER OF ATTORNEY GIVEN BY THE TENDERER. THE POWER OF ATTORNEY SHALL BE ATTACHED WITH THE TENDER SCHEDULES

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TENDERER’S DETAILS: : TENDERER’S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Table Header : -

TENDERER'S NAME	TENDERER'S ACTUAL OR INTENDED COUNTRY OF REGISTRATION	TENDERER'S YEAR OF REGISTRATION	TENDERER'S LEGAL ADDRESS IN COUNTRY OF REGISTRATION

Table Footer : -

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JV MEMBERS DETAILS : TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Table Header : -			
JV'S NAME	JV'S ACTUAL OR INTENDED COUNTRY OF REGISTRATION	JV'S YEAR OF REGISTRATION	JV'S LEGAL ADDRESS IN COUNTRY OF REGISTRATION
Table Footer : -			

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TENDERER'S/JV MEMBER'S AUTHORIZED REPRESENTATIVE INFORMATION : TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Table Header : -

NAME	ADDRESS	TELEPHONE NO.	EMAIL

Table Footer : -

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ATTACHED COPIES OF THE FOLLOWING DOCUMENTS: : TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Table Header : DOCUMENTS TO BE ATTACHED	
DESCRIPTION	**TENDERER'S RESPONSE**
A) FOR KENYAN TENDERERS A CURRENT TAX COMPLIANCE CERTIFICATE OR TAX EXEMPTION CERTIFICATE ISSUED BY THE KENYA REVENUE AUTHORITY IN ACCORDANCE WITH ITT 3.13.	
B) ARTICLES OF INCORPORATION (OR EQUIVALENT DOCUMENTS OF CONSTITUTION OR ASSOCIATION), AND/OR DOCUMENTS OF REGISTRATION OF THE LEGAL ENTITY NAMED ABOVE, IN ACCORDANCE WITH ITT 3.6.	
C) IN CASE OF JV, LETTER OF INTENT TO FORM JV OR JV AGREEMENT, IN ACCORDANCE WITH ITT 3.1.	
D) IN CASE OF STATE-OWNED ENTERPRISE OR INSTITUTION, IN ACCORDANCE WITH ITT 3.1 DOCUMENTS ESTABLISHING: (I) LEGAL AND FINANCIAL AUTONOMY (II) OPERATION UNDER COMMERCIAL LAW (III) ESTABLISHING THAT THE TENDERER IS NOT UNDER THE SUPERVISION OF THE PROCURING ENTITY	
Table Footer : -	

(A) SOLE PROPRIETOR, PROVIDE THE FOLLOWING DETAILS : TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Table Header : -

NAME IN FULL	AGE	NATIONALITY	COUNTRY OF ORIGIN	CITIZENSHIP

Table Footer : -

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(B) PARTNERSHIP, PROVIDE THE FOLLOWING DETAILS. : TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Table Header : -

NAMES OF PARTNERS	NATIONALITY	CITIZENSHIP	PERCENTAGE SHARES OWNED

Table Footer : -

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(C) REGISTERED COMPANY, PROVIDE THE FOLLOWING DETAILS. : TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Table Header : -

PRIVATE OR PUBLIC COMPANY (SELECT ONE)	STATE NOMINAL KENYA SHILLINGS (EQUIVALENT)	STATE ISSUED KENYA SHILLINGS (EQUIVALENT)

Table Footer : -

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(D) GIVE DETAILS OF DIRECTORS AS FOLLOWS. : TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Table Header : -			
NAME OF DIRECTOR	**NATIONALITY**	**CITIZENSHIP**	**PERCENTAGE SHARES OWNED**
Table Footer : -			

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INTEREST OF THE FIRM IN THE PROCURING ENTITY : TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Table Header : DISCLOSURE OF INTEREST	
STATEMENT	**TENDERER'S RESPONSE**
I) IS THERE ANY PERSON(S) IN NAME OF PROCURING ENTITY WHO HAS ANY INTEREST OR RELATIONSHIP IN THIS FIRM	
Table Footer : IF YES, PROVIDE DETAILS AS FOLLOWS:	

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DETAILS OF PERSONS WITH INTEREST IN THE PROCURING ENTITY : TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Table Header : -

NAME OF THE PERSON	DESIGNATION IN THE PROCURING ENTITY	INTEREST OR RELATIONSHIP WITH THE TENDERER

Table Footer : -

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CONFLICT OF INTEREST DISCLOSURE : TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Table Header : -

TYPE OF CONFLICT	DISCLOSURE YES/NO	IF YES, PROVIDE DETAILS OF RELATIONSHIP WITH THE TENDERER
TENDERER IS DIRECTLY OR INDIRECTLY CONTROLLED BY OR IS UNDER COMMON CONTROL WITH ANOTHER TENDERER.		
TENDERER RECEIVES OR HAS RECEIVED ANY DIRECT OR INDIRECT SUBSIDY FROM ANOTHER TENDERER.		
TENDERER HAS THE SAME LEGAL REPRESENTATIVE AS ANOTHER TENDERER		
TENDERER HAS A RELATIONSHIP WITH ANOTHER TENDERER, DIRECTLY OR THROUGH COMMON THIRD PARTIES THAT PUTS IT IN A POSITION TO INFLUENCE THE TENDER OF ANOTHER TENDERER, OR INFLUENCE THE DECISIONS OF THE PROCURING ENTITY REGARDING THIS TENDER.		

ANY OF THE TENDERER'S AFFILIATES PARTICIPATED AS A CONSULTANT IN THE PREPARATION OF THE DESIGN OR TECHNICAL SPECIFICATIONS OF THE WORKS THAT ARE THE SUBJECT OF THE TENDER.		
TENDERER HAS A CLOSE BUSINESS OR FAMILY RELATIONSHIP WITH A STAFF OF THE PROCURING ENTITY.		
HAS THE CONFLICT STEMMING FROM SUCH RELATIONSHIP STATED IN ITEM 6 ABOVE BEEN RESOLVED IN A MANNER ACCEPTABLE TO THE PROCURING ENTITY THROUGHOUT THE TENDERING PROCESS AND EXECUTION OF THE CONTRACT		

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THE TENDERER HAS ENTERED INTO CONSULTATIONS, COMMUNICATIONS, AGREEMENTS OR ARRANGEMENTS WITH ONE OR MORE COMPETITORS REGARDING THIS REQUEST FOR TENDERS AND THE TENDERER DISCLOSES, COMPLETE DETAILS THEREOF, INCLUDING THE NAMES OF THE COMPETITORS AND THE NATURE OF, AND REASONS FOR, SUCH CONSULTATIONS, COMMUNICATIONS, AGREEMENTS OR ARRANGEMENTS.		
Table Footer : -		

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CERTIFICATION : TENDERER'S ELIGIBILITY & CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

Technical Evaluation Process : No

Table Header : -

STATEMENT	TENDERER'S RESPONSE	NAME	TITLE OR DESIGNATION	DATE
WE CONFIRM THAT INFORMATION PROVIDED ABOVE IS CORRECT AND WE UNDERSTAND THAT GIVING OF FALSE INFORMATION WILL LEAD TO DI SQUALIFICATION OF OUR TENDER				

Table Footer : -

1. LIST OF GOODS AND DELIVERY SCHEDULE : SCHEDULE OF REQUIREMENTS (SECTION V)

Technical Evaluation Process : No

Table Header : [THE PROCURING ENTITY SHALL FILL IN THIS TABLE, WITH THE EXCEPTION OF THE COLUMN “TENDERER'S OFFERED DELIVERY DATE” TO BE FILLED BY THE TENDERER]

LINE ITEM NO.	DESCRIPTION OF GOODS	QUANTITY	UNIT OF MEASURE	FINAL DESTINATION AS SPECIFIED IN TDS	DELIVERY PERIOD	TENDERER’S OFFERED DELIVERY PERIOD [TO BE PROVIDED BY THE TENDERER]
1	DIESEL FUEL	1	LITRES	NANDI COUNTY ASSEMBLY	1	

Table Footer : -

2. LIST OF RELATED SERVICES AND COMPLETION SCHEDULE : SCHEDULE OF REQUIREMENTS (SECTION V)

Technical Evaluation Process : No

Table Header : THIS TABLE SHALL BE FILLED IN BY THE PROCURING ENTITY. THE REQUIRED COMPLETION DATES SHOULD BE REALISTIC, AND CONSISTENT WITH THE REQUIRED GOODS DELIVERY DATES (AS PER INCOTERMS)

SERVICE	DESCRIPTION OF SERVICE	QUANTITY	UNIT OF MEASURE	PLACE WHERE SERVICES SHALL BE PERFORMED	DELIVERY PERIOD
1	N/A	0	N/A	N/A	

Table Footer : -

NON-PERFORMED CONTRACTS IN ACCORDANCE WITH SECTION III, EVALUATION AND QUALIFICATION CRITERIA : HISTORICAL CONTRACT NON-PERFORMANCE, PENDING LITIGATION AND LITIGATION HISTORY

Technical Evaluation Process : No

Table Header : -

CONTRACT NON PERFORMANCE	YEAR	TENDERER'S RESPONSE (YES OR NO)
CONTRACT NON-PERFORMANCE OCCURRED DURING THE PERIOD SPECIFIED IN SECTION III, EVALUATION AND QUALIFICATION CRITERIA, SUB-FACTOR 4.4 IF YES, GIVE DETAILS IN THE TABLE BELOW:	2024 &2025	

Table Footer : IF YES, GIVE DETAILS IN THE TABLE BELOW:

DETAILS OF NON-PERFORMED CONTRACTS : HISTORICAL CONTRACT NON-PERFORMANCE, PENDING LITIGATION AND LITIGATION HISTORY

Technical Evaluation Process : No

Table Header : -

TENDERER'S/ JV MEMBER NAME	YEAR	JOINT VENTURE MEMBER NAME	NON-PERFORMED PORTION OF CONTRACT - AMOUNT	CONTRACT NAME:	NAME OF PROCURING ENTITY:	CONTRACT NUMBER	REASON(S) FOR NONPERFORMANCE:	TOTAL CONTRACT AMOUNT	NON-PERFORMED PORTION OF CONTRACT IN PERCENTAGE

Table Footer : -

PENDING LITIGATION, IN ACCORDANCE WITH SECTION III, EVALUATION AND QUALIFICATION CRITERIA : HISTORICAL CONTRACT NON-PERFORMANCE, PENDING LITIGATION AND LITIGATION HISTORY

Technical Evaluation Process : No

Table Header : -	
STATEMENT	**TENDERER'S RESPONSE**
IS THERE ANY PENDING LITIGATION IN ACCORDANCE WITH SECTION III, EVALUATION AND QUALIFICATION CRITERIA, SUB-FACTOR 4.5	
Table Footer : IF YES, GIVE DETAILS IN THE TABLE BELOW	

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DETAILS OF PENDING LITIGATION : HISTORICAL CONTRACT NON-PERFORMANCE, PENDING LITIGATION AND LITIGATION HISTORY

Technical Evaluation Process : No

Table Header : -

TENDERER'S/ JV MEMBER NAME	YEAR OF DISPUTE	AMOUNT IN DISPUTE (CURRENCY)	CONTRACT IDENTIFICATION:	NAME OF PROCURING ENTITY:	ADDRESS OF PROCURING ENTITY:	MATTER IN DISPUTE	PARTY WHO INITIATED THE DISPUTE:	STATUS OF DISPUTE:	TOTAL CONTRACT AMOUNT (CURRENCY), KENYA SHILLING EQUIVALENT (EXCHANGE RATE)

Table Footer : -

LITIGATION HISTORY IN ACCORDANCE WITH SECTION III, EVALUATION AND QUALIFICATION CRITERIA : HISTORICAL CONTRACT NON-PERFORMANCE, PENDING LITIGATION AND LITIGATION HISTORY

Technical Evaluation Process : No

Table Header : -	
S THERE ANY LITIGATION HISTORY IN ACCORDANCE WITH SECTION III, EVALUATION AND QUALIFICATION CRITERIA, SUB-FACTOR 4.6.	**TENDERER'S RESPONSE**
IS THERE ANY LITIGATION HISTORY IN ACCORDANCE WITH SECTION III, EVALUATION AND QUALIFICATION CRITERIA, SUB-FACTOR 4.6.	
Table Footer : YES, GIVE DETAILS IN THE TABLE BELOW:	

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DETAILS OF LITIGATION HISTORY : HISTORICAL CONTRACT NON-PERFORMANCE, PENDING LITIGATION AND LITIGATION HISTORY

Technical Evaluation Process : No

Table Header : -

NAME OF TENDERER/ JV MEMBER, WHERE APPLICABLE	YEAR OF LITIGATION AWARD	OUTCOME AS PERCENTAGE OF NETWORTH	CONTRACT NAME	CONTRACT NUMBER	NAME OF PROCURING ENTITY:	MATTER IN DISPUTE:	PARTY WHO INITIATED THE DISPUTE:	REASON(S) FOR LITIGATION AND AWARD DECISION	TOTAL CONTRACT AMOUNT IN KENYA SHILLING EQUIVALENT

Table Footer : INCLUDE DETAILS RELATING TO POTENTIAL BID-RIGGING PRACTICES SUCH AS PREVIOUS OCCASIONS WHERE TENDERS WERE WITHDRAWN, JOINT BIDS WITH COMPETITORS, SUBCONTRACTING WORK TO UNSUCCESSFUL TENDERERS, ETC.

TECHNICAL EVALUATION CRITERIA TABLE : TECHNICAL EVALUATION CRITERIA FORM

Technical Evaluation Process : Yes

Table Header : -

SERIAL NUMBER	ITEM DESCRIPTION	TECHNICAL EVALUATION CRITERIA	MAXIMUM SCORE	SUPPLIER RESPONSE
1	EXPERIENCE	ATTACH A LIST OF 4 CORPORATE CLIENTS SERVED IN A SIMILAR ASSIGNMENT IN THE LAST 2 YEARS(ATTACH COPIES OF RECOMMENDATION LETTERS, AWARDS,LPOS AND CONTRACT AGREEMENTS . EACH LETTER -5 MARKS	20	
2	FINANCIAL CAPACITY	LINE OF CREDIT-ATTACH A LETTER FROM A BANK OR FINANCIAL INSTITUTION RECOGNIZED BY THE CBK	15	

3	FUEL STATION /NETWORK COVERAGE	PROVIDE EVIDENCE OF OWNERSHIP OR LEASE OF AT LEAST ONE FULLY OPERATIONAL FUEL STATION WITHIN THE COUNTY (WITHIN A RADIUS OF 4 KM FROM THE COUNTY ASSEMBLY OFFICES)	15	
4	STAFF QUALIFICATION	ATTACH EVIDENCE BY PROVIDING CVS AND ACADEMIC CERTIFICATES FOR ATLEAST 4 PERSONNEL TO BE HANDLING THIS WORK :1 SUPERVISOR AND 3 OPERATIONAL STAFF (EACH QUALIFIED PERSONNEL -5 MARKS)	20	

5	CREDIT TO PROCURING ENTITY	PROVIDE STATEMENT ON MAXIMUM CREDIT TO BE GIVEN TO THE PROCURING ENTITY	15	
6	FINANCIAL STATEMENTS	ATTACH PROOF OF AUDITED ACCOUNTS: CURRENT ASSETS /CURRENT LIABILITIES FOR THE LAST 3 YEARS 2023,2024 AND 2025.EACH YEAR-5 MARKS	15	
Table Footer : -				

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PRICE SCHEDULE: (CAREFULLY READ THE INSTRUCTIONS ABOVE BEFORE FILLING THE PRICE SCHEDULE. WHERE A COLUMN IS NOT APPLICABLE INSERT '0") : PRICE SCHEDULE

Table Header : TENDERER TO FILL THE COLUMNS AS FOLLOWS: A) FOR GOODS MANUFACTURED IN KENYA, COLUMNS 7,10,19,20,21,22 AND 24 B)FOR GOODS MANUFACTURED OUTSIDE KENYA, ALREADY IMPORTED* , COLUMNS 7, 10, 14, 15,22 AND 24 C) FOR GOODS MANUFACTURED OUTSIDE KENYA - TO BE IMPORTED, COLUMNS 7, 10,12,19, 22, AND 24 * [FOR PREVIOUSLY IMPORTED GOODS, THE QUOTED PRICE SHALL BE DISTINGUISHABLE FROM THE ORIGINAL IMPORT VALUE OF THESE GOODS DECLARED TO CUSTOMS AND SHALL INCLUDE ANY REBATE OR MARK-UP OF THE LOCAL AGENT OR REPRESENTATIVE AND ALL LOCAL COSTS EXCEPT IMPORT DUTIES AND TAXES, WHICH HAVE BEEN AND/OR HAVE TO BE PAID BY THE PROCURING ENTITY. FOR CLARITY, THE TENDERERS ARE ASKED TO QUOTE THE PRICE INCLUDING IMPORT DUTIES, AND ADDITIONALLY TO PROVIDE THE IMPORT DUTIES AND THE PRICE NET OF IMPORT DUTIES WHICH IS THE DIFFERENCE OF THOSE VALUES.]

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1. LINE ITEM NO	2. UNSPSC CODE	3. UNSPSC DESCRIPTION	4. DESCRIPTION OF GOODS	5. UNIT OF MEASURE	6. QUANTITY	7. DELIVERY PERIOD AS DEFINED INCOTERMS	8. UNIT PRICE EXW	9. TOTAL EXW PRICE PER LINE ITEM (COL. 6X8)	10. PRICE FOR INLAND TRANSPORTATION AND OTHER SERVICES REQUIRED IN KENYA TO CONVEY THE GOODS TO THEIR FINAL DESTINATION PER LINE ITEM	11. TOTAL PRICE PER LINE ITEM BEFORE TAX FOR GOODS MANUFACTURED IN KENYA (COL. 9 +10)	12. COUNTRY OF ORIGIN	13.PLACE OF DESTINATION	14. UNIT PRICE INCLUDING CUSTOM DUTIES AND IMPORT TAXES PAID, IN ACCORDANCE WITH ITT 13.8 (C)(I)	15. CUSTOM DUTIES AND IMPORT TAXES PAID PER UNIT IN ACCORDANCE WITH ITT 13.8 (C) (II), [TO BE SUPPORTED BY DOCUMENTS	16. UNIT PRICE NET OF CUSTOM DUTIES AND IMPORT TAXES, IN ACCORDANCE WITH ITT 14.8 (C) (III) (COL. 14 MINUS COL. 15)	17. PRICE PER LINE ITEM NET OF CUSTOM DUTIES AND IMPORT TAXES PAID, IN ACCORDANCE WITH ITT 13.8 (C)(I) (COL. 6 X COL. 16)	18. TOTAL PRICE PER LINE ITEM BEFORE TAX FOR GOODS MANUFACTURED OUTSIDE KENYA, ALREADY IMPORTED(COL. 10 + COL. 17)	19. UNIT PRICE CIP IN ACCORDANCE WITH ITT 13.8 (B)(I)	20. CIP PRICE PER LINE ITEM (COL. 6 X COL. 19)	21. TOTAL PRICE PER LINE ITEM BEFORE TAX FOR GOODS MANUFACTURED OUTSIDE KENYA, TO BE IMPORTED (COL. 20 + COL. 10)	22.GRAND TENDER PRICE BEFORE TAXES (SELECT COL. 11 OR COL. 18 OR COL. 21 AS APPLICABLE)	23. CAPACITY BUILDING LEVY (COL. 22 * 0.0003)	24. SALES AND OTHER TAXES PAID OR PAYABLE PER LINE ITEM IF CONTRACT IS AWARDED	25 UNIT PRICE INCLUSIVE OF TAXES AND LEVIES TO BE CARRIED TO THE FORM OF TENDER ((COL. 22+COL. 23+COL. 24)/ COL 6)	26. APPLICABLE INCOTERM

1	151015050101	(AGO)/ AUTOMOTIVE DIESEL	DIESEL FUEL	Each (EA)	1	1						NANDI COUNTY ASSEMBLY												DDP

Table Footer : -

Sr no.	Formula
1	9. TOTAL EXW PRICE PER LINE ITEM (COL. 6X8)=6. QUANTITY*8. UNIT PRICE EXW
2	11. TOTAL PRICE PER LINE ITEM BEFORE TAX FOR GOODS MANUFACTURED IN KENYA (COL. 9+10)=9. TOTAL EXW PRICE PER LINE ITEM (COL. 6X8)+10. PRICE FOR INLAND TRANSPORTATION AND OTHER SERVICES REQUIRED IN KENYA TO CONVEY THE GOODS TO THEIR FINAL DESTINATION PER LINE ITEM
3	17. PRICE PER LINE ITEM NET OF CUSTOM DUTIES AND IMPORT TAXES PAID, IN ACCORDANCE WITH ITT 13.8(C)(I) (COL. 6 X COL. 16) =6. QUANTITY*16. UNIT PRICE NET OF CUSTOM DUTIES AND IMPORT TAXES, IN ACCORDANCE WITH ITT 14.8 (C) (III) (COL. 14 MINUS COL. 15)
4	18. TOTAL PRICE PER LINE ITEM BEFORE TAX FOR GOODS MANUFACTURED OUTSIDE KENYA, ALREADY IMPORTED(COL. 10 + COL. 17)=10. PRICE FOR INLAND TRANSPORTATION AND OTHER SERVICES REQUIRED IN KENYA TO CONVEY THE GOODS TO THEIR FINAL DESTINATION PER LINE ITEM+17. PRICE PER LINE ITEM NET OF CUSTOM DUTIES AND IMPORT TAXES PAID, IN ACCORDANCE WITH ITT 13.8(C)(I) (COL. 6 X COL. 16)
5	20. CIP PRICE PER LINE ITEM (COL. 6 X COL. 19)=6. QUANTITY*19. UNIT PRICE CIP IN ACCORDANCE WITH ITT 13.8(B)(I)

6	21. TOTAL PRICE PER LINE ITEM BEFORE TAX FOR GOODS MANUFACTURED OUTSIDE KENYA, TO BE IMPORTED (COL. 20 + COL. 10)=20. CIP PRICE PER LINE ITEM (COL. 6 X COL. 19)+10. PRICE FOR INLAND TRANSPORTATION AND OTHER SERVICES REQUIRED IN KENYA TO CONVEY THE GOODS TO THEIR FINAL DESTINATION PER LINE ITEM
7	23. CAPACITY BUILDING LEVY (COL.22 * 0.0003)=22.GRAND TENDER PRICE BEFORE TAXES (SELECT COL. 11 OR COL. 18 OR COL. 21 AS APPLICABLE)*0.0003
8	25 UNIT PRICE INCLUSIVE OF TAXES AND LEVIES TO BE CARRIED TO THE FORM OF TENDER ((COL. 22+COL. 23+COL. 24)/COL 6)=(22. GRAND TENDER PRICE BEFORE TAXES (SELECT COL. 11 OR COL. 18 OR COL. 21 AS APPLICABLE)+23. CAPACITY BUILDING LEVY (COL.22 * 0.0003)+24. SALES AND OTHER TAXES PAID OR PAYABLE PER LINE ITEM IF CONTRACT IS AWARDED)/6. QUANTITY

eGP Kenya
UNUNUZI WA UWAZI

SECTION VI -GENERAL CONDITIONS OF CONTRACT (GCC)

eGP Kenya
UNUNUZI WA UWAZI

Detail

SECTION VI - GENERAL CONDITIONS OF CONTRACT

1. DEFINITIONS

IN THE CONDITIONS OF CONTRACT ("THESE CONDITIONS"), WHICH INCLUDE SPECIAL CONDITIONS AND THESE GENERAL CONDITIONS, THE FOLLOWING WORDS AND EXPRESSIONS SHALL HAVE THE MEANINGS STATED. WORDS INDICATING PERSONS OR PARTIES INCLUDE CORPORATIONS AND OTHER LEGAL ENTITIES, EXCEPT WHERE THE CONTEXT REQUIRES OTHERWISE.

A) **"CONTRACT"** MEANS THE CONTRACT AGREEMENT ENTERED INTO BETWEEN THE PROCURING ENTITY AND THE SUPPLIER, TOGETHER WITH THE CONTRACT DOCUMENTS REFERRED TO THEREIN, INCLUDING ALL ATTACHMENTS, APPENDICES, AND ALL DOCUMENTS INCORPORATED BY REFERENCE THEREIN.

B) **"CONTRACT DOCUMENTS"** MEANS THE DOCUMENTS LISTED IN THE CONTRACT AGREEMENT, INCLUDING ANY AMENDMENTS THERETO.

C) "CONTRACT PRICE" MEANS THE PRICE PAYABLE TO THE SUPPLIER AS SPECIFIED IN THE CONTRACT AGREEMENT, SUBJECT TO SUCH ADDITIONS AND ADJUSTMENTS THERETO OR DEDUCTIONS THEREFROM, AS MAY BE MADE PURSUANT TO THE CONTRACT.

D) "COMPLETION" MEANS THE FULFILMENT OF THE RELATED SERVICES BY THE SUPPLIER IN ACCORDANCE WITH THE TERMS AND CONDITIONS SET FORTH IN THE CONTRACT.

E) "DAY" MEANS CALENDAR DAY.

F) "GCC" MEANS THE GENERAL CONDITIONS OF CONTRACT.

G) "GOODS"
MEANS ALL OF THE COMMODITIES, RAW MATERIAL, MACHINERY AND EQUIPMENT, AND/OR OTHER MATERIALS THAT THE SUPPLIER IS REQUIRED TO SUPPLY TO THE PROCURING ENTITY UNDER THE CONTRACT.

H) "IN WRITING" MEANS COMMUNICATED IN WRITTEN FORM WITH PROOF OF DISPATCH.

I) "LAWS" MEANS ALL NATIONAL LEGISLATION, STATUTES, ORDINANCES, AND REGULATIONS AND BY-LAWS OF ANY LEGALLY CONSTITUTED PUBLIC AUTHORITY.

J) "LETTER OF ACCEPTANCE" MEANS THE LETTER OF FORMAL ACCEPTANCE, SIGNED BY THE SUPPLIER, INCLUDING ANY ANNEXED MEMORANDA COMPRISING AGREEMENTS BETWEEN AND SIGNED BY BOTH PARTIES.

K) "PROCURING ENTITY" MEANS THE PROCURING ENTITY PURCHASING THE GOODS AND RELATED SERVICES, AS SPECIFIED IN THE **SCC.**

L) "RELATED SERVICES" MEANS THE SERVICES INCIDENTAL TO THE SUPPLY OF THE GOODS, SUCH AS INSURANCE, DELIVERY, INSTALLATION, COMMISSIONING, TRAINING AND INITIAL MAINTENANCE AND OTHER SUCH OBLIGATIONS OF THE SUPPLIER UNDER THE CONTRACT.

M) **"SCC"** MEANS THE SPECIAL CONDITIONS OF CONTRACT.

N) "SUBCONTRACTOR" MEANS ANY PERSON, PRIVATE OR GOVERNMENT ENTITY, OR A COMBINATION OF THE ABOVE, TO WHOM ANY PART OF THE GOODS TO BE SUPPLIED OR EXECUTION OF ANY PART OF THE RELATED SERVICES IS SUBCONTRACTED BY THE SUPPLIER.

O) "SUPPLIER" MEANS THE PERSON, PRIVATE OR GOVERNMENT ENTITY, OR A COMBINATION OF THE ABOVE, WHOSE TENDER TO PERFORM THE CONTRACT HAS BEEN ACCEPTED BY THE PROCURING ENTITY AND IS NAMED AS SUCH IN THE CONTRACT AGREEMENT.

2. INTERPRETATION

2.1. IF THE CONTEXT SO REQUIRES IT, SINGULAR MEANS PLURAL AND VICE VERSA.

2.2. INCOTERMS

A) UNLESS INCONSISTENT WITH ANY PROVISION OF THE CONTRACT, THE MEANING OF ANY TRADE TERM AND THE RIGHTS AND OBLIGATIONS OF PARTIES THEREUNDER SHALL BE AS PRESCRIBED BY INCOTERMS SPECIFIED IN THE **SCC.**

B) THE TERMS EXW[EX-WORKS] AND CIP[CARRIAGE AND INSURANCE PAID] AND OTHER SIMILAR TERMS, WHEN USED, SHALL BE GOVERNED BY THE RULES PRESCRIBED IN THE CURRENT EDITION OF INCOTERMS SPECIFIED IN THE **SCC**
AND PUBLISHED BY THE INTERNATIONAL CHAMBER OF COMMERCE IN PARIS, FRANCE.

3. CONTRACT DOCUMENTS

SUBJECT TO THE ORDER OF PRECEDENCE SET FORTH IN THE FRAMEWORK AGREEMENT, ALL DOCUMENTS FORMING THE CONTRACT (AND ALL PARTS THEREOF) ARE INTENDED TO BE CORRELATIVE, COMPLEMENTARY, AND MUTUALLY EXPLANATORY. THE CONTRACT AGREEMENT SHALL BE READ AS A WHOLE. THE DOCUMENTS FORMING THE CONTRACT SHALL BE INTERPRETED IN THE FOLLOWING ORDER OF PRIORITY:

A) FRAMEWORK AGREEMENT;
B) LETTER OF AWARD
C) SPECIAL CONDITIONS OF CONTRACT;
D) GENERAL CONDITIONS OF CONTRACT;
E) FORM OF TENDER;
F) LETTER OF ACCEPTANCE;
G) SPECIFICATIONS AND SCHEDULES OF THE DRAWINGS (IF ANY);
H) SCHEDULES OF REQUIREMENTS;
I) PRICE SCHEDULE;
J) LOCAL CONTENT PLAN, IF APPLICABLE; AND
K) ANY OTHER DOCUMENTS FORMING PART OF THE CONTRACT.

4. FRAUD AND CORRUPTION

4.1 THE SUPPLIER SHALL COMPLY WITH ANTI-CORRUPTION LAWS AND GUIDELINES AND THE PREVAILING SANCTIONS, POLICIES AND PROCEDURES AS SET FORTH IN THE LAWS OF KENYA.

4.2 THE SUPPLIER SHALL DISCLOSE ANY COMMISSIONS, GRATUITY OR FEES THAT MAY HAV E BEEN PAID OR ARE TO BE PAID TO AGENTS OR ANY OTHER PERSON WITH RESPECT TO THE TENDERING PROCESS OR IMPLEMENTATION OF THE CONTRACT. THE INFORMATION DIS CLOSED MUST INCLUDE AT LEAST THE NAME AND ADDRESS OF THE AGENT OR OTHER PA RTY, THE AMOUNT AND CURRENCY, AND THE PURPOSE OF THE COMMISSION, GRATUITY O R FEE.

5. ENTIRE AGREEMENT

5.1. THE CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PROCURING EN TITY AND THE SUPPLIER AND SUPERSEDES ALL COMMUNICATIONS, NEGOTIATIONS AND AG REEMENTS (WHETHER WRITTEN OR ORAL) OF THE PARTIES WITH RESPECT THERETO MADE PRIOR TO THE DATE OF CONTRACT.

5.2. THE PARTIES SHALL ENTER INTO A FRAMEWORK AGREEMENT WITHIN 28 DAYS AFTER THE CONTRACTOR RECEIVES THE LETTER OF ACCEPTANCE, UNLESS THE PARTICULAR CONDITIONS ESTABLISH OTHERWISE. THE FRAMEWORK AGREEMENT SHALL BE BASED UPON FORM NO. 3 – FRAMEWORK AGREEMENT ANNEXED TO THE PARTICULAR CONDITIONS. THE COSTS OF STAMP DUTIES AND SIMILAR CHARGES (IF ANY) IMPOSED BY LAW IN CONNECTION WITH ENTRY INTO THE FRAMEWORK AGREEMENT SHALL BE BORNE BY THE PROCURING ENTITY.

5.3. THE FRAMEWORK AGREEMENT ESTABLISHES THE TERMS AND CONDITIONS THAT WILL GOVERN THE CONTRACT AWARDED DURING THE TERM OF THE FRAMEWORK AGREEMENT. THE FRAMEWORK AGREEMENT ESTABLISHES FOR THE PROCUREMENT WORKS BY PACKAGE AS AND WHEN REQUIRED, OVER THE SPECIFIED PERIOD OF TIME. THE FRAMEWORK AGREEMENT DOES NOT COMMIT A PROCURING ENTITY TO PROCURE, NOR A FIRM TO SUPPLY. THE FRAMEWORK AGREEMENT ALLOWS THE PROCURING ENTITY TO CALL THE CONTRACTOR TO COMMENCE THE WORKS ON A PARTICULAR PACKAGE IN A SPECIFIED LOCATION WITHIN THE DURATION OF THE AGREEMENT.

5.4. THIS FRAMEWORK AGREEMENT DOES NOT GUARANTEE THE CONTRACTOR OF BEING CALLED FOR A CONTRACT TO START AND NO COMMITMENT IS MADE WITH REGARD TO POSSIBLE NUMBER OF PACKAGES TO CARRY OUT.

5.5. THIS FRAMEWORK AGREEMENT DOES EXCLUDE THE PROCURING ENTITY FROM THE RIGHT TO PROCURE THE SAME WORKS FROM OTHER FIRMS.

5.6. THIS FRAMEWORK AGREEMENT DOES NOT STOP THE PROCURING ENTITY FROM REMOVING THE CONTRACTOR FROM THE SAME AGREEMENT.

5.7. FAS SHALL BE ESTABLISHED FOR A MAXIMUM PERIOD OF THREE (3) YEARS. THE PROCURING ENTITY MAY WITH THE CONSENT OF THE CONTRACTOR EXTEND THIS AGREEMENT IF THE AGREEMENT PERIOD IS LESS THAN THREE (3) YEARS, IF THE INITIAL ENGAGEMENT HAS BEEN SATISFACTORY.

5.8. CALL-OFF CONTRACTS; FOR WORK ON A PACKAGE TO START, THE PROCURING ENTITY SHALL ISSUE A NOTICE OF ACCEPTANCE OF A PARTICULAR PACKAGE REQUESTING THE CONTRACTOR TO FURNISH A PERFORMANCE SECURITY AND TO START THE WORKS THEREAFTER, AND PROVIDING THE CONTRACTOR WITH DETAILS OF LOCATION WHERE THE WORKS, ARE TO BE CARRIED OUT. THE CALL-OFF STATEMENT SHALL SPECIFY THE OBJECTIVES, TASKS, DELIVERABLES, TIMEFRAMES AND PRICE OR PRICE MECHANISM. THE PRICE FOR INDIVIDUAL CALL-OFF CONTRACTS SHALL BE BASED ON THE PRICES DETAILED IN THE FRAMEWORK AGREEMENT.

6. AMENDMENT

6.1 NO AMENDMENT OR OTHER VARIATION OF THE CONTRACT SHALL BE VALID UNLESS IT IS IN WRITING, IS DATED, EXPRESSLY REFERS TO THE CONTRACT, AND IS SIGNED BY A DU LY AUTHORIZED REPRESENTATIVE OF EACH PARTY THERETO.

7. NON-WAIVER

A) NO RELAXATION, FORBEARANCE, DELAY, OR INDULGENCE BY EITHER PARTY IN ENFORCIN G ANY OF THE TERMS AND CONDITIONS OF THE CONTRACT OR THE GRANTING OF TIME BY EITHER PARTY TO THE OTHER SHALL PREJUDICE, AFFECT, OR RESTRICT THE RIGHTS OF THAT PARTY UNDER THE CONTRACT, NEITHER SHALL ANY WAIVER BY EITHER PARTY OF AN Y BREACH OF CONTRACT OPERATE AS WAIVER OF ANY SUBSEQUENT OR CONTINUING BRE ACH OF CONTRACT.

B) ANY WAIVER OF A PARTY'S RIGHTS, POWERS, OR REMEDIES UNDER THE CONTRACT MUS T BE IN WRITING, DATED, AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE PART Y GRANTING SUCH WAIVER, AND MUST SPECIFY THE RIGHT AND THE EXTENT TO WHICH IT IS BEING WAIVED.

8. SEVERABILITY

IF ANY PROVISION OR CONDITION OF THE CONTRACT IS PROHIBITED OR RENDERED INVALI D OR UNENFORCEABLE, SUCH PROHIBITION, INVALIDITY OR UNENFORCEABILITY SHALL NOT AFFECT THE VALIDITY OR ENFORCEABILITY OF ANY OTHER PROVISIONS AND CONDITIONS OF THE CONTRACT.

9. LANGUAGE

9.1 THE CONTRACT AS WELL AS ALL CORRESPONDENCE AND DOCUMENTS RELATING TO THE CONTRACT EXCHANGED BY THE SUPPLIER AND THE PROCURING ENTITY, SHALL BE WRITTEN IN THE ENGLISH LANGUAGE. SUPPORTING DOCUMENTS AND PRINTED LITERATURE THAT ARE PART OF THE CONTRACT MAY BE IN ANOTHER LANGUAGE PROVIDED THEY ARE ACCOMPANIED BY AN ACCURATE AND CERTIFIED TRANSLATION OF THE RELEVANT PASSAGES IN THE ENGLISH LANGUAGE, IN WHICH CASE, FOR PURPOSES OF INTERPRETATION OF THE CONTRACT, THE ENGLISH LANGUAGE TRANSLATION SHALL GOVERN.

9.2 THE SUPPLIER SHALL BEAR ALL COSTS OF TRANSLATION TO THE GOVERNING LANGUAGE AND ALL RISKS OF THE ACCURACY OF SUCH TRANSLATION, FOR DOCUMENTS PROVIDED BY THE SUPPLIER.

10. JOINT VENTURE, CONSORTIUM OR ASSOCIATION

10.1 IF THE SUPPLIER IS A JOINT VENTURE, CONSORTIUM, OR ASSOCIATION, ALL OF THE PARTIES SHALL BE JOINTLY AND SEVERALLY LIABLE TO THE PROCURING ENTITY FOR THE FULFILMENT OF THE PROVISIONS OF THE CONTRACT AND SHALL DESIGNATE ONE MEMBER OF THE JOINT VENTURE, CONSORTIUM, OR ASSOCIATION TO ACT AS A LEADER WITH AUTHORITY TO BIND THE JOINT VENTURE, CONSORTIUM, OR ASSOCIATION. THE COMPOSITION OR THE CONSTITUTION OF THE JOINT VENTURE, CONSORTIUM, OR ASSOCIATION SHALL NOT BE ALTERED WITHOUT THE PRIOR WRITTEN CONSENT OF THE PROCURING ENTITY.

11. ELIGIBILITY

11.1 THE SUPPLIER AND ITS SUBCONTRACTORS SHALL HAVE THE NATIONALITY OF AN ELIGIBLE COUNTRY. A SUPPLIER OR SUB- CONTRACTOR SHALL BE DEEMED TO HAVE THE NATIONALITY OF A COUNTRY IF IT IS A CITIZEN OR CONSTITUTED, INCORPORATED, OR REGISTERED, AND OPERATES IN CONFORMITY WITH THE PROVISIONS OF THE LAWS OF THAT COUNTRY.

11.2 ALL GOODS AND RELATED SERVICES TO BE SUPPLIED UNDER THE CONTRACT SHALL HAVE THEIR ORIGIN IN ELIGIBLE COUNTRIES. FOR THE PURPOSE OF THIS CLAUSE, ORIGIN MEANS THE COUNTRY WHERE THE GOODS HAVE BEEN GROWN, MINED, CULTIVATED, PRODUCED, MANUFACTURED, OR PROCESSED; OR THROUGH MANUFACTURE, PROCESSING, OR ASSEMBLY, ANOTHER COMMERCIALLY RECOGNIZED ARTICLE RESULTS THAT DIFFERS SUBSTANTIALLY IN ITS BASIC CHARACTERISTICS FROM ITS COMPONENTS.

11.3 THE TENDERER, IF A KENYAN FIRM, MUST SUBMIT WITH ITS TENDER A VALID TAX COMPLIANCE CERTIFICATE FROM THE KENYA REVENUE AUTHORITY.

12. NOTICES

12.1 ANY NOTICE GIVEN BY ONE PARTY TO THE OTHER PURSUANT TO THE CONTRACT SHALL BE IN WRITING TO THE ADDRESS SPECIFIED IN THE **SCC.**

12.2 A NOTICE SHALL BE EFFECTIVE WHEN DELIVERED OR ON THE NOTICE'S EFFECTIVE DATE, WHICHEVER IS LATER

13. GOVERNING LAW

13.1 THE CONTRACT SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH TH E LAWS OF KENYA.
THROUGHOUT THE EXECUTION OF THE CONTRACT, THE SUPPLIER SHALL COMPLY WITH TH E IMPORT OF GOODS AND SERVICES PROHIBITIONS IN KENYA:

A) WHERE, AS A MATTER OF LAW, COMPLIANCE OR OFFICIAL REGULATIONS, KENYA PROHI BITS COMMERCIAL RELATIONS WITH THAT COUNTRY OR ANY IMPORT OF GOODS FROM TH AT COUNTRY OR ANY PAYMENTS TO ANY COUNTRY, PERSON, OR ENTITY IN THAT COUNTR Y ; OR

B) BY AN ACT OF COMPLIANCE WITH A DECISION OF THE UNITED NATIONS SECURITY CO UNCIL TAKEN UNDER CHAPTER VII OF THE CHARTER OF THE UNITED NATIONS, KENYA PRO HIBITS ANY IMPORT OF GOODS FROM THAT COUNTRY OR ANY PAYMENTS TO ANY COUNT RY, PERSON, OR ENTITY.

14. SETTLEMENT OF DISPUTES

14.1 THE PROCURING ENTITY AND THE SUPPLIER SHALL MAKE EVERY EFFORT TO RESOLVE AMICABLY BY DIRECT NEGOTIATION ANY DISAGREEMENT OR DISPUTE ARISING BETWEEN TH EM UNDER OR IN CONNECTION WITH THE CONTRACT.

14.2 IF, AFTER THIRTY (30) DAYS, THE PARTIES HAVE FAILED TO RESOLVE THEIR DISPUTE OR DIFFERENCE BY SUCH MUTUAL CONSULTATION, THEN EITHER THE PROCURING ENTITY OR THE SUPPLIER MAY GIVE NOTICE TO THE OTHER PARTY OF ITS INTENTION TO COMME NCE ARBITRATION, AS HEREINAFTER PROVIDED, AS TO THE MATTER IN DISPUTE, AND NO A RBITRATION IN RESPECT OF THIS MATTER MAY BE COMMENCED UNLESS SUCH NOTICE IS GIVEN. ANY DISPUTE OR DIFFERENCE IN RESPECT OF WHICH A NOTICE OF INTENTION TO COMMENCE ARBITRATION HAS BEEN GIVEN IN ACCORDANCE WITH THIS CLAUSE SHALL BE FINALLY SETTLED BY ARBITRATION. ARBITRATION MAY BE COMMENCED PRIOR TO OR AFTE R DELIVERY OF THE GOODS UNDER THE CONTRACT.

15. ARBITRATION PROCEEDINGS SHALL BE CONDUCTED AS FOLLOWS:

15.1 ANY CLAIM OR DISPUTE BETWEEN THE PARTIES ARISING OUT OF OR IN CONNECTION WITH THE CONTRACT NOT SETTLED AMICABLY IN ACCORDANCE WITH SUB-CLAUSE 14.1 SHALL BE FINALLY SETTLED BY ARBITRATION.

15.2 NO ARBITRATION PROCEEDINGS SHALL BE COMMENCED ON ANY CLAIM OR DISPUTE WHERE NOTICE OF A CLAIM OR DISPUTE HAS NOT BEEN GIVEN BY THE APPLYING PARTY WITHIN THIRTY DAYS OF THE OCCURRENCE OR DISCOVERY OF THE MATTER OR ISSUE GIVI NG RISE TO THE DISPUTE.

15.3 NOTWITHSTANDING THE ISSUE OF A NOTICE AS STATED ABOVE, THE ARBITRATION OF SUCH A CLAIM OR DISPUTE SHALL NOT COMMENCE UNLESS AN ATTEMPT HAS IN THE FIR ST INSTANCE BEEN MADE BY THE PARTIES TO SETTLE SUCH CLAIM OR DISPUTE AMICABLY WITH OR WITHOUT THE ASSISTANCE OF THIRD PARTIES. PROOF OF SUCH ATTEMPT SHALL BE REQUIRED.

15.4 THE ARBITRATOR SHALL, WITHOUT PREJUDICE TO THE GENERALITY OF HIS POWERS, H AVE POWERS TO DIRECT SUCH MEASUREMENTS, COMPUTATIONS, OR VALUATIONS AS MAY IN HIS OPINION BE DESIRABLE IN ORDER TO DETERMINE THE RIGHTS OF THE PARTIES AN D ASSESS AND AWARD ANY SUMS WHICH OUGHT TO HAVE BEEN THE SUBJECT OF OR INC LUDED IN ANY DUE PAYMENTS.

15.5 NEITHER PARTY SHALL BE LIMITED IN THE PROCEEDINGS BEFORE THE ARBITRATORS T O THE EVIDENCE, OR TO THE REASONS FOR THE DISPUTE GIVEN IN ITS NOTICE OF A CLAI M OR DISPUTE.

15.6 ARBITRATION MAY BE COMMENCED PRIOR TO OR AFTER DELIVERY OF THE GOODS. T HE OBLIGATIONS OF THE PARTIES SHALL NOT BE ALTERED BY REASON OF ANY ARBITRATI ON BEING CONDUCTED DURING THE PROGRESS OF THE DELIVERY OF GOODS.

15.7THE TERMS OF THE REMUNERATION OF EACH OR ALL THE MEMBERS OF ARBITRATION SHALL BE MUTUALLY AGREED UPON BY THE PARTIES WHEN AGREEING THE TERMS OF AP POINTMENT. EACH PARTY SHALL BE RESPONSIBLE FOR PAYING ONE-HALF OF THIS REMUNERATION.

16. ARBITRATION PROCEEDINGS

16.1 ARBITRATION PROCEEDINGS WITH NATIONAL SUPPLIERS WILL BE CONDUCTED IN ACCORDANCE WITH THE ARBITRATION LAWS OF KENYA. IN CASE OF ANY CLAIM OR DISPUTE, SUCH CLAIM OR DISPUTE SHALL BE NOTIFIED IN WRITING BY EITHER PARTY TO THE OTHER WITH A REQUEST TO SUBMIT IT TO ARBITRATION AND TO CONCUR IN THE APPOINTMENT OF AN ARBITRATOR WITHIN THIRTY DAYS OF THE NOTICE. THE DISPUTE SHALL BE REFERRED TO THE ARBITRATION AND FINAL DECISION OF A PERSON OR PERSONS TO BE AGREED BETWEEN THE PARTIES. FAILING AGREEMENT TO CONCUR IN THE APPOINTMENT OF AN ARBITRATOR, THE ARBITRATOR SHALL BE APPOINTED, ON THE REQUEST OF THE APPLYING PARTY, BY THE CHAIRMAN OR VICE CHAIRMAN OF ANY OF THE FOLLOWING PROFESSIONAL INSTITUTIONS;

I) KENYA NATIONAL CHAMBER OF COMMERCE & INDUSTRY;
II) CHARTERED INSTITUTE OF ARBITRATORS KENYA BRANCH; OR
III) THE LAW SOCIETY OF KENYA.

16.2 THE INSTITUTION WRITTEN TO FIRST BY THE AGGRIEVED PARTY SHALL TAKE PRECEDENCE OVER ALL OTHER INSTITUTIONS.

17. ALTERNATIVE ARBITRATION PROCEEDINGS

ALTERNATIVELY, THE PARTIES MAY REFER THE MATTER TO THE NAIROBI CENTRE FOR INTERNATIONAL ARBITRATION (NCIA) WHICH OFFERS A NEUTRAL VENUE FOR THE CONDUCT OF NATIONAL AND INTERNATIONAL ARBITRATION WITH COMMITMENT TO PROVIDING INSTITUTIONAL SUPPORT TO THE ARBITRAL PROCESS.

18. ARBITRATION WITH FOREIGN SUPPLIERS

ARBITRATION WITH FOREIGN SUPPLIERS SHALL BE CONDUCTED IN ACCORDANCE WITH THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL); OR WITH PROCEEDINGS ADMINISTERED BY THE INTERNATIONAL CHAMBER OF COMMERCE (ICC) AND CONDUCTED UNDER THE ICC RULES OF ARBITRATION; BY ONE OR MORE ARBITRATORS APPOINTED IN ACCORDANCE WITH SAID ARBITRATION RULES.

19. PLACE OF ARBITRATION

THE PLACE OF ARBITRATION SHALL BE A LOCATION SPECIFIED IN THE **SCC;** AND THE ARBITRATION SHALL BE CONDUCTED IN THE LANGUAGE FOR COMMUNICATIONS DEFINED IN SUB-CLAUSE 9.1 [LAW AND LANGUAGE].

20. FAILURE TO COMPLY WITH ARBITRATOR'S DECISION

20.1 THE AWARD OF SUCH ARBITRATOR SHALL BE FINAL AND BINDING UPON THE PARTIES.

20.2 WHERE A PARTY IS AGGRIEVED BY THE DECISION OF AN ARBITRATOR, THE PARTY MAY REFER THE MATTER TO A COMPETENT COURT OF LAW.

20.3 IN THE EVENT THAT A PARTY FAILS TO COMPLY WITH A FINAL AND BINDING ARBITRATOR'S DECISION, THEN THE OTHER PARTY MAY, WITHOUT PREJUDICE TO ANY OTHER RIGHTS IT MAY HAVE, REFER THE MATTER TO A COMPETENT COURT OF LAW.

21. CONTRACT OPERATIONS CONTINUATION

NOTWITHSTANDING ANY REFERENCE TO ARBITRATION HEREIN,

A) THE PARTIES SHALL CONTINUE TO PERFORM THEIR RESPECTIVE OBLIGATIONS UNDER THE CONTRACT UNLESS THEY OTHERWISE AGREE; AND

B) THE PROCURING ENTITY SHALL PAY THE SUPPLIER ANY MONIES DUE TO THE SUPPLIER.

22. INSPECTIONS AND AUDIT BY THE PROCURING ENTITY

22.1 THE SUPPLIER SHALL KEEP, AND SHALL CAUSE ITS SUBCONTRACTORS TO KEEP, ACCURATE AND SYSTEMATIC ACCOUNTS AND RECORDS IN RESPECT OF THE GOODS IN SUCH FORM AND DETAILS AS WILL CLEARLY IDENTIFY RELEVANT TIME, CHANGES AND COSTS.

22.2 THE SUPPLIER SHALL PERMIT AND SHALL CAUSE ITS SUBCONTRACTORS TO PERMIT, THE PROCURING ENTITY AND/OR PERSONS APPOINTED BY THE PROCURING ENTITY OR BY OTHER STATUTORY BODIES OF THE GOVERNMENT TO INSPECT THE SITE AND/OR THE ACCOUNTS AND RECORDS RELATING TO THE PROCUREMENT PROCESS, SELECTION AND/OR CONTRACT EXECUTION, AND TO HAVE SUCH ACCOUNTS AND RECORDS AUDITED BY AUDITORS APPOINTED BY THE PROCURING ENTITY. THE SUPPLIER'S AND ITS SUBCONTRACTORS' ATTENTION IS DRAWN TO SUB- CLAUSE 2.3 OF APPENDIX 1 OF THIS TENDER DOCUMENT WHICH PROVIDES, INTER ALIA, THAT ACTS INTENDED TO MATERIALLY IMPEDE THE EXERCISE OF THE PROCURING ENTITY'S INSPECTION AND AUDIT RIGHTS CONSTITUTE A PROHIBITED PRACTICE SUBJECT TO CONTRACT TERMINATION (AS WELL AS TO A DETERMINATION OF INELIGIBILITY).

23. SCOPE OF SUPPLY

THE GOODS AND RELATED SERVICES TO BE SUPPLIED SHALL BE AS SPECIFIED IN THE SCHEDULE OF REQUIREMENTS.

24. DELIVERY AND DOCUMENTS

DELIVERY OF THE GOODS AND COMPLETION OF THE RELATED SERVICES SHALL BE IN ACCORDANCE WITH THE LIST OF GOODS AND DELIVERY SCHEDULE SPECIFIED IN THE SUPPLY REQUIREMENTS. THE DETAILS OF SHIPPING AND OTHER DOCUMENTS TO BE FURNISHED BY THE SUPPLIER ARE SPECIFIED IN THE **SCC.**

25. SUPPLIER'S RESPONSIBILITIES

THE SUPPLIER SHALL SUPPLY ALL THE GOODS AND RELATED SERVICES INCLUDED IN THE S COPE OF SUPPLY IN ACCORDANCE WITH GCC CLAUSE 23, AND THE DELIVERY AND COMPL ETION SCHEDULE, AS PER GCC CLAUSE 24.

26. CONTRACT PRICE

26.1 PRICES CHARGED BY THE SUPPLIER FOR THE GOODS SUPPLIED AND THE RELATED SER VICES PERFORMED UNDER THE CONTRACT SHALL NOT VARY FROM THE PRICES QUOTED B Y THE SUPPLIER IN ITS TENDER, WITH THE EXCEPTION OF ANY PRICE ADJUSTMENTS AUTH ORIZED IN THE **SCC.**

26.2 WHERE THE CONTRACT PRICE IS DIFFERENT FROM THE CORRECTED TENDER PRICE, IN ORDER TO ENSURE THE SUPPLIER IS NOT PAID LESS OR MORE RELATIVE TO THE CONTRAC T PRICE (WHICH WOULD BE THE TENDER PRICE), ANY PARTIAL PAYMENT VALUATION BASE D ON RATES IN THE SCHEDULE OF PRICES IN THE TENDER, WILL BE ADJUSTED BY A PLUS OR MINUS PERCENTAGE. THE PERCENTAGE ALREADY WORKED OUT DURING TENDER EVALU ATION IS WORKED OUT AS FOLLOWS: (CORRECTED TENDER PRICE – TENDER PRICE) /TENDER PRICE X 100.

27. TERMS OF PAYMENT

27.1 THE SUPPLIER SHALL REQUEST FOR PAYMENT BY SUBMITTING INVOICE (S), DELIVERY NOTE(S) AND ANY OTHER RELEVANT DOCUMENTS. THE METHOD AND CONDITIONS OF PAYMENT TO BE MADE TO THE SUPPLIER SHALL BE AS SPECIFIED IN THE SCC.

27.2 PAYMENTS SHALL BE MADE PROMPTLY BY THE PROCURING ENTITY, BUT NOT LATER THAN THIRTY (30) DAYS AFTER SUBMISSION OF AN INVOICE BY THE SUPPLIER, AND AFTER THE PROCURING ENTITY HAS ACCEPTED IT.

27.3 WHERE A PROCURING ENTITY REJECTS GOODS AND RELATED SERVICES, IN PART OR WHOLLY, THE PROCURING ENTITY SHALL PROMPTLY INFORM THE SUPPLIER TO COLLECT, REPLACE OR RECTIFY AS APPROPRIATE AND GIVE REASONS FOR REJECTION. THE SUPPLIER SHALL SUBMIT A FRESH INVOICE, DELIVERY NOTE AND ANY OTHER RELEVANT DOCUMENTS AS SPECIFIED IN THE **SCC.**

27.4 THE CURRENCIES IN WHICH PAYMENTS SHALL BE MADE TO THE SUPPLIER UNDER THIS CONTRACT SHALL BE THOSE IN WHICH THE TENDER PRICE IS EXPRESSED.

27.5 IN THE EVENT THAT THE PROCURING ENTITY FAILS TO PAY THE SUPPLIER ANY PAYMENT BY ITS DUE DATE OR WITHIN THE PERIOD SET FORTH IN THE **SCC,** PROCURING ENTITY SHALL PAY INTEREST ON OVERDUE AMOUNT IN ACCORDANCE WITH PREVAILING MEAN COMMERCIAL LENDING RATE AS DETERMINED BY THE CENTRAL BANK OF KENYA**,** FOR THE PERIOD OF DELAY UNTIL PAYMENT HAS BEEN MADE IN FULL, WHETHER BEFORE OR AFTER JUDGMENT OR ARBITRAGE AWARD.

28. TAXES AND DUTIES

28.1 THE SUPPLIER SHALL BE ENTIRELY RESPONSIBLE FOR ALL TAXES, DUTIES, LICENSE FEES, AND OTHER SUCH LEVIES INCURRED TO DELIVER THE GOODS AND RELATED SERVICES TO THE PROCURING ENTITY AT THE FINAL DELIVERY POINT.

28.2 IF ANY TAX EXEMPTIONS, REDUCTIONS, ALLOWANCES OR PRIVILEGES MAY BE AVAILABLE TO THE SUPPLIER IN KENYA, THE SUPPLIER SHALL INFORM THE PROCURING ENTITY AND THE PROCURING ENTITY SHALL USE ITS BEST EFFORTS TO ENABLE THE SUPPLIER TO BENEFIT FROM ANY SUCH TAX SAVINGS TO THE MAXIMUM ALLOWABLE EXTENT.

29. PERFORMANCE SECURITY

29.1 IF REQUIRED AS SPECIFIED IN THE SCC, THE SUPPLIER SHALL, WITHIN TWENTY-ONE (21) DAYS OF THE LETTER OF AWARD, PROVIDE A PERFORMANCE SECURITY FOR THE PERFORMANCE OF THE CONTRACT IN THE AMOUNT SPECIFIED IN THE **SCC**.

29.2 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.

29.3
THE PERFORMANCE SECURITY, IF REQUIRED, SHALL BE DENOMINATED IN THE CURRENCY (IES) OF THE CONTRACT, OR IN A FREELY CONVERTIBLE CURRENCY ACCEPTABLE TO THE PROCURING ENTITY AS SPECIFIED IN THE **SCC;** AND SHALL BE IN THE FORM OF A DEMAND GUARANTEE IN THE FORMAT STIPULATED IN THE TENDER DOCUMENT.

29.4 THE PERFORMANCE SECURITY SHALL BE DISCHARGED BY THE PROCURING ENTITY AND RETURNED TO THE SUPPLIER NOT LATER THAN THIRTY (30) DAYS FOLLOWING THE DATE OF COMPLETION OF THE SUPPLIER'S PERFORMANCE OBLIGATIONS UNDER THE CONTRACT, INCLUDING ANY WARRANTY OBLIGATIONS, UNLESS SPECIFIED OTHERWISE IN THE **SCC.**

30. COPYRIGHT

30.1 THE COPYRIGHT IN ALL DRAWINGS, DOCUMENTS, AND OTHER MATERIALS CONTAINING DATA AND INFORMATION FURNISHED TO THE PROCURING ENTITY BY THE SUPPLIER HEREIN SHALL REMAIN VESTED IN THE SUPPLIER, OR, IF THEY ARE FURNISHED TO THE PROCURING ENTITY DIRECTLY OR THROUGH THE SUPPLIER BY ANY THIRD PARTY, INCLUDING SUPPLIERS OF MATERIALS, THE COPYRIGHT IN SUCH MATERIALS SHALL REMAIN VESTED IN SUCH THIRD PARTY.

31. CONFIDENTIAL INFORMATION

31.1THE PROCURING ENTITY AND THE SUPPLIER SHALL KEEP CONFIDENTIAL AND SHALL NOT, WITHOUT THE WRITTEN CONSENT OF THE OTHER PARTY HERETO, DIVULGE TO ANY THIRD PARTY ANY DOCUMENTS, DATA, OR OTHER INFORMATION FURNISHED DIRECTLY OR INDIRECTLY BY THE OTHER PARTY HERETO IN CONNECTION WITH THE CONTRACT, WHETHER SUCH INFORMATION HAS BEEN FURNISHED PRIOR TO, DURING OR FOLLOWING COMPLETION OR TERMINATION OF THE CONTRACT. NOTWITHSTANDING
THE ABOVE, THE SUPPLIER MAY FURNISH TO ITS SUB-CONTRACTOR SUCH DOCUMENTS, DATA, AND OTHER INFORMATION IT RECEIVES FROM THE PROCURING ENTITY TO THE EXTENT REQUIRED FOR THE SUB-CONTRACTOR TO PERFORM ITS WORK UNDER THE CONTRACT, IN WHICH EVENT THE SUPPLIER SHALL OBTAIN FROM SUCH SUB-CONTRACTOR UNDERTAKING OF CONFIDENTIALITY SIMILAR TO THAT IMPOSED ON THE SUPPLIER UNDER THIS
GCC CLAUSE 31.

31.2 THE PROCURING ENTITY SHALL NOT USE SUCH DOCUMENTS, DATA, AND OTHER INFORMATION RECEIVED FROM THE SUPPLIER FOR ANY PURPOSES UNRELATED TO THE CONTRACT. SIMILARLY, THE SUPPLIER SHALL NOT USE SUCH DOCUMENTS, DATA, AND OTHER INFORMATION RECEIVED FROM THE PROCURING ENTITY FOR ANY PURPOSE OTHER THAN THE PERFORMANCE OF THE CONTRACT.

31.3 THE OBLIGATION OF A PARTY UNDER GCC SUB-
CLAUSES 31.1 AND 31.2 ABOVE, HOWEVER, SHALL NOT APPLY TO INFORMATION THAT:

A) THE PROCURING ENTITY OR SUPPLIER NEED TO SHARE WITH OTHER ARMS OF GOVERNMENT OR OTHER BODIES PARTICIPATING IN THE FINANCING OF THE CONTRACT; SUCH PARTIES SHALL BE DISCLOSED IN THE SCC;

B) NOW OR HEREAFTER ENTERS THE PUBLIC DOMAIN THROUGH NO FAULT OF THAT PARTY;
C) CAN BE PROVEN TO HAVE BEEN POSSESSED BY THAT PARTY AT THE TIME OF DISCLOSURE AND WHICH WAS NOT PREVIOUSLY OBTAINED, DIRECTLY OR INDIRECTLY, FROM THE OTHER PARTY; OR
D) OTHERWISE LAWFULLY BECOMES AVAILABLE TO THAT PARTY FROM A THIRD PARTY THAT HAS NO OBLIGATION OF CONFIDENTIALITY.

31.4 THE ABOVE PROVISIONS OF GCC CLAUSE 31 SHALL NOT IN ANY WAY MODIFY ANY UNDERTAKING OF CONFIDENTIALITY GIVEN BY EITHER OF THE PARTIES HERETO PRIOR TO THE DATE OF THE CONTRACT IN RESPECT OF THE SUPPLY OR ANY PART THEREOF.

31.5 THE PROVISIONS OF GCC CLAUSE 31 SHALL SURVIVE COMPLETION OR TERMINATION, FOR WHATEVER REASON, OF THE CONTRACT.

32. SUBCONTRACTING

32.1 THE SUPPLIER SHALL NOTIFY THE PROCURING ENTITY IN WRITING OF ALL SUBCONTRACTS AWARDED UNDER THE CONTRACT IF NOT ALREADY SPECIFIED IN THE TENDER. SUCH NOTIFICATION, IN THE ORIGINAL TENDER OR LATER SHALL NOT RELIEVE THE SUPPLIER FROM ANY OF ITS OBLIGATIONS, DUTIES, RESPONSIBILITIES, OR LIABILITY UNDER THE CONTRACT.

32.2 SUBCONTRACTS SHALL COMPLY WITH THE PROVISIONS OF GCC CLAUSES 4 AND 11

33. SPECIFICATIONS AND STANDARDS

33.1 TECHNICAL SPECIFICATIONS AND DRAWINGS
A) THE GOODS AND RELATED SERVICES SUPPLIED UNDER THIS CONTRACT SHALL CONFORM TO THE TECHNICAL SPECIFICATIONS AND STANDARDS MENTIONED IN SECTION VI, SCHEDULE OF REQUIREMENTS AND, WHEN NO APPLICABLE STANDARD IS MENTIONED, THE STANDARD SHALL BE EQUIVALENT OR SUPERIOR TO THE OFFICIAL STANDARDS WHOSE APPLICATION IS APPROPRIATE TO THE GOODS' COUNTRY OF ORIGIN.

B) THE SUPPLIER SHALL BE ENTITLED TO DISCLAIM RESPONSIBILITY FOR ANY DESIGN, DATA, DRAWING, SPECIFICATION OR OTHER DOCUMENT, OR ANY MODIFICATION THEREOF PROVIDED OR DESIGNED BY OR ON BEHALF OF THE PROCURING ENTITY, BY GIVING A NOTICE OF SUCH DISCLAIMER TO THE PROCURING ENTITY.

C) WHEREVER REFERENCES ARE MADE IN THE CONTRACT TO CODES AND STANDARDS IN ACCORDANCE WITH WHICH IT SHALL BE EXECUTED, THE EDITION OR THE REVISED VERSION OF SUCH CODES AND STANDARDS SHALL BE THOSE SPECIFIED IN THE SCHEDULE OF REQUIREMENTS. DURING CONTRACT EXECUTION, ANY CHANGES IN ANY SUCH CODES AND STANDARDS SHALL BE APPLIED ONLY AFTER APPROVAL BY THE PROCURING ENTITY AND SHALL BE TREATED IN ACCORDANCE WITH GCC CLAUSE 44.

34. PACKING AND DOCUMENTS

34.1 THE SUPPLIER SHALL PROVIDE SUCH PACKING OF THE GOODS AS IS REQUIRED TO PREVENT THEIR DAMAGE OR DETERIORATION DURING TRANSIT TO THEIR FINAL DESTINATION, AS INDICATED IN THE CONTRACT. DURING TRANSIT, THE PACKING SHALL BE SUFFICIENT TO WITHSTAND, WITHOUT LIMITATION, ROUGH HANDLING AND EXPOSURE TO EXTREME TEMPERATURES, SALT AND PRECIPITATION, AND OPEN STORAGE. PACKING CASE SIZE AND WEIGHTS SHALL TAKE INTO CONSIDERATION, WHERE APPROPRIATE, THE REMOTENESS OF THE GOODS' FINAL DESTINATION AND THE ABSENCE OF HEAVY HANDLING FACILITIES AT ALL POINTS IN TRANSIT.

34.2 THE PACKING, MARKING, AND DOCUMENTATION WITHIN AND OUTSIDE THE PACKAGES SHALL COMPLY STRICTLY WITH SUCH SPECIAL REQUIREMENTS AS SHALL BE EXPRESSLY PROVIDED FOR IN THE CONTRACT, INCLUDING ADDITIONAL REQUIREMENTS, IF ANY, SPECIFIED IN THE SCC, AND IN ANY OTHER INSTRUCTIONS ORDERED BY THE PROCURING ENTITY

35. INSURANCE

35.1 THE GOODS SUPPLIED UNDER THE CONTRACT SHALL BE FULLY INSURED WITH AN INSURANCE COMPANY REGISTERED IN KENYA AGAINST LOSS OR DAMAGE INCIDENTAL TO MANUFACTURE OR ACQUISITION, TRANSPORTATION, STORAGE, AND DELIVERY, IN ACCORDANCE WITH THE APPLICABLE INCOTERMS OR IN THE MANNER SPECIFIED IN THE **SCC.**

36. TRANSPORTATION AND INCIDENTAL SERVICES

36.1 UNLESS OTHERWISE SPECIFIED IN THE **SCC,** RESPONSIBILITY FOR ARRANGING TRANSPO RTATION OF THE GOODS SHALL BE IN ACCORDANCE WITH THE SPECIFIED INCOTERMS.

36.2 THE SUPPLIER MAY BE REQUIRED TO PROVIDE ANY OR ALL OF THE FOLLOWING SERVI CES, INCLUDING ADDITIONAL SERVICES, IF ANY, SPECIFIED IN **SCC:**

A) PERFORMANCE OR SUPERVISION OF ON-SITE ASSEMBLY AND/OR START-UP OF THE SUPPLIED GOODS;

B) FURNISHING OF TOOLS REQUIRED FOR ASSEMBLY AND /OR MAINTENANCE OF THE SUPPLIED GOODS;

C) FURNISHING OF A DETAILED OPERATIONS AND MAINTENANCE MANUAL FOR EACH APP ROPRIATE UNIT OF THE SUPPLIED GOODS;

D) PERFORMANCE OR SUPERVISION OR MAINTENANCE AND/OR REPAIR OF THE SUPPLIED GOODS, FOR A PERIOD OF TIME AGREED BY THE PARTIES, PROVIDED THAT THIS SERVICE S HALL NOT RELIEVE THE SUPPLIER OF ANY WARRANTY OBLIGATIONS UNDER THIS CONTRAC T; AND

E) TRAINING OF THE PROCURING ENTITY'S PERSONNEL, AT THE SUPPLIER'S PLANT AND /OR ON-SITE, IN ASSEMBLY, START-UP, OPERATION, MAINTENANCE, AND /OR REPAIR OF THE SUPPLIED GOODS.

36. 3 PRICES CHARGED BY THE SUPPLIER FOR INCIDENTAL SERVICES, IF NOT INCLUDED IN THE CONTRACT PRICE FOR THE GOODS, SHALL BE AGREED UPON IN ADVANCE BY THE PA RTIES AND SHALL NOT EXCEED THE PREVAILING RATES CHARGED TO OTHER PARTIES BY T HE SUPPLIER FOR SIMILAR SERVICES

37. INSPECTIONS AND TESTS

37.1 THE SUPPLIER SHALL AT ITS OWN EXPENSE AND AT NO COST TO THE PROCURING EN TITY CARRY OUT ALL SUCH TESTS AND /OR INSPECTIONS OF THE GOODS AND RELATED SERVICES AS ARE SPECIFIED IN THE SCC.

37.2 THE INSPECTIONS AND TESTS MAY BE CONDUCTED ON THE PREMISES OF THE SUPPLIER OR ITS SUBCONTRACTOR, AT POINT OF DELIVERY, AND/OR AT THE GOODS' FINAL DESTINATION, OR IN ANOTHER PLACE IN KENYA AS SPECIFIED IN THE SCC. SUBJECT TO GCC SUB-CLAUSE 37.3, IF CONDUCTED ON THE PREMISES OF THE SUPPLIER OR ITS SUBCONTRACTOR, ALL REASONABLE FACILITIES AND ASSISTANCE, INCLUDING ACCESS TO DRAWINGS AND PRODUCTION DATA, SHALL BE FURNISHED TO THE INSPECTORS AT NO CHARGE TO THE PROCURING ENTITY.

37.3 THE PROCURING ENTITY OR ITS DESIGNATED REPRESENTATIVE SHALL BE ENTITLED TO ATTEND THE TESTS AND/OR INSPECTIONS REFERRED TO IN GCC SUB-CLAUSE 37.2, PROVIDED THAT THE PROCURING ENTITY BEAR ALL OF ITS OWN COSTS AND EXPENSES INCURRED IN CONNECTION WITH SUCH ATTENDANCE INCLUDING, BUT NOT LIMITED TO, ALL TRAVELLING AND BOARD AND LODGING EXPENSES.

37.4 WHENEVER THE SUPPLIER IS READY TO CARRY OUT ANY SUCH TEST AND INSPECTION, IT SHALL GIVE A REASONABLE ADVANCE NOTICE, INCLUDING THE PLACE AND TIME, TO THE PROCURING ENTITY. THE SUPPLIER SHALL OBTAIN FROM ANY RELEVANT THIRD PARTY OR MANUFACTURER ANY NECESSARY PERMISSION OR CONSENT TO ENABLE THE PROCURING ENTITY OR ITS DESIGNATED REPRESENTATIVE TO ATTEND THE TEST AND/OR INSPECTION.

37.5 THE PROCURING ENTITY MAY REQUIRE THE SUPPLIER TO CARRY OUT ANY TEST AND/OR INSPECTION NOT REQUIRED BY THE CONTRACT BUT DEEMED NECESSARY TO VERIFY THAT THE CHARACTERISTICS AND PERFORMANCE OF THE GOODS COMPLY WITH THE TECHNICAL SPECIFICATIONS CODES AND STANDARDS UNDER THE CONTRACT, PROVIDED THAT THE SUPPLIER'S REASONABLE COSTS AND EXPENSES INCURRED IN THE CARRYING OUT OF SUCH TEST AND
/OR INSPECTION SHALL BE ADDED TO THE CONTRACT PRICE. FURTHER, IF SUCH TEST AND /OR INSPECTION IMPEDES THE PROGRESS OF MANUFACTURING AND/OR THE SUPPLIER'S PERFORMANCE OF ITS OTHER OBLIGATIONS UNDER THE CONTRACT, DUE ALLOWANCE WILL BE MADE IN RESPECT OF THE DELIVERY DATES AND COMPLETION DATES AND THE OTHER OBLIGATIONS SO AFFECTED.

37.6 THE SUPPLIER SHALL PROVIDE THE PROCURING ENTITY WITH A REPORT OF THE RESULTS OF ANY SUCH TEST AND/OR INSPECTION.

37.8 THE PROCURING ENTITY MAY REJECT ANY GOODS OR ANY PART THEREOF THAT FAIL TO PASS ANY TEST AND/OR INSPECTION OR DO NOT CONFORM TO THE SPECIFICATIONS. THE SUPPLIER SHALL EITHER RECTIFY OR REPLACE SUCH REJECTED GOODS OR PARTS THEREOF OR MAKE ALTERATIONS NECESSARY TO MEET THE SPECIFICATIONS AT NO COST TO THE PROCURING ENTITY, AND SHALL REPEAT THE TEST AND/OR INSPECTION, AT NO COST TO THE PROCURING ENTITY, UPON GIVING A NOTICE PURSUANT TO GCC SUB- CLAUSE 37.4.

37. 9 THE SUPPLIER AGREES THAT NEITHER THE EXECUTION OF A TEST AND/OR INSPECTION OF THE GOODS OR ANY PART THEREOF, NOR THE ATTENDANCE BY THE PROCURING ENTITY OR ITS REPRESENTATIVE, NOR THE ISSUE OF ANY REPORT PURSUANT TO GCC SUB-CLAUSE 37.6, SHALL RELEASE THE SUPPLIER FROM ANY WARRANTIES OR OTHER OBLIGATIONS UNDER THE CONTRACT.

38. LIQUIDATED DAMAGES

38.1 EXCEPT AS PROVIDED UNDER GCC CLAUSE 43, IF THE SUPPLIER FAILS TO DELIVER ANY OR ALL OF THE GOODS BY THE DATE(S) OF DELIVERY OR PERFORM THE RELATED SERVICES WITHIN THE PERIOD SPECIFIED IN THE CONTRACT, THE PROCURING ENTITY MAY WITHOUT PREJUDICE TO ALL ITS OTHER REMEDIES UNDER THE CONTRACT, DEDUCT FROM THE CONTRACT PRICE, AS LIQUIDATED DAMAGES, A SUM EQUIVALENT TO THE PERCENTAGE SPECIFIED IN THE SCC OF THE DELIVERED PRICE OF THE DELAYED GOODS OR UNPERFORMED SERVICES FOR EACH WEEK OR PART THEREOF OF DELAY UNTIL ACTUAL DELIVERY OR PERFORMANCE, UP TO A MAXIMUM DEDUCTION OF THE PERCENTAGE SPECIFIED IN THOSE SCC. ONCE THE MAXIMUM IS REACHED, THE PROCURING ENTITY MAY TERMINATE THE CONTRACT PURSUANT TO GCC CLAUSE 47.

39. WARRANTY

39.1 THE SUPPLIER WARRANTS THAT ALL THE GOODS ARE NEW, UNUSED, AND OF THE MO ST RECENT OR CURRENT MODELS, AND THAT THEY INCORPORATE ALL RECENT IMPROVEME NTS IN DESIGN AND MATERIALS, UNLESS PROVIDED OTHERWISE IN THE CONTRACT.

39.2 SUBJECT TO GCC SUB-CLAUSE 33.1
(B), THE SUPPLIER FURTHER WARRANTS THAT THE GOODS SHALL BE FREE FROM DEFECTS A RISING FROM ANY ACT OR OMISSION OF THE SUPPLIER OR ARISING FROM DESIGN, MATER IALS, AND WORKMANSHIP, UNDER NORMAL USE IN THE CONDITIONS PREVAILING IN THE COUNTRY OF FINAL DESTINATION.

39.3 UNLESS OTHERWISE SPECIFIED IN THE SCC, THE WARRANTY SHALL REMAIN VALID FOR TWELVE (12) MONTHS AFTER THE GOODS, OR ANY PORTION THEREOF AS THE CASE MAY BE, HAVE BEEN DELIVERED TO AND ACCEPTED AT THE FINAL DESTINATION INDICATED IN T HE SCC, OR FOR EIGHTEEN (18) MONTHS AFTER THE DATE OF SHIPMENT FROM THE PORT OR PLACE OF LOADING IN THE COUNTRY OF ORIGIN, WHICHEVER PERIOD CONCLUDES EA RLIER.

39.4 THE PROCURING ENTITY SHALL GIVE NOTICE TO THE SUPPLIER STATING THE NATURE OF ANY SUCH DEFECTS TOGETHER WITH ALL AVAILABLE EVIDENCE THEREOF, PROMPTLY FO LLOWING THE DISCOVERY THEREOF. THE PROCURING ENTITY SHALL AFFORD ALL REASONA BLE OPPORTUNITY FOR THE SUPPLIER TO INSPECT SUCH DEFECTS.

39.5 UPON RECEIPT OF SUCH NOTICE, THE SUPPLIER SHALL, WITHIN THE PERIOD SPECIFIED IN THE SCC, EXPEDITIOUSLY REPAIR OR REPLACE THE DEFECTIVE GOODS OR PARTS THERE OF, AT NO COST TO THE PROCURING ENTITY.

39.6 IF HAVING BEEN NOTIFIED, THE SUPPLIER FAILS TO REMEDY THE DEFECT WITHIN THE PERIOD SPECIFIED IN THE **SCC**, THE PROCURING ENTITY MAY PROCEED TO TAKE WITHIN A REASONABLE PERIOD SUCH REMEDIAL ACTION AS MAY BE NECESSARY , AT THE SUPPLIER'S RISK AND EXPENSE AND WITHOUT PREJUDICE TO ANY OTHER RIGHTS WHICH THE PROCURING ENTITY MAY HAVE AGAINST THE SUPPLIER UNDER THE CONTRACT.

40. PATENT INDEMNITY

40.1 THE SUPPLIER SHALL, SUBJECT TO THE PROCURING ENTITY'
S COMPLIANCE WITH GCC SUB-CLAUSE 40.2, INDEMNIFY AND HOLD HARMLESS THE PROCU RING ENTITY AND ITS EMPLOYEES AND OFFICERS FROM AND AGAINST ANY AND ALL SUITS , ACTIONS OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, LOSSES, DAMAGES, COST S, AND EXPENSES OF ANY NATURE, INCLUDING ATTORNEY'S FEES AND EXPENSES, WHICH T HE PROCURING ENTITY MAY SUFFER AS A RESULT OF ANY INFRINGEMENT OR ALLEGED INF RINGEMENT OF ANY PATENT, UTILITY MODEL, REGISTERED DESIGN, TRADEMARK, COPYRIGH T, OR OTHER INTELLECTUAL PROPERTY RIGHT REGISTERED OR OTHERWISE EXISTING AT TH E DATE OF THE CONTRACT BY REASON OF:

A) THE INSTALLATION OF THE GOODS BY THE SUPPLIER OR THE USE OF THE GOODS IN THE COUNTRY WHERE THE SITE IS LOCATED; AND
B) THE SALE IN ANY COUNTRY OF THE PRODUCTS PRODUCED BY THE GOODS.
SUCH INDEMNITY SHALL NOT COVER ANY USE OF THE GOODS OR ANY PART THEREOF OT HER THAN FOR THE PURPOSE INDICATED BY OR TO BE REASONABLY INFERRED FROM THE CONTRACT, NEITHER ANY INFRINGEMENT RESULTING FROM THE USE OF THE GOODS OR A NY PART THEREOF, OR ANY PRODUCTS PRODUCED THEREBY IN ASSOCIATION OR COMBINA TION WITH ANY OTHER EQUIPMENT, PLANT, OR MATERIALS NOT SUPPLIED BY THE SUPPLI ER, PURSUANT TO THE CONTRACT.

40.2 IF ANY PROCEEDINGS ARE BROUGHT OR ANY CLAIM IS MADE AGAINST THE PROCURIN G ENTITY ARISING OUT OF THE MATTERS REFERRED TO IN GCC SUB-CLAUSE 24 THE PROCU RING ENTITY SHALL PROMPTLY GIVE THE SUPPLIER A NOTICE THEREOF, AND THE SUPPLIER MAY AT ITS OWN EXPENSE AND IN THE PROCURING ENTITY'S NAME CONDUCT SUCH PRO CEEDINGS OR CLAIM AND ANY NEGOTIATIONS FOR THE SETTLEMENT OF ANY SUCH PROCE EDINGS OR CLAIM.

40.3 IF THE SUPPLIER FAILS TO NOTIFY THE PROCURING ENTITY WITHIN TWENTY-EIGHT (28) DAYS AFTER RECEIPT OF SUCH NOTICE THAT IT INTENDS TO CONDUCT ANY SUCH PROCEE DINGS OR CLAIM, THEN THE PROCURING ENTITY SHALL BE FREE TO CONDUCT THE SAME ON ITS OWN BEHALF.

40.4 THE PROCURING ENTITY SHALL, AT THE SUPPLIER'S REQUEST, AFFORD ALL AVAILABLE ASSISTANCE TO THE SUPPLIER IN CONDUCTING SUCH PROCEEDINGS OR CLAIM, AND SHAL L BE REIMBURSED BY THE SUPPLIER FOR ALL REASONABLE EXPENSES INCURRED IN SO DO ING.

40.5 THE PROCURING ENTITY SHALL INDEMNIFY AND HOLD HARMLESS THE SUPPLIER AND ITS EMPLOYEES, OFFICERS, AND SUB-CONTRACTORS FROM AND AGAINST ANY AND ALL SUITS, ACTIONS OR ADMINISTRATIVE PROCEEDINGS, CLAIMS, DEMANDS, LOSSES, DAMAGES, COSTS, AND EXPENSES OF ANY NATURE, INCLUDING ATTORNEY'S FEES AND EXPENSES, WHICH THE SUPPLIER MAY SUFFER AS A RESULT OF ANY INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, UTILITY MODEL, REGISTERED DESIGN, TRADEMARK, COPYRIGHT, OR OTHER INTELLECTUAL PROPERTY RIGHT REGISTERED OR OTHERWISE EXISTING AT THE DATE OF THE CONTRACT ARISING OUT OF OR IN CONNECTION WITH ANY DESIGN, DATA, DRAWING, SPECIFICATION, OR OTHER DOCUMENTS OR MATERIALS PROVIDED OR DESIGNED BY OR ON BEHALF OF THE PROCURING ENTITY.

41. LIMITATION OF LIABILITY

41.1 EXCEPT IN CASES OF CRIMINAL NEGLIGENCE OR WILLFUL MISCONDUCT,

A) THE SUPPLIER SHALL NOT BE LIABLE TO THE PROCURING ENTITY, WHETHER IN CONTRACT, TORT, OR OTHERWISE, FOR ANY INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE, LOSS OF USE, LOSS OF PRODUCTION, OR LOSS OF PROFITS OR INTEREST COSTS, PROVIDED THAT THIS EXCLUSION SHALL NOT APPLY TO ANY OBLIGATION OF THE SUPPLIER TO PAY LIQUIDATED DAMAGES TO THE PROCURING ENTITY, AND

B) THE AGGREGATE LIABILITY OF THE SUPPLIER TO THE PROCURING ENTITY, WHETHER UNDER THE CONTRACT, IN TORT OR OTHERWISE, SHALL NOT EXCEED THE TOTAL CONTRACT PRICE, PROVIDED THAT THIS LIMITATION SHALL NOT APPLY TO THE COST OF REPAIRING OR REPLACING DEFECTIVE EQUIPMENT, OR TO ANY OBLIGATION OF THE SUPPLIER TO INDEMNIFY THE PROCURING ENTITY WITH RESPECT TO PATENT INFRINGEMENT.

42. CHANGE IN LAWS AND REGULATIONS

42.1 UNLESS OTHERWISE SPECIFIED IN THE CONTRACT, IF AFTER THE DATE OF 30 DAYS PRI OR TO DATE OF TENDER SUBMISSION, ANY LAW, REGULATION, ORDINANCE, ORDER OR BY LAW HAVING THE FORCE OF LAW IS ENACTED, PROMULGATED, ABROGATED, OR CHANGED IN KENYA (WHICH SHALL BE DEEMED TO INCLUDE ANY CHANGE IN INTERPRETATION OR A PPLICATION BY THE COMPETENT AUTHORITIES) THAT SUBSEQUENTLY AFFECTS THE DELIVER Y DATE AND/OR THE CONTRACT PRICE, THEN SUCH DELIVERY DATE AND/OR CONTRACT PRI CE SHALL BE CORRESPONDINGLY INCREASED OR DECREASED, TO THE EXTENT THAT THE S UPPLIER HAS THEREBY BEEN AFFECTED IN THE PERFORMANCE OF ANY OF ITS OBLIGATION S UNDER THE CONTRACT. NOTWITHSTANDING THE FOREGOING, SUCH ADDITIONAL OR RED UCED COST SHALL NOT BE SEPARATELY PAID OR CREDITED IF THE SAME HAS ALREADY BE EN ACCOUNTED FOR IN THE PRICE ADJUSTMENT PROVISIONS WHERE APPLICABLE, IN ACCO RDANCE WITH GCC CLAUSE 26.

43. FORCE MAJEURE

43.1 THE SUPPLIER SHALL NOT BE LIABLE FOR FORFEITURE OF ITS PERFORMANCE SECURITY , LIQUIDATED DAMAGES, OR TERMINATION FOR DEFAULT IF AND TO THE EXTENT THAT ITS DELAY IN PERFORMANCE OR OTHER FAILURE TO PERFORM ITS OBLIGATIONS UNDER THE CONTRACT IS THE RESULT OF AN EVENT OF FORCE MAJEURE.

43.2 FOR PURPOSES OF THIS CLAUSE, “FORCE MAJEURE” MEANS AN EVENT OR SITUATION B EYOND THE CONTROL OF THE SUPPLIER THAT IS NOT FORESEEABLE, IS UNAVOIDABLE, AN D ITS ORIGIN IS NOT DUE TO NEGLIGENCE OR LACK OF CARE ON THE PART OF THE SUPP LIER. SUCH EVENTS MAY INCLUDE, BUT NOT BE LIMITED TO, ACTS OF THE PROCURING EN TITY IN ITS SOVEREIGN CAPACITY, WARS OR REVOLUTIONS, FIRES, FLOODS, EPIDEMICS, QU ARANTINE RESTRICTIONS, AND FREIGHT EMBARGOES.

43.3 IF A FORCE MAJEURE SITUATION ARISES, THE SUPPLIER SHALL PROMPTLY NOTIFY THE PROCURING ENTITY IN WRITING OF SUCH CONDITION AND THE CAUSE THEREOF. UNLESS OTHERWISE DIRECTED BY THE PROCURING ENTITY IN WRITING, THE SUPPLIER SHALL CONTI NUE TO PERFORM ITS OBLIGATIONS UNDER THE CONTRACT AS FAR AS IS REASONABLY PR ACTICAL, AND SHALL SEEK ALL REASONABLE ALTERNATIVE MEANS FOR PERFORMANCE NOT PREVENTED BY THE FORCE MAJEURE EVENT.

44. CHANGE ORDERS AND CONTRACT AMENDMENTS

44.1 THE PROCURING ENTITY MAY AT ANY TIME ORDER THE SUPPLIER THROUGH NOTICE IN ACCORDANCE GCC CLAUSE 12, TO MAKE CHANGES WITHIN THE GENERAL SCOPE OF THE CONTRACT IN ANY ONE OR MORE OF THE FOLLOWING:

A) DRAWINGS, DESIGNS, OR SPECIFICATIONS, WHERE GOODS TO BE FURNISHED UNDER THE CONTRACT ARE TO BE SPECIFICALLY MANUFACTURED FOR THE PROCURING ENTITY;
B) THE METHOD OF SHIPMENT OR PACKING;
C) THE PLACE OF DELIVERY; AND
D) THE RELATED SERVICES TO BE PROVIDED BY THE SUPPLIER.

44.2 IF ANY SUCH CHANGE CAUSES AN INCREASE OR DECREASE IN THE COST OF, OR THE TIME REQUIRED FOR, THE SUPPLIER'S PERFORMANCE OF ANY PROVISIONS UNDER THE CONTRACT, AN EQUITABLE ADJUSTMENT SHALL BE MADE IN THE CONTRACT PRICE OR IN THE DELIVERY/COMPLETION SCHEDULE, OR BOTH, AND THE CONTRACT SHALL ACCORDINGLY BE AMENDED. ANY CLAIMS BY THE SUPPLIER FOR ADJUSTMENT UNDER THIS CLAUSE MUST BE ASSERTED WITHIN TWENTY-EIGHT (28) DAYS FROM THE DATE OF THE SUPPLIER'S RECEIPT OF THE PROCURING ENTITY'S CHANGE ORDER.

44.3 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.

45. VALUE ENGINEERING:

45.1 THE SUPPLIER MAY PREPARE, AT ITS OWN COST, A VALUE ENGINEERING PROPOSAL AT ANY TIME DURING THE PERFORMANCE OF THE CONTRACT. THE VALUE ENGINEERING PROPOSAL SHALL, AT A MINIMUM, INCLUDE THE FOLLOWING;

A) THE PROPOSED CHANGE
(S), AND A DESCRIPTION OF THE DIFFERENCE TO THE EXISTING CONTRACT REQUIREMENTS;
B) A FULL COST/BENEFIT ANALYSIS OF THE PROPOSED CHANGE(S) INCLUDING A DESCRIPTION AND ESTIMATE OF COSTS (INCLUDING LIFE CYCLE COSTS) THE PROCURING ENTITY MAY INCUR IN IMPLEMENTING THE VALUE ENGINEERING PROPOSAL; AND
C) A DESCRIPTION OF ANY EFFECT(S) OF THE CHANGE ON PERFORMANCE/FUNCTIONALITY.

45.2 THE PROCURING ENTITY MAY ACCEPT THE VALUE ENGINEERING PROPOSAL IF THE PROPOSAL DEMONSTRATES BENEFITS THAT:
A) ACCELERATES THE DELIVERY PERIOD; OR
B) REDUCES THE CONTRACT PRICE OR THE LIFE CYCLE COSTS TO THE PROCURING ENTITY; OR
C) IMPROVES THE QUALITY, EFFICIENCY OR SUSTAINABILITY OF THE GOODS; OR
D) YIELDS ANY OTHER BENEFITS TO THE PROCURING ENTITY, WITHOUT COMPROMISING THE NECESSARY FUNCTIONS OF THE FACILITIES.

45.3 IF THE VALUE ENGINEERING PROPOSAL IS APPROVED BY THE PROCURING ENTITY AND RESULTS IN:
A) A REDUCTION OF THE CONTRACT PRICE; THE AMOUNT TO BE PAID TO THE SUPPLIER SHALL BE THE PERCENTAGE SPECIFIED IN THE SCC OF THE REDUCTION IN THE CONTRACT PRICE; OR
B) AN INCREASE IN THE CONTRACT PRICE; BUT RESULTS IN A REDUCTION IN LIFE CYCLE COSTS DUE TO ANY BENEFIT DESCRIBED IN 45.2 (A) TO (D) ABOVE, THE AMOUNT TO BE PAID TO THE SUPPLIER SHALL BE THE FULL INCREASE IN THE CONTRACT PRICE.

45.4 SUBJECT TO THE ABOVE, NO VARIATION IN OR MODIFICATION OF THE TERMS OF THE CONTRACT SHALL BE MADE EXCEPT BY WRITTEN AMENDMENT SIGNED BY THE PARTIES.

46. EXTENSIONS OF TIME

46.1 IF AT ANY TIME DURING PERFORMANCE OF THE CONTRACT, THE SUPPLIER OR ITS SUBCONTRACTORS SHOULD ENCOUNTER CONDITIONS IMPEDING TIMELY DELIVERY OF THE GOODS OR COMPLETION OF RELATED SERVICES PURSUANT TO GCC CLAUSE 43, THE SUPPLIER SHALL PROMPTLY NOTIFY THE PROCURING ENTITY IN WRITING OF THE DELAY, ITS LIKELY DURATION, AND ITS CAUSE. AS SOON AS PRACTICABLE AFTER RECEIPT OF THE SUPPLIER'S NOTICE, THE PROCURING ENTITY SHALL EVALUATE THE SITUATION AND MAY AT ITS DISCRETION EXTEND THE SUPPLIER'S TIME FOR PERFORMANCE, IN WHICH CASE THE EXTENSION SHALL BE RATIFIED BY THE PARTIES BY AMENDMENT OF THE CONTRACT.
46.2 EXCEPT IN CASE OF FORCE MAJEURE, AS PROVIDED UNDER GCC CLAUSE 43, A DELAY BY THE SUPPLIER IN THE PERFORMANCE OF ITS DELIVERY AND COMPLETION OBLIGATIONS SHALL RENDER THE SUPPLIER LIABLE TO THE IMPOSITION OF LIQUIDATED DAMAGES PURSUANT TO GCC CLAUSE 37, UNLESS AN EXTENSION OF TIME IS AGREED UPON, PURSUANT TO GCC SUB-CLAUSE 46.1.

47. TERMINATION

47.1 TERMINATION FOR DEFAULT

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A) THE PROCURING ENTITY, WITHOUT PREJUDICE TO ANY OTHER REMEDY FOR BREACH O F CONTRACT, BY WRITTEN NOTICE OF DEFAULT SENT TO THE SUPPLIER, MAY TERMINATE T HE CONTRACT IN WHOLE OR IN PART:

I) IF THE SUPPLIER FAILS TO DELIVER ANY OR ALL OF THE GOODS WITHIN THE PERIOD S PECIFIED IN THE CONTRACT, OR WITHIN ANY EXTENSION THEREOF GRANTED BY THE PROC URING ENTITY PURSUANT TO GCC CLAUSE 46;

II) IF THE SUPPLIER FAILS TO PERFORM ANY OTHER OBLIGATION UNDER THE CONTRACT; OR

III) IF THE SUPPLIER, IN THE JUDGMENT OF THE PROCURING ENTITY HAS ENGAGED IN FR AUD AND CORRUPTION, AS DEFINED IN CLAUSE 4 OF THE GCC AND APPENDIX 1 IN COMPETING FOR OR IN EXECUTING THE CONTRACT.

B) IN THE EVENT THE PROCURING ENTITY TERMINATES THE CONTRACT IN WHOLE OR IN PART, PURSUANT TO GCC CLAUSE 47.1(A), THE PROCURING ENTITY MAY PROCURE, UPON S UCH TERMS AND IN SUCH MANNER AS IT DEEMS APPROPRIATE, GOODS OR RELATED SERV ICES SIMILAR TO THOSE UNDELIVERED OR NOT PERFORMED, AND THE SUPPLIER SHALL BE LIABLE TO THE PROCURING ENTITY FOR ANY ADDITIONAL COSTS FOR SUCH SIMILAR GOO DS OR RELATED SERVICES. HOWEVER, THE SUPPLIER SHALL CONTINUE PERFORMANCE OF T HE CONTRACT TO THE EXTENT NOT TERMINATED.

47.2 TERMINATION FOR INSOLVENCY

THE PROCURING ENTITY MAY AT ANY TIME TERMINATE THE CONTRACT BY GIVING NOTICE TO THE SUPPLIER IF THE SUPPLIER BECOMES BANKRUPT OR OTHERWISE INSOLVENT. IN SU CH EVENT, TERMINATION WILL BE WITHOUT COMPENSATION TO THE SUPPLIER, PROVIDED THAT SUCH TERMINATION WILL NOT PREJUDICE OR AFFECT ANY RIGHT OF ACTION OR RE MEDY THAT HAS ACCRUED OR WILL ACCRUE THEREAFTER TO THE PROCURING ENTITY.

47.3 TERMINATION FOR CONVENIENCE.

A) THE PROCURING ENTITY, BY NOTICE SENT TO THE SUPPLIER, MAY TERMINATE THE CONTRACT, IN WHOLE OR IN PART, AT ANY TIME FOR ITS CONVENIENCE. THE NOTICE OF TERMINATION SHALL SPECIFY THAT TERMINATION IS FOR THE PROCURING ENTITY'S CONVENIENCE, THE EXTENT TO WHICH PERFORMANCE OF THE SUPPLIER UNDER THE CONTRACT IS TERMINATED, AND THE DATE UPON WHICH SUCH TERMINATION BECOMES EFFECTIVE.

B) THE GOODS THAT ARE COMPLETE AND READY FOR SHIPMENT WITHIN TWENTY-EIGHT (28) DAYS AFTER THE SUPPLIER'S RECEIPT OF NOTICE OF TERMINATION SHALL BE ACCEPTED BY THE PROCURING ENTITY AT THE CONTRACT TERMS AND PRICES. FOR THE REMAINING GOODS, THE PROCURING ENTITY MAY ELECT:

I) TO HAVE ANY PORTION COMPLETED AND DELIVERED AT THE CONTRACT TERMS AND PRICES; AND/OR

II) TO CANCEL THE REMAINDER AND PAY TO THE SUPPLIER AN AGREED AMOUNT FOR PARTIALLY COMPLETED GOODS AND RELATED SERVICES AND FOR MATERIALS AND PARTS PREVIOUSLY PROCURED BY THE SUPPLIER.

48. ASSIGNMENT

NEITHER THE PROCURING ENTITY NOR THE SUPPLIER SHALL ASSIGN, IN WHOLE OR IN PART, THEIR OBLIGATIONS UNDER THIS CONTRACT, EXCEPT WITH PRIOR WRITTEN CONSENT OF THE OTHER PARTY.

49. EXPORT RESTRICTION

NOTWITHSTANDING ANY OBLIGATION UNDER THE CONTRACT TO COMPLETE ALL EXPORT FORMALITIES, ANY EXPORT RESTRICTIONS ATTRIBUTABLE TO THE PROCURING ENTITY, TO KENYA, OR TO THE USE OF THE PRODUCTS/GOODS, SYSTEMS OR SERVICES TO BE SUPPLIED, WHICH ARISE FROM TRADE REGULATIONS FROM A COUNTRY SUPPLYING THOSE PRODUCTS/GOODS, SYSTEMS OR SERVICES, AND WHICH SUBSTANTIALLY IMPEDE THE SUPPLIER FROM MEETING ITS OBLIGATIONS UNDER THE CONTRACT, SHALL RELEASE THE SUPPLIER FROM THE OBLIGATION TO PROVIDE DELIVERIES OR SERVICES, ALWAYS PROVIDED, HOWEVER, THAT THE SUPPLIER CAN DEMONSTRATE TO THE SATISFACTION OF THE PROCURING ENTITY THAT IT HAS COMPLETED ALL FORMALITIES IN A TIMELY MANNER, INCLUDING APPLYING FOR PERMITS, AUTHORIZATIONS AND LICENSES NECESSARY FOR THE EXPORT OF THE PRODUCTS/GOODS, SYSTEMS OR SERVICES UNDER THE TERMS OF THE CONTRACT. TERMINATION OF THE CONTRACT ON THIS BASIS SHALL BE FOR THE PROCURING ENTITY'S CONVENIENCE PURSUANT TO SUB-CLAUSE 47.3.

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SECTION VII - SPECIAL CONDITIONS OF CONTRACT (SCC)

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Special Conditions of Contract (SCC)

	GCC Reference & SCC Detail	Filled By	Value to be Auto Populated in Tender Document
GCC Reference	**1. DEFINITIONS** K) "PROCURING ENTITY" MEANS THE PROCURING ENTITY PURCHASING THE GOODS AND RELATED SERVICES, AS SPECIFIED IN THE **SCC.**	-	-
SCC Detail	THE PROCURING ENTITY IS: ..... *[INSERT COMPLETE LEGAL NAME OF THE PROCURING ENTITY]*	Auto Populate	4423 NANDI - COUNTY ASSEMBLY
GCC Reference	**2. INTERPRETATION** 2.2. INCOTERMS A) UNLESS INCONSISTENT WITH ANY PROVISION OF THE CONTRACT, THE MEANING OF ANY TRADE TERM AND THE RIGHTS AND OBLIGATIONS OF PARTIES THEREUNDER SHALL BE AS PRESCRIBED BY INCOTERMS SPECIFIED IN THE **SCC.**	-	-

SCC Detail	A) THE MEANING OF THE TRADE TERMS SHALL BE AS PRESCRIBED BY INCOTERMS. IF THE MEANING OF ANY TRADE TERM AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES THEREUNDER SHALL NOT BE AS PRESCRIBED BY INCOTERMS, THEY SHALL BE AS PRESCRIBED BY: [EXCEPTIONAL; REFER TO OTHER INTERNATIONALLY ACCEPTED TRADE TERMS]	Manual Input	
GCC Reference	B) THE TERMS EXW[EX-WORKS] AND CIP [CARRIAGE AND INSURANCE PAID] AND OTHER SIMILAR TERMS, WHEN USED, SHALL BE GOVERNED BY THE RULES PRESCRIBED IN THE CURRENT EDITION OF INCOTERMS SPECIFIED IN THE **SCC** AND PUBLISHED BY THE INTERNATIONAL CHAMBER OF COMMERCE IN PARIS, FRANCE.	-	-
SCC Detail	B) THE VERSION EDITION OF INCOTERMS SHALL BE INCOTERMS ….[INSERT THE YEAR OF THE LATEST EDITION/VERSION OF INCOTERMS]	Manual Input	
GCC Reference	**12. NOTICES** 12.1 ANY NOTICE GIVEN BY ONE PARTY TO THE OTHER PURSUANT TO THE CONTRACT SHALL BE IN WRITING TO THE ADDRESS SPECIFIED IN THE **SCC.**	-	-
SCC Detail	FOR NOTICES, THE PROCURING ENTITY'S ADDRESS SHALL BE: …….	Auto Populate	https://egpkenya.go.ke/login

GCC Reference	**19. PLACE OF ARBITRATION** THE PLACE OF ARBITRATION SHALL BE A L OCATION SPECIFIED IN THE **SCC;** AND THE ARBITRATION SHALL BE CONDUCTED IN THE LANGUAGE FOR COMMUNICATIONS DEFINE D IN SUB- CLAUSE 9.1 [LAW AND LANGUAGE].	-	-
SCC Detail	THE PLACE OF ARBITRATION SHALL BE ---------- (SPECIFY CITY AND COUNTRY).	Manual Input	
GCC Reference	**24. DELIVERY AND DOCUMENTS** DELIVERY OF THE GOODS AND COMPLETION OF THE RELATED SERVICES SHALL BE IN AC CORDANCE WITH THE LIST OF GOODS AND DELIVERY SCHEDULE SPECIFIED IN THE SUPP LY REQUIREMENTS. THE DETAILS OF SHIPPIN G AND OTHER DOCUMENTS TO BE FURNISH ED BY THE SUPPLIER ARE SPECIFIED IN THE **SCC.**	-	-

SCC Detail	DETAILS OF SHIPPING AND OTHER DOCUMENTS TO BE FURNISHED BY THE SUPPLIER ARE …… [INSERT THE REQUIRED DOCUMENTS, SUCH AS A NEGOTIABLE BILL OF LADING, A NON-NEGOTIABLE SEA WAY BILL, AN AIRWAY BILL, A RAILWAY CONSIGNMENT NOTE, A ROAD CONSIGNMENT NOTE, INSURANCE CERTIFICATE, MANUFACTURER'S OR SUPPLIER' S WARRANTY CERTIFICATE, INSPECTION CERTIFICATE ISSUED BY NOMINATED INSPECTION AGENCY, SUPPLIER'S FACTORY SHIPPING DETAILS ETC.]. 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.	Manual Input	
GCC Reference	**26. CONTRACT PRICE** 26.1 PRICES CHARGED BY THE SUPPLIER FOR THE GOODS SUPPLIED AND THE RELATED S ERVICES PERFORMED UNDER THE CONTRACT SHALL NOT VARY FROM THE PRICES QUOTE D BY THE SUPPLIER IN ITS TENDER, WITH T HE EXCEPTION OF ANY PRICE ADJUSTMENTS AUTHORIZED IN THE **SCC.**	-	-

SCC Detail	THE PRICES CHARGED FOR THE GOODS SUPPLIED AND THE RELATED SERVICES PERFORMED [INSERT "SHALL" OR "SHALL NOT," AS APPROPRIATE] BE ADJUSTABLE. IF PRICES ARE ADJUSTABLE, THE FOLLOWING METHOD SHALL BE USED TO CALCULATE THE PRICE ADJUSTMENT [SEE ATTACHMENT TO THESE SCC FOR A SAMPLE PRICE ADJUSTMENT FORMULA]	Manual Input	
GCC Reference	**27. TERMS OF PAYMENT** 27.1 THE SUPPLIER SHALL REQUEST FOR PAY MENT BY SUBMITTING INVOICE (S), DELIVERY NOTE(S) AND ANY OTHER REL EVANT DOCUMENTS. THE METHOD AND CONDITIONS OF PAYMENT TO BE MADE TO THE SUPPLIER SHALL BE AS SPECIFIED IN THE SCC.	-	-
SCC Detail	SAMPLE PROVISION GCC 27.1—THE METHOD AND CONDITIONS OF PAYMENT TO BE MADE TO THE SUPPLIER UNDER THIS CONTRACT SHALL BE AS FOLLOWS: (I) PAYMENT FOR GOODS SUPPLIED FROM ABROAD: PAYMENT OF FOREIGN CURRENCY PORTION SHALL BE MADE IN [INSERT CURRENCY OF THE CONTRACT PRICE] IN THE FOLLOWING MANNER:	Manual Input	

(II) ADVANCE PAYMENT: TEN (10) PERCENT OF THE CONTRACT PRICE SHALL BE PAID WITHIN THIRTY (30) DAYS OF SIGNING OF THE CONTRACT, AND UPON SUBMISSION OF CLAIM AND A BANK GUARANTEE FOR EQUIVALENT AMOUNT VALID UNTIL THE GOODS ARE DELIVERED AND, IN THE FORM, PROVIDED IN THE TENDERING DOCUMENT OR ANOTHER FORM ACCEPTABLE TO THE PROCURING ENTITY.

(III) ON SHIPMENT: EIGHTY (80) PERCENT OF THE CONTRACT PRICE OF THE GOODS SHIPPED SHALL BE PAID THROUGH IRREVOCABLE CONFIRMED LETTER OF CREDIT OPENED IN FAVOUR OF THE SUPPLIER IN A BANK IN ITS COUNTRY, UPON SUBMISSION OF DOCUMENTS SPECIFIED IN GCC CLAUSE 23.

(IV) ON ACCEPTANCE: TEN (10) PERCENT OF THE CONTRACT PRICE OF GOODS RECEIVED SHALL BE PAID WITHIN THIRTY (30) DAYS OF RECEIPT OF THE GOODS UPON SUBMISSION OF CLAIM SUPPORTED BY THE ACCEPTANCE CERTIFICATE ISSUED BY THE PROCURING ENTITY.

B. PAYMENT OF LOCAL CURRENCY PORTION OF A FOREIGN SUPPLIER SHALL BE MADE IN KENYA SHILLINGS WITHIN THIRTY (30) DAYS OF PRESENTATION OF CLAIM SUPPORTED BY A CERTIFICATE FROM THE PROCURING ENTITY DECLARING THAT THE GOODS HAVE BEEN DELIVERED AND THAT ALL OTHER CONTRACTED SERVICES HAVE BEEN PERFORMED.

C. PAYMENT FOR GOODS AND SERVICES SUPPLIED FROM WITHIN KENYA:

	PAYMENT FOR GOODS AND SERVICES SUPPLIED FROM WITHIN KENYA SHALL BE MADE IN _____ [CURRENCY], AS FOLLOWS: (I) ADVANCE PAYMENT: TEN (10) PERCENT OF THE CONTRACT PRICE SHALL BE PAID WITHIN THIRTY (30) DAYS OF SIGNING OF THE CONTRACT AGAINST AN INVOICE AND A BANK GUARANTEE FOR THE EQUIVALENT AMOUNT AND IN THE FORM PROVIDED IN THE TENDERING DOCUMENT OR ANOTHER FORM ACCEPTABLE TO THE PROCURING ENTITY. (II) ON DELIVERY: EIGHTY (80) PERCENT OF THE CONTRACT PRICE SHALL BE PAID ON RECEIPT OF THE GOODS AND UPON SUBMISSION OF THE DOCUMENTS SPECIFIED IN GCC CLAUSE 24. THE BANK GUARANTEE SHALL THEN BE RELEASED. (III) ON ACCEPTANCE: THE REMAINING TEN (10) PERCENT OF THE CONTRACT PRICE SHALL BE PAID TO THE SUPPLIER WITHIN THIRTY (30) DAYS AFTER THE DATE OF THE ACCEPTANCE CERTIFICATE FOR THE RESPECTIVE DELIVERY ISSUED BY THE PROCURING ENTITY		
GCC Reference	27.3 WHERE A PROCURING ENTITY REJECTS GOODS AND RELATED SERVICES, IN PART O R WHOLLY, THE PROCURING ENTITY SHALL PROMPTLY INFORM THE SUPPLIER TO COLL ECT, REPLACE OR RECTIFY AS APPROPRIATE AND GIVE REASONS FOR REJECTION. THE SU PPLIER SHALL SUBMIT A FRESH INVOICE, DE LIVERY NOTE AND ANY OTHER RELEVANT D OCUMENTS AS SPECIFIED IN THE **SCC.**	-	-

SCC Detail	OTHER RELEVANT DOCUMENTS SHALL INCLUDE..... [SPECIFY]	Manual Input	
GCC Reference	27.5 IN THE EVENT THAT THE PROCURING ENTITY FAILS TO PAY THE SUPPLIER ANY PA YMENT BY ITS DUE DATE OR WITHIN THE P ERIOD SET FORTH IN THE **SCC,** PROCURING ENTITY SHALL PAY INTEREST ON OVERDUE AMOUNT IN ACCORDANCE WITH PREVAILING MEAN COMMERCIAL LENDING RATE AS DETERMINED BY THE CENTRAL BANK OF KENYA , FOR THE PERIOD OF DELAY UNTIL PAYME NT HAS BEEN MADE IN FULL, WHETHER BEF ORE OR AFTER JUDGMENT OR ARBITRAGE A WARD.	-	-
SCC Detail	THE PAYMENT-DELAY PERIOD AFTER WHICH THE PROCURING ENTITY MAY PAY INTEREST TO THE SUPPLIER SHALL BE [INSERT NUMBER] DAYS.	Manual Input	
GCC Reference	**29. PERFORMANCE SECURITY** 29.1 IF REQUIRED AS SPECIFIED IN THE SCC, THE SUPPLIER SHALL, WITHIN TWENTY-ONE (21) DAYS OF THE LETTER OF AWARD, P ROVIDE A PERFORMANCE SECURITY FOR THE PERFORMANCE OF THE CONTRACT IN THE AMOUNT SPECIFIED IN THE **SCC**.	-	-

SCC Detail	A PERFORMANCE SECURITY..... [INSERT "SHALL" OR "SHALL NOT" BE REQUIRED] [IF A PERFORMANCE SECURITY IS REQUIRED, INSERT "THE AMOUNT OF THE PERFORMANCE SECURITY SHALL BE: [INSERT AMOUNT] [THE AMOUNT OF THE PERFORMANCE SECURITY IS USUALLY EXPRESSED AS A PERCENTAGE OF THE CONTRACT PRICE. THE PERCENTAGE VARIES ACCORDING TO THE PROCURING ENTITY'S PERCEIVED RISK AND IMPACT OF NON-PERFORMANCE BY THE SUPPLIER. A 10% PERCENTAGE IS USED UNDER NORMAL CIRCUMSTANCES]	Manual Input	
GCC Reference	29.3 THE PERFORMANCE SECURITY, IF REQUIRED, SHALL BE DENOMINATED IN THE CURRENCY(IES) OF THE CONTRACT, OR IN A FREELY CONVERTIBLE CURRENCY ACCEPTABLE TO THE PROCURING ENTITY AS SPECIFIED IN THE **SCC;** AND SHALL BE IN THE FORM OF A DEMAND GUARANTEE IN THE FORMAT STIPULATED IN THE TENDER DOCUMENT.	-	-

SCC Detail	IF REQUIRED, THE PERFORMANCE SECURITY SHALL BE IN THE FORM OF: ..... [INSERT "A DEMAND GUARANTEE"] IF REQUIRED, THE PERFORMANCE SECURITY SHALL BE DENOMINATED IN ..... [INSERT "A FREELY CONVERTIBLE CURRENCY ACCEPTABLETO THE PROCURING ENTITY" OR "THE CURRENCIES OF PAYMENT OF THE CONTRACT, IN ACCORDANCE WITH THEIR PORTIONS OF THE CONTRACT PRICE"]	Manual Input	
GCC Reference	29.4 THE PERFORMANCE SECURITY SHALL BE DISCHARGED BY THE PROCURING ENTITY AND RETURNED TO THE SUPPLIER NOT LATER THAN THIRTY (30) DAYS FOLLOWING THE DATE OF COMPLETION OF THE SUPPLIER'S PERFORMANCE OBLIGATIONS UNDER THE CONTRACT, INCLUDING ANY WARRANTY OBLIGATIONS, UNLESS SPECIFIED OTHERWISE IN THE **SCC.**	-	-
SCC Detail	DISCHARGE OF THE PERFORMANCE SECURITY SHALL TAKE PLACE:..... [INSERT NUMBER OF DAYS IF DIFFERENT FROM THE ONE INDICATED IN SUB CLAUSE GCC 29.4] DAYS AFTER THE DATE OF COMPLETION OF THE SUPPLIER'S PERFORMANCE OBLIGATIONS UNDER THE CONTRACT	Manual Input	

GCC Reference	**31. CONFIDENTIAL INFORMATION** A) THE PROCURING ENTITY OR SUPPLIER NEED TO SHARE WITH OTHER ARMS OF GOVERNMENT OR OTHER BODIES PARTICIPATING IN THE FINANCING OF THE CONTRACT; SUCH PARTIES SHALL BE DISCLOSED IN THE SCC;	-	-
SCC Detail	THE ARMS OF GOVERNMENT .... THE BODIES PARTICIPATING IN THE FINANCING OF THE CONTRACT ARE.....	Manual Input	
GCC Reference	**34. PACKING AND DOCUMENTS** 34.2 THE PACKING, MARKING, AND DOCUMENTATION WITHIN AND OUTSIDE THE PACKAGES SHALL COMPLY STRICTLY WITH SUCH SPECIAL REQUIREMENTS AS SHALL BE EXPRESSLY PROVIDED FOR IN THE CONTRACT, INCLUDING ADDITIONAL REQUIREMENTS, IF ANY, SPECIFIED IN THE SCC, AND IN ANY OTHER INSTRUCTIONS ORDERED BY THE PROCURING ENTITY	-	-
SCC Detail	THE PACKING, MARKING AND DOCUMENTATION WITHIN AND OUTSIDE THE PACKAGES SHALL BE: ..... [INSERT IN DETAIL THE TYPE OF PACKING REQUIRED, THE MARKINGS IN THE PACKING AND ALL DOCUMENTATION REQUIRED]	Manual Input	

GCC Reference	**35. INSURANCE** 35.1 THE GOODS SUPPLIED UNDER THE CONTRACT SHALL BE FULLY INSURED WITH AN INSURANCE COMPANY REGISTERED IN KENYA AGAINST LOSS OR DAMAGE INCIDENTAL TO MANUFACTURE OR ACQUISITION, TRANSPORTATION, STORAGE, AND DELIVERY, IN ACCORDANCE WITH THE APPLICABLE INCOTERMS OR IN THE MANNER SPECIFIED IN THE **SCC.**	-	-
SCC Detail	THE INSURANCE COVERAGE SHALL BE AS SPECIFIED IN THE INCOTERMS..... IF NOT IN ACCORDANCE WITH INCOTERMS, INSURANCE SHALL BE AS FOLLOWS: ..... [INSERT SPECIFIC INSURANCE PROVISIONS AGREED UPON, INCLUDING COVERAGE, CURRENCY AND AMOUNT]	Manual Input	
GCC Reference	**36. TRANSPORTATION AND INCIDENTAL SERVICES** 36.1 UNLESS OTHERWISE SPECIFIED IN THE **SCC,** RESPONSIBILITY FOR ARRANGING TRANSPORTATION OF THE GOODS SHALL BE IN ACCORDANCE WITH THE SPECIFIED INCOTERMS.	-	-

SCC Detail	RESPONSIBILITY FOR TRANSPORTATION OF THE GOODS SHALL BE AS SPECIFIED IN THE INCOTERMS. IF NOT IN ACCORDANCE WITH INCOTERMS, RESPONSIBILITY FOR TRANSPORTATIONS SHALL BE AS FOLLOWS: *[INSERT "THE SUPPLIER IS REQUIRED UNDER THE CONTRACT TO TRANSPORT THE GOODS TO A SPECIFIED PLACE OF FINAL DESTINATION WITHIN* KENYA, *DEFINED AS THE PROJECT SITE, TRANSPORT TO SUCH PLACE OF DESTINATION IN* KENYA, *INCLUDING INSURANCE AND STORAGE, AS SHALL BE SPECIFIED IN THE CONTRACT, SHALL BE ARRANGED BY THE SUPPLIER, AND RELATED COSTS SHALL BE INCLUDED IN THE CONTRACT PRICE"; OR ANY OTHER AGREED UPON TRADE TERMS (SPECIFY THE RESPECTIVE RESPONSIBILITIES OF THE PROCURING ENTITY AND THE SUPPLIER)]*	Manual Input	
GCC Reference	36.2 THE SUPPLIER MAY BE REQUIRED TO P ROVIDE ANY OR ALL OF THE FOLLOWING S ERVICES, INCLUDING ADDITIONAL SERVICES, IF ANY, SPECIFIED IN **SCC:**	-	-
SCC Detail	INCIDENTAL SERVICES TO BE PROVIDED ARE: ……. [SELECTED SERVICES COVERED UNDER GCC CLAUSE 36.2 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.]	Manual Input	

GCC Reference	**37. INSPECTIONS AND TESTS** 37.1 THE SUPPLIER SHALL AT ITS OWN EXPENSE AND AT NO COST TO THE PROCURING ENTITY CARRY OUT ALL SUCH TESTS AND/OR INSPECTIONS OF THE GOODS AND RELATED SERVICES AS ARE SPECIFIED IN THE SCC.	-	-
SCC Detail	THE INSPECTIONS AND TESTS SHALL BE: ..... [INSERT NATURE, FREQUENCY, PROCEDURES FOR CARRYING OUT THE INSPECTIONS AND TESTS]	Manual Input	
GCC Reference	37.2 THE INSPECTIONS AND TESTS MAY BE CONDUCTED ON THE PREMISES OF THE SUPPLIER OR ITS SUBCONTRACTOR, AT POINT OF DELIVERY, AND/OR AT THE GOODS' FINAL DESTINATION, OR IN ANOTHER PLACE IN KENYA AS SPECIFIED IN THE SCC. SUBJECT TO GCC SUB-CLAUSE 37.3, IF CONDUCTED ON THE PREMISES OF THE SUPPLIER OR ITS SUBCONTRACTOR, ALL REASONABLE FACILITIES AND ASSISTANCE, INCLUDING ACCESS TO DRAWINGS AND PRODUCTION DATA, SHALL BE FURNISHED TO THE INSPECTORS AT NO CHARGE TO THE PROCURING ENTITY.	-	-
SCC Detail	THE INSPECTIONS AND TESTS SHALL BE CONDUCTED AT: ..... [INSERT NAME(S) OF LOCATION(S)]	Manual Input	

GCC Reference	**38. LIQUIDATED DAMAGES** 38.1 EXCEPT AS PROVIDED UNDER GCC CLAUSE 43, IF THE SUPPLIER FAILS TO DELIVER ANY OR ALL OF THE GOODS BY THE DATE(S) OF DELIVERY OR PERFORM THE RELATED SERVICES WITHIN THE PERIOD SPECIFIED IN THE CONTRACT, THE PROCURING ENTITY MAY WITHOUT PREJUDICE TO ALL ITS OTHER REMEDIES UNDER THE CONTRACT, DEDUCT FROM THE CONTRACT PRICE, AS LIQUIDATED DAMAGES, A SUM EQUIVALENT TO THE PERCENTAGE SPECIFIED IN THE SCC OF THE DELIVERED PRICE OF THE DELAYED GOODS OR UNPERFORMED SERVICES FOR EACH WEEK OR PART THEREOF OF DELAY UNTIL ACTUAL DELIVERY OR PERFORMANCE, UP TO A MAXIMUM DEDUCTION OF THE PERCENTAGE SPECIFIED IN THOSE SCC. ONCE THE MAXIMUM IS REACHED, THE PROCURING ENTITY MAY TERMINATE THE CONTRACT PURSUANT TO GCC CLAUSE 47.	-	-
SCC Detail	THE LIQUIDATED DAMAGE SHALL BE:..... [INSERT NUMBER] % PER WEEK	Manual Input	
SCC Detail	THE MAXIMUM AMOUNT OF LIQUIDATED DAMAGES SHALL BE:..... [INSERT NUMBER] % OF THE CONTRACT PRICE	Manual Input	

GCC Reference	**39. WARRANTY** 39.3 UNLESS OTHERWISE SPECIFIED IN THE SCC, THE WARRANTY SHALL REMAIN VALID FOR TWELVE (12) MONTHS AFTER THE GOODS, OR ANY PORTION THEREOF AS THE CASE MAY BE, HAVE BEEN DELIVERED TO AND ACCEPTED AT THE FINAL DESTINATION INDICATED IN THE SCC, OR FOR EIGHTEEN (18) MONTHS AFTER THE DATE OF SHIPMENT FROM THE PORT OR PLACE OF LOADING IN THE COUNTRY OF ORIGIN, WHICHEVER PERIOD CONCLUDES EARLIER.	-	-
SCC Detail	THE PERIOD OF VALIDITY OF THE WARRANTY SHALL BE:..... [INSERT NUMBER] DAYS FOR PURPOSES OF THE WARRANTY, THE PLACE (S) OF FINAL DESTINATION(S) SHALL BE:..... [INSERT NAME(S) OF LOCATION(S)] SAMPLE PROVISION GCC 39.3—IN PARTIAL MODIFICATION OF THE PROVISIONS, THE WARRANTY PERIOD SHALL BE _____ HOURS OF OPERATION OR _____ 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:	Manual Input	

	(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 GCC 37.7, OR (B) PAY LIQUIDATED DAMAGES TO THE PROCURING ENTITY WITH RESPECT TO THE FAILURE TO MEET THE CONTRACTUAL GUARANTEES. THE RATE OF THESE LIQUIDATED DAMAGES SHALL BE (_____). [THE RATE SHOULD BE HIGHER THAN THE ADJUSTMENT RATE USED IN THE TENDER EVALUATION UNDER TDS 34.6(F)]		
GCC Reference	39.5 UPON RECEIPT OF SUCH NOTICE, THE SUPPLIER SHALL, WITHIN THE PERIOD SPECIFIED IN THE SCC, EXPEDITIOUSLY REPAIR OR REPLACE THE DEFECTIVE GOODS OR PARTS THEREOF, AT NO COST TO THE PROCURING ENTITY.	-	-
SCC Detail	THE PERIOD FOR REPAIR OR REPLACEMENT SHALL BE:..... [INSERT NUMBER(S)] DAYS.	Manual Input	

GCC Reference	39.6 IF HAVING BEEN NOTIFIED, THE SUPPLIER FAILS TO REMEDY THE DEFECT WITHIN THE PERIOD SPECIFIED IN THE **SCC**, THE PROCURING ENTITY MAY PROCEED TO TAKE WITHIN A REASONABLE PERIOD SUCH REMEDIAL ACTION AS MAY BE NECESSARY , AT THE SUPPLIER'S RISK AND EXPENSE AND WITHOUT PREJUDICE TO ANY OTHER RIGHTS WHICH THE PROCURING ENTITY MAY HAVE AGAINST THE SUPPLIER UNDER THE CONTRACT.	-	-
SCC Detail	PERIOD WITHIN WHICH DEFECTS SHOULD BE REMEDIED..... [INSERT NUMBER (S)] DAYS	Manual Input	
GCC Reference	**45. VALUE ENGINEERING:** 45.3 IF THE VALUE ENGINEERING PROPOSAL IS APPROVED BY THE PROCURING ENTITY A ND RESULTS IN: A) A REDUCTION OF THE CONTRACT PRICE; THE AMOUNT TO BE PAID TO THE SUPPLIE R SHALL BE THE PERCENTAGE SPECIFIED IN THE SCC OF THE REDUCTION IN THE CONT RACT PRICE; OR B) AN INCREASE IN THE CONTRACT PRICE; BUT RESULTS IN A REDUCTION IN LIFE CYC LE COSTS DUE TO ANY BENEFIT DESCRIBED IN 45.2 (A) TO (D) ABOVE, THE AMOUNT TO BE PAID TO THE SUPPLIER SHALL BE THE F ULL INCREASE IN THE CONTRACT PRICE.	-	-

SCC Detail	IF THE VALUE ENGINEERING PROPOSAL IS APPROVED BY THE PROCURING ENTITY THE AMOUNT TO BE PAID TO THE SUPPLIER SHALL BE ___%. THE PERCENTAGE IS NORMALLY UP TO 50% OF THE REDUCTION IN THE CONTRACT PRICE.	Manual Input	

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