



**KERIO VALLEY DEVELOPMENT AUTHORITY**

**TENDER NO.: KVDA/T/04/2020-2021**

**FOR SUPPLY INSTALLATION AND COMMISSIONING OF  
ADDITIONAL MACHINES/EQUIPMENT FOR MANGO  
FACTORY IN TOT.**

**Receipt No.....**

**Tender Reg. No.....**

**CLOSING DATE: WEDNESDAY 30<sup>TH</sup>  
SEPTEMBER 2020 AT 10.30 AM**

## TABLE OF CONTENTS

		PAGE
	INTRODUCTION .....	3
SECTION I	INVITATION TO TENDER.....	4
SECTION II	INSTRUCTIONS TO TENDERERS.....	5
	Appendix to Instructions to Tenderers .....	21
SECTION III	GENERAL CONDITIONS OF CONTRACT.....	23
SECTION IV	SPECIAL CONDITIONS OF CONTRACT.....	30
SECTION V	TECHNICAL SPECIFICATIONS.....	32
SECTION VI	SCHEDULE OF REQUIREMENTS.....	34
SECTION VII	PRICE SCHEDULE FOR GOODS.....	35
SECTION VIII	STANDARD FORMS.....	36
	8.1 FORM OF TENDER.....	37
	8.2 CONFIDENTIAL BUSINESS QUESTIONNAIRES FORMS.....	38
	8.3 TENDER SECURITY FORM.....	39
	8.4 CONTRACT FORM.....	40
	8.5 PERFORMANCE SECURITY FORM.....	41
	8.6 BANK GUARANTEE FOR ADVANCE PAYMENT FORM.....	42
	8.7 MANUFACTURER'S AUTHORIZATION FORM.....	43

## Introduction

- 1.1 This Standard Tender Document has been prepared for use by public entities in Kenya
- 1.2 The following general directions should be observed when using the document.
  - (a) Specific details should be furnished in the Invitation to Tender and in the special conditions of contract. The final documents to be provided to the tenderers should not have blank spaces or give options
  - (b) The Instructions to Tenderers and the general conditions of contract should remain unchanged. Any necessary amendments to these parts should be made through the special conditions of contract and the appendix to instructions to tenderers.
- 1.3
  - (a) Information contained in the Invitation to Tender shall conform to the data and information in the tender documents to enable potential tenderers to decide whether or not to participate and shall indicate any important tender requirements.
  - (b) The Invitation to Tender shall be issued as an advertisement in accordance with the regulations or a letter of invitation addressed to tenderers who have expressed interest following the invitation for expression of interest for which the invitation is issued.

**TENDER REF NO.** KVDA/T/04/2020-2021  
**TENDER NAME** SUPPLY INSTALLATION AND COMMISSIONING OF  
ADDITIONAL MACHINES/EQUIPMENT FOR MANGO  
FACTORY IN TOT.

- 1.2.1 Kerio Valley Development Authority (KVDA) invites sealed bids from eligible and interested bidders for the supply, installation and commissioning of additional machines/equipment for mango factory at Tot.
- 1.2.2 Interested eligible candidates may obtain further information from our website [www.kvda.go.ke](http://www.kvda.go.ke) OR National Treasury Ifmis Portal [www.supplier.treasury.go.ke](http://www.supplier.treasury.go.ke) OR inspect the tender documents at Supplies and Procurement Department, situated at 13<sup>th</sup> floor KVDA Plaza Eldoret, Telephone No. 053 63361/3 – Ext. 225 during normal working hours.
- 1.2.3 A complete set of tender documents may be obtained by interested candidates upon payment of non-refundable fees of **Kshs.1,000/=** in cash or Bankers cheque payable to Kerio Valley Development Authority OR downloaded from our website [www.kvda.go.ke](http://www.kvda.go.ke) OR National Treasury Ifmis Portal [www.supplier.treasury.go.ke](http://www.supplier.treasury.go.ke) free of charge.
- 1.2.4 Completed tender documents are to be enclosed in plain sealed envelopes marked with tender reference number and be deposited in the Tender Box at the entrance of 13<sup>th</sup> Floor, KVDA PLAZA (Eldoret) or be addressed to:  
The Managing Director,  
Kerio Valley Development Authority,  
P. O. Box 2660 - 30100  
**ELDORET.**
- So as to be received on or before Wednesday 30<sup>th</sup> September, 2020 at 10.30 A.M
- 1.2.5 Prices quoted should be net inclusive of all taxes and delivery must be in Kenya Shillings and shall remain valid for 120 days from the closing date of the tender.
- 1.2.6 **Youths, women and persons living with disabilities are encouraged to participate.**
- 1.3 All tenders must be accompanied by Bid Security of Kshs 100,000.00 in form of Bank guarantee, Bankers Cheque or Insurance guarantee from approved Insurance companies by PPRA
- 1.4 Tenders will be opened immediately thereafter at the **Boardroom, 14<sup>th</sup> Floor** in the presence of the Candidates or their representatives who choose to attend.

**AG.HSCMS**  
**FOR: MANAGING DIRECTOR**  
**KERIO VALLEY DEVELOPMENT AUTHORITY**

## SECTION II - INSTRUCTIONS TO TENDERERS

### Table of Clauses

	Page
2.1 Eligible tenderers.....	6
2.2 Eligible goods.....	6
2.3 Cost of tendering.....	6
2.4 Contents of Tender document.....	7
2.5 Clarification of documents.....	7
2.6 Amendment of documents.....	8
2.7 Language of tender.....	8
2.8 Documents comprising the tender.....	8
2.9 Tender forms.....	9
2.10 Tender prices.....	9
2.11 Tender currencies.....	9
2.12 Tenderers eligibility and qualifications.....	0
2.13 Goods' eligibility and conformity to tender documents.....	10
2.14 Tender security.....	11
2.15 Validity of tenders.....	12
2.16 Format and signing of tenders.....	13
2.17 Sealing and marking of tenders.....	13
2.18 Deadline for submission of tender .....	14
2.19 Modification and withdrawal of tenders.....	14
2.20 Opening of tenders.....	15
2.21 Clarification of tenders.....	15
2.22 Preliminary examination.....	15
2.23 Conversion to single currency.....	16
2.24 Evaluation and comparison of tenders.....	16
2.25 Contacting the procuring entity.....	17
2.26 Award of contract.....	17
(a) Post qualification.....	17
(b) Award criteria.....	17
(c) Procuring entity's right to vary quantities....	18
(d) Procuring entity's right to accept or reject any or all tenders .....	18
2.27 Notification of award.....	18
2.28 Signing of contract.....	18
2.29 Performance security.....	19
2.30 Corrupt or fraudulent practices.....	19

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

### **2.1 Eligible Tenderers**

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

### **2.2 Eligible Goods**

- 2.2.1 All goods to be supplied under the contract shall have their origin in eligible source countries.
- 2.2.2 For purposes of this clause, “origin” means the place where the goods are mined, grown, or produced. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially-recognized product results that is substantially different in basic characteristics or in purpose or utility from its components
- 2.2.3 The origin of goods is distinct from the nationality of the tenderer.

### **2.3 Cost of Tendering**

- 2.3.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the KVDA, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 2.3.2 The price to be charged for the tender document shall not exceed Kshs.5,000/=

2.3.3 All firms found capable of performing the contract satisfactorily in accordance with the set prequalification criteria shall be prequalified.

## 2.4. **The Tender Document**

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

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

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

## 2.5 **Clarification of Documents**

2.5.1 A prospective tenderer requiring any clarification of the tender document may notify the KVDA in writing or by post at the entity's address indicated in the Invitation to Tender. The KVDA will respond in writing to any request for clarification of the tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of tenders, prescribed by the KVDA. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers that have received the tender document.

2.5.2 The KVDA shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.

## **2.6 Amendment of Documents**

8

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

## **2.7 Language of Tender**

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

## **2.8 Documents Comprising of Tender**

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

## **2.9 Tender Forms**

- 2.9.1 The tenderer shall complete the Tender Form and the appropriate Price Schedule furnished in the tender documents, indicating the goods to be supplied, a brief description of the goods, their country of origin, quantity, and prices.

## **2.10 Tender Prices**



- 2.10.1 The tenderer shall indicate on the appropriate Price Schedule the unit prices and total tender price of the goods it proposes to supply under the contract
- 2.10.2 Prices indicated on the Price Schedule shall include all costs including taxes, insurances and delivery to the premises of the entity.
- 2.10.3 Prices quoted by the tenderer shall be fixed during the Tender's performance of the contract and not subject to variation on any account. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.22
- 2.10.4 The validity period of the tender shall be 120 days from the date of opening of the tender.

## 2.11 **Tender Currencies**

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

## 2.12 **Tenderers Eligibility and Qualifications**

- 2.12.1 Pursuant to paragraph 2.1. the tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.
- 2.12.2 The documentary evidence of the tenderers eligibility to tender shall establish to the KVDA's satisfaction that the tenderer, at the time of submission of its tender, is from an eligible source country as defined under paragraph 2.1
- 2.12.3 The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall be established to the Procuring entity's satisfaction;
- (a) that, in the case of a tenderer offering to supply goods under the contract which the tenderer did not manufacture or otherwise produce, the tenderer has been duly authorized by the goods' Manufacturer or producer to supply the goods.
  - (b) that the tenderer has the financial, technical, and production capability necessary to perform the contract;
  - (c) that, in the case of a tenderer not doing business within Kenya, the tenderer is or will be (if awarded the contract) represented by an Agent in Kenya equipped, and able to carry out the Tenderer's maintenance, repair, and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.

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

- 2.13.1 Pursuant to paragraph 2.2 of this section, the tenderer shall furnish, as part of its tender documents establishing the eligibility and conformity to the tender documents of all goods which the tenderer proposes to supply under the contract
- 2.13.2 The documentary evidence of the eligibility of the goods shall consist of a statement in the Price Schedule of the country of origin of the goods and services offered which shall be confirmed by a certificate of origin issued at the time of shipment.
- 2.13.3 The documentary evidence of conformity of the goods to the tender documents may be in the form of literature, drawings, and data, and shall consist of:
- (a) a detailed description of the essential technical and performance characteristic of the goods;
  - (b) a list giving full particulars, including available source and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the goods for a period of two (2) years, following commencement of the use of the goods by the Procuring entity; and
  - (c) a clause-by-clause commentary on the KVDA's Technical Specifications demonstrating substantial responsiveness of the goods and service to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.
- 2.13.4 For purposes of the documentary evidence to be furnished pursuant to paragraph 2.13.3(c) above, the tenderer shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by the KVDA in its Technical Specifications, are intended to be descriptive only and not restrictive. The tenderer may substitute alternative standards, brand names, and/or catalogue numbers in its tender, provided that it demonstrates to the Procurement entity's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

## **2.14 Tender Security**

- 2.14.1 The tenderer shall furnish, as part of its tender, a tender security for the amount specified in the Appendix to Invitation to Tenderers.
- 2.14.2 The tender security shall be in the amount of 0.5 – 2 per cent of the tender price.

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

## 2.15 **Validity of Tenders**

- 2.15.1 Tenders shall remain valid for 90 days or as specified in the Invitation to Tender after the date of tender opening prescribed by the KVDA, pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the KVDA as non-responsive.
- 2.15.2 In exceptional circumstances, the KVDA may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 2.14 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

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

- 2.16.1 The KVDA shall prepare two copies of the tender, clearly marking each “ORIGINAL TENDER” and “COPY OF TENDER,” as appropriate. In the event of any discrepancy between them, the original shall govern.
- 2.16.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. The latter authorization shall be indicated by written power-of-attorney accompanying the tender. All pages of the tender, except for unamended printed literature, shall be initialed by the person or persons signing the tender.
- 2.16.3 The tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

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

- 2.17.1 The Tenderer shall seal the original and each copy of the tender in separate envelopes, duly marking the envelopes as “ORIGINAL” and “COPY.” The envelopes shall then be sealed in an outer envelope.
- 2.17.2 The inner and outer envelopes shall:
- (a) be addressed to the Procuring entity at the address given in the Invitation to Tender:
  - (b) bear, tender number and name in the Invitation for Tenders and the words, “DO NOT OPEN BEFORE,” WEDNESDAY 30<sup>TH</sup> SEPTEMBER AT 10.30 AM.
- 2.17.3 The inner envelopes shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared “late”.
- 2.17.4 If the outer envelope is not sealed and marked as required by paragraph 2.17.2, the KVDA will assume no responsibility for the tender’s misplacement or premature opening.

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

Tenders must be received by the KVDA at the address specified under paragraph 2.17.2 no later than WEDNESDAY 30<sup>TH</sup> SEPTEMBER AT 10.30 AM.

- 2.18.1 The KVDA may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 2.6, in which case all rights and obligations of the KVDA and candidates previously subject to the deadline will therefore be subject to the deadline as extended

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

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

## **2.20 Opening of Tenders**

The KVDA will open all tenders in the presence of tenderers' representatives who choose to attend, at WEDNESDAY 30<sup>TH</sup> SEPTEMBER AT 10.30 AM.

- 2.20.1 and in the location specified in the Invitation to Tender.

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

2.20.2 The tenderers' names, tender modifications or withdrawals, tender prices, discounts and the presence or absence of requisite tender security and such other details as the KVDA, at its discretion, may consider appropriate, will be announced at the opening.

2.20.3 The KVDA will prepare minutes of the tender opening.

## **2.21 Clarification of Tenders**

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

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

## **2.22 Preliminary Examination**

2.22.1 The KVDA will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order.

2.22.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantify, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security forfeited. If there is a discrepancy between words and figures the amount in words will prevail

2.22.3 The KVDA may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or effect the relative ranking of any tenderer.

2.22.4 Prior to the detailed evaluation, pursuant to paragraph 2.23 the KVDA will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one, which conforms to all the terms and conditions of the tender documents without material deviations. The KVDA's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

2.22.5 If a tender is not substantially responsive, it will be rejected by the KVDA and may not subsequently be made responsive by the tenderer by correction of the non-conformity.

### **2.23 Conversion to Single Currency**

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

### **2.24 Evaluation and Comparison of Tenders**

2.24.1 The KVDA will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.22

2.24.2 The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.

2.24.3 A tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

### **2.25 Preference**

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

### **2.26 Contacting the Procuring entity**

2.26.1 Subject to paragraph 2.21 no tenderer shall contact the KVDA on any matter related to its tender, from the time of the tender opening to the time the contract is awarded.

2.26.2 Any effort by a tenderer to influence the KVDA in its decisions on tender, evaluation, tender comparison, or contract award may result in the rejection of the Tenderer's tender.

**(a) Post-qualification**

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

**(b) Award Criteria**

- 2.27.4 The KVDA will award the contract to the successful tenderer(s) whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

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

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

**(d) Procuring entity's Right to Accept or Reject Any or All Tenders**

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

**2.28 Notification of Award**

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



- 2.28.2 The notification of award will constitute the formation of the Contract but will have to wait until the contract is finally signed by both parties
- 2.28.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 2.28, the KVDA will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.14

## **2.29 Signing of Contract**

- 2.29.1 At the same time as the KVDA notifies the successful tenderer that its tender has been accepted, the KVDA will send the tenderer the Contract Form provided in the tender documents, incorporating all agreements between the parties.
- 2.29.2 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.
- 2.29.3 Within thirty (30) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the KVDA.

## **2.30 Performance Security**

- 2.30.1 Within Thirty (30) days of the receipt of notification of award from the KVDA, the successful tenderer shall furnish the performance security in accordance with the Conditions of Contract, in the Performance Security Form provided in the tender documents, or in another form acceptable to the KVDA.
- 2.30.2 Failure of the successful tenderer to comply with the requirements of paragraph 2.27 or paragraph 2.28 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the KVDA may make the award to the next lowest evaluated Candidate or call for new tenders.

## **2.31 Corrupt or Fraudulent Practices**

- 2.31.1 The KVDA requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts when used in the present regulations, the following terms are defined as follows;
- (i) "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and
  - (ii) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the KVDA, and includes collusive practice among tenderer (prior to or after tender submission) designed to establish tender prices at

artificial non-competitive levels and to deprive the KVDA of the18 benefits of free and open competition;

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

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

**Notes on the Appendix to the Instruction to Tenderers**

1. The Appendix to instructions to tenderers is intended to assist the procuring entity in providing specific information in relation to the corresponding clause in the instructions to Tenderers included in Section II and has to be prepared for each specific procurement.
2. The KVDA should specify in the appendix information and requirements specific to the circumstances of the procuring entity, the goods to be procured and the tender evaluation criteria that will apply to the tenders.
3. In preparing the Appendix the following aspects should be taken into consideration;
  - (a) The information that specifies and complements provisions of Section II to be incorporated
  - (b) Amendments and/or supplements if any, to provisions of Section II as necessitated by the circumstances of the goods to be procured to be also incorporated
4. Section II should remain unchanged and can only be amended through the Appendix.
5. Clauses to be included in this part must be consistent with the public procurement law and the regulations.

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

<b>INSTRUCTIONS TO TENDERERS REFERENCE</b>	<b>PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS</b>
2.1.1	<i>Open to eligible and interested tenderers</i>
2.14.1	<i>KSHS. 100,000.00</i>
2.18.1	<i>Wednesday 30<sup>th</sup> September At 10.30 Am.</i>
2.29.1	<i>Contract will be signed within 30 days from the date of notification of award</i>
2.30.1	<i>10% performance security</i>

*(Complete as necessary)*

Table of Clauses

	Page
3.1 Definitions.....	24
3.2 Application.....	24
3.3 Country of Origin.....	24
3.4 Standards.....	25
3.5 Use of Contract documents and information.....	25
3.6 Patent Rights.....	25
3.7 Performance security.....	25
3.8 Inspection and Tests.....	26
3.9 Packing.....	27
3.10 Delivery and documents.....	27
3.11 Insurance .....	27
3.12 Payment.....	27
3.13 Price.....	28
3.14 Assignments.....	28
3.15 Sub contracts.....	28
3.16 Termination for default.....	28
3.17 Liquidated damages.....	29
3.18 Resolution of Disputes.....	29
3.19 Language and law.....	29
3.20 Force Majeure.....	29

### 3.1 Definitions

- (a) In this Contract, the following terms shall be interpreted as indicated: -  
“The Contract” means the agreement entered into between the Procuring entity and the tenderer, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- (b) “The Contract Price” means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations
- (c) “The Goods” means all of the equipment, machinery, and/or other materials, which the tenderer is required to supply to the KVDA under the Contract.
- (d) “The Procuring entity” means the organization purchasing the Goods under this Contract.
- (e) “The Tenderer” means the individual or firm supplying the Goods under this Contract.

### 3.2 Application

- 3.2.1 These General Conditions shall apply in all Contracts made by the Procuring entity for the procurement installation and commissioning of equipment

### 3.3 Country of Origin

- 3.3.1 For purposes of this clause, “Origin” means the place where the Goods were mined, grown or produced.
- 3.3.2 The origin of Goods and Services is distinct from the nationality of the tenderer.

### 3.4 Standards

- 3.4.1 The Goods supplied under this Contract shall conform to the standards mentioned in the Technical Specifications.

### 3.5 Use of Contract Documents and Information

- 3.5.1 The tenderer shall not, without the KVDA's prior written consent, disclose the Contract, or any provision therefore, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the KVDA in connection therewith, to any person other than a person employed by the tenderer in the performance of the Contract.
- 3.5.2 The tenderer shall not, without the KVDA's prior written consent, make use of any document or information enumerated in paragraph 3.5.1 above
- 3.5.3 Any document, other than the Contract itself, enumerated in paragraph 3.5.1 shall remain the property of the KVDA and shall be returned (all copies) to the Procuring entity on completion of the Tenderer's performance under the Contract if so required by the KVDA.

### 3.6 **Patent Rights**

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

### 3.7 **Performance Security**

- 3.7.1 Within thirty (30) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the KVDA the performance security in the amount specified in Special Conditions of Contract.
- 3.7.2 The proceeds of the performance security shall be payable to the KVDA as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.
- 3.7.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the KVDA and shall be in the form of a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in Kenya or abroad, acceptable to the KVDA, in the form provided in the tender documents.
- 3.7.4 The performance security will be discharged by the KVDA and returned to the Candidate not later than thirty (30) days following the date of completion of the Tenderer's performance obligations under the Contract, including any warranty obligations, under the Contract

### 3.8 **Inspection and Tests**

- 3.8.1 The KVDA or its representative shall have the right to inspect and/or to test the<sup>24</sup> goods to confirm their conformity to the Contract specifications. The KVDA shall notify the tenderer in writing in a timely manner, of the identity of any representatives retained for these purposes.
- 3.8.2 The inspections and tests may be conducted in the premises of the tenderer or its subcontractor(s), at point of delivery, and/or at the Goods' final destination. If conducted on the premises of the tenderer or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the KVDA.
- 3.8.3 Should any inspected or tested goods fail to conform to the Specifications, the KVDA may reject the equipment, and the tenderer shall either replace the rejected equipment or make alterations necessary to make specification requirements free of costs to the KVDA.
- 3.8.4 The KVDA's right to inspect, test and where necessary, reject the goods after the Goods' arrival shall in no way be limited or waived by reason of the equipment having previously been inspected, tested and passed by the KVDA or its representative prior to the equipment delivery.
- 3.8.5 Nothing in paragraph 3.8 shall in any way release the tenderer from any warranty or other obligations under this Contract.

### 3.9 **Packing**

- 3.9.1 The tenderer 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.
- 3.9.2 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

### 3.10 **Delivery and Documents**

- 3.10.1 Delivery of the Goods shall be made by the tenderer in accordance with the terms specified by KVDA in its Schedule of Requirements and the Special Conditions of Contract

### 3.11 **Insurance**



3.11.1 The Goods supplied under the Contract shall be fully insured against loss or damage incidental to manufacturer or acquisition, transportation, storage, and delivery in the manner specified in the Special conditions of contract.

### **3.12 Payment**

3.12.1 The method and conditions of payment to be made to the tenderer under this Contract shall be specified in Special Conditions of Contract

3.12.2 Payments shall be made promptly by the KVDA as specified in the contract

### **3.13 Prices**

3.13.1 Prices charged by the tenderer for goods delivered and services performed under the Contract shall not, with the exception of any price adjustments authorized in Special Conditions of Contract, vary from the prices by the tenderer in its tender.

3.13.2 Contract price variations shall not be allowed for contracts not exceeding one year (12 months)

3.13.3 Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price.

3.13.4 Price variation request shall be processed by the KVDA within 30 days of receiving the request.

### **3.14. Assignment**

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

### **3.15 Subcontracts**

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

### **3.16 Termination for default**

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

- (a) if the tenderer fails to deliver any or all of the goods within the 26 period(s) specified in the Contract, or within any extension thereof granted by the KVDA.
- (b) if the tenderer fails to perform any other obligation(s) under the Contract
- (c) if the tenderer, in the judgment of the KVDA has engaged in corrupt or fraudulent practices in competing for or in executing the Contract

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

### **3.17 Liquidated Damages**

3.17.1. If the tenderer fails to deliver any or all of the goods within the period(s) specified in the contract, the KVDA shall, without prejudice to its other remedies under the contract, deduct from the contract prices liquidated damages sum equivalent to 0.5% of the delivered price of the delayed items up to a maximum deduction of 10% of the delayed goods. After this the tenderer may consider termination of the contract.

### **3.18 Resolution of Disputes**

3.18.1 The KVDA and the tenderer shall make every effort to resolve amicably by direct informal negotiation and disagreement or dispute arising between them under or in connection with the contract

3.18.2 If, after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute, either party may require adjudication in an agreed national or international forum, and/or international arbitration.

### **3.19 Language and Law**

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

### **3.20 Force Majeure**

3.20.1 The tenderer shall not be liable for forfeiture of its performance security or termination for default if and to the extent that it's delay in performance or other

failure to perform its obligations under the Contract is the result of an event of  
Force Majeure.

**Notes on Special Conditions of Contract**

The clauses in this section are intended to assist the procuring entity in providing contract-specific information in relation to corresponding clauses in the General Conditions of Contract.

The provisions of Section IV complement the General Conditions of Contract included in Section III, specifying contractual requirements linked to the special circumstances of the procuring entity and the goods being procured. In preparing Section IV, the following aspects should be taken into consideration.

- (a) Information that complement provisions of Section III must be incorporated and
- (b) Amendments and/or supplements to provisions of Section III, as necessitated by the circumstances of the goods being procured must also be incorporated.

- 4.1. Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, between the GCC and the SCC, the provisions of the SCC herein shall prevail over these in the GCC.
42. Special conditions of contract as relates to the GCC

REFERENCE OF GCC	SPECIAL CONDITIONS OF CONTRACT
3.7.1	<i>10% performance security</i>
3.10.1	<i>The goods will be delivered to Tot mango Factory within 8 weeks from the date of contract signing</i>
3.11.1	<i>The tenderer shall insure the goods upto installation</i>
3.12.1	<i>Kenya shillings upon delivery of acceptable product terms of payment</i>
3.18.1	<i>Amicable resolutions of disputes</i>

*(Complete as necessary)*

**5.1 General**

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

**SUPPLY,INSTALLATION  
ANDCOMMISSIONING OF MACHINES IN  
MANGO FACTORY**

ITEM	Requirements				
	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
	<b><u>MACHINE</u></b>				
1	<b><u>JUICE PREPARATION</u></b>				
	SS304 Hanging screw pump to suck juice concentrate Q = ___t/h outlet pressure = ___Mpa	No	1		
	SS304 Blending tanks, double walled, 4000L capacity, single layer, vertical agitator variable speed, with manhole, digital show thermometer, glass tube level indicator	No	2		
	SS304 centrifugal pump Q = ___t/h head 24m	No	1		
	SS304 Twin bags filter Q = ___t/h 300m double bags with filter core	No	1		
	SS304 Blending platform	No	1		
	Sterilizer	No	1		
	Homogenizer	No	1		
2	<b><u>PET BOTTLES FILLING LINE</u></b> <b><u>(Capacity of 6000 bottles per hour)</u></b>				
	SS304 Bottle feeding manual loading table		1		
	Air conveyor with fans and filters		1		
	Juice filling machine 3 in 1 Capacity ___bph		1		
	Tunnel type cap disinfestation		1		

	Centralized lubricating system		1		
	SS304 Centrifugal pump Q= ___ t/h		2		
	SS304 overheading feeding tank, ___ for juice fibres		1		
	Pneumatic cap elevator		1		
	SS304 sterilizing conveyor with variable speed		1		
	SS304 Spraying and cooling tunnel, food grade plastic conveyor, conveyor motors with variable speed(inverter type), high pressure water pump with dial type thermometer		1		
	Inspection light box		1		
	Nitrogen Dosing Machine		1		
	Sleeve label machine PM150		1		
	Label shrinking machine SB1 ___ 00		1		
	Steam generator for shrink label machine		1		
	Shrink wrapper machine Capacity ___ Packs/min		1		
	Interlinking bottle conveyor system ___ 0M		1		
	Case roller conveyor after shrink wrapper		1		
	SS304 Control cabinets (Processing and bottling line)		1		
3	<b>UTILITIES</b>				
	Compressor		1		
	Cooling tower with pump tank recycling system		1		
	Boiler		1		
<b>TOTAL AMOUNT IN KSHS.</b>					



**SECTION VI- SCHEDULE OF REQUIREMENTS**

Number	Description	Quantity	Delivery schedule (shipment)
			In Weeks/months from _____ <sup>1</sup>

**SECTION VII - PRICE SCHEDULE FOR GOODS**

Name of tenderer \_\_\_\_\_ Tender Number \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_

---

<sup>1</sup> The Procuring entity must specify here the date from which the delivery schedule will start. That date should be either the date of the contract award, or the date of contract signature, or the date of opening of letter of credit, or the date of confirmation of the Letter of Credit, as appropriate. The Tender Form should include only a cross reference to this Schedule.

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

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

**Notes on the sample Forms**

1. Form of Tender - The form of tender must be completed by the tenderer and submitted with the tender documents. It must also be duly signed by duly authorized representatives of the tenderer.
2. Confidential Business Questionnaire Form - This form must be completed by the tenderer and submitted with the tender documents.
3. Tender Security Form - When required by the tender documents the tender shall provide the tender security either in the form included herein or in another format acceptable to the procuring entity.
4. Contract Form - The Contract Form shall not be completed by the tenderer at the time of submitting the tender. The Contract Form shall be completed after contract award and should incorporate the accepted contract price.
5. Performance Security Form - The performance security form should not be completed by the tenderers at the time of tender preparation. Only the successful tenderer will be required to provide performance security in the form provided herein or in another form acceptable to the procuring entity.
6. Bank Guarantee for Advance Payment Form - When Advance payment is requested for by the successful bidder and agreed by the procuring entity, this form must be completed fully and duly signed by the authorized officials of the bank.
7. Manufacturers Authorization Form - When required by the tender documents this form must be completed and submitted with the tender documents. This form will be completed by the manufacturer of the goods where the tenderer is an agent.

8.1 **FORM OF TENDER**

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

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

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

Gentlemen and/or Ladies:

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

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

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

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

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

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

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

\_\_\_\_\_  
[signature] [in the capacity of]  
Duly authorized to sign tender for an on behalf of \_\_\_\_\_

8.2 **CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM**

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

*Part 1 – General:*

Business Name .....

Location of business premises. ....

Plot No.....

Street/Road .....

Postal Address ..... Tel No. .... Fax ..... E mail .....

Nature of Business .....

Registration Certificate No. ....

Maximum value of business which you can handle at any one time – Kshs. ....

Name of your bankers .....  
 Branch .....

<b>Part 2 (a) – Sole Proprietor</b>			
Your name in full .....			
Age .....			
Nationality .....		Country of origin .....	
• Citizenship details .....			
• .....			
<b>Part 2 (b) Partnership</b>			
Given details of partners as follows:			
Name	Shares	Nationality	Citizenship
Details			
1.	.....	.....	.....
	.....		

	<p>2. ....</p> <p>3. ....</p> <p>4. ....</p>																												
	<p><b>Part 2 (c) – Registered Company</b></p>																												
	<p>Private or Public .....</p> <p>State the nominal and issued capital of company-              Nominal Kshs. ....              Issued Kshs. ....</p> <p>Given details of all directors as follows</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 40%;">Name</th> <th style="width: 30%;">Nationality</th> <th style="width: 20%;">Citizenship Details</th> </tr> </thead> <tbody> <tr> <td>Shares</td> <td></td> <td></td> <td></td> </tr> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>5.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>		Name	Nationality	Citizenship Details	Shares				1.	.....	.....	.....	2.	.....	.....	.....	3.	.....	.....	.....	4.	.....	.....	.....	5.	.....	.....	.....
	Name	Nationality	Citizenship Details																										
Shares																													
1.	.....	.....	.....																										
2.	.....	.....	.....																										
3.	.....	.....	.....																										
4.	.....	.....	.....																										
5.	.....	.....	.....																										
	<p>Date ..... Signature of Candidate .....</p>																												

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

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

THE CONDITIONS of this obligation are:-

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

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

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

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

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

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

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

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

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

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

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



*(Amend accordingly if provided by Insurance Company)*

To .....  
[name of Procuring entity]

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

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

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

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

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

Signed and seal of the Guarantors

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

\_\_\_\_\_  
[address]

\_\_\_\_\_  
[date]

To .....  
[name of Procuring entity]

[name of tender] .....

Gentlemen and/or Ladies:

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

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

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

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

Yours truly,  
Signature and seal of the Guarantors

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

\_\_\_\_\_  
[address]

\_\_\_\_\_  
[date]

## 8.7 MANUFACTURER'S AUTHORIZATION FORM

To *[name of the Procuring entity]* .....

WHEREAS .....*[ name of the manufacturer]* who are established and reputable manufacturers of .....  
*[name and/or description of the goods]* having factories  
 at ..... *[address of factory]* do hereby  
 authorize ..... *[name and address of Agent]* to submit a tender, and  
 subsequently negotiate and sign the Contract with you against tender  
 No. .... *[reference of the Tender]* for the above goods manufactured  
 by us.

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

---

*[signature for and on behalf of manufacturer]*

*Note:* This letter of authority should be on the letterhead of the Manufacturer and should be signed by a person competent.

Address of Procuring Entity

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

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

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

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

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

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

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

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

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

SIGNED FOR ACCOUNTING OFFICER

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

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

BETWEEN

.....APPLICANT

AND

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

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

**REQUEST FOR REVIEW**

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

- 1.
- 2.
- etc.

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

- 1.
- 2.
- etc

SIGNED .....(Applicant)

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

**FOR OFFICIAL USE ONLY**

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

**TENDER-SECURING DECLARATION FORM-AGPO**

[The Tenderer shall fill in this Form in accordance with the instructions indicated.] Date: [insert date ] Tender No.: [insert tender number]

To: [insert name of Procuring Entity]

We, the undersigned, declare that: We understand that, according to your conditions, tenders must be supported by a Tenders-Securing Declaration. We accept that we will automatically be suspended from being eligible for tendering in any contract with the Procuring Entity for the period of time as determined by the Authority if we are in breach of our obligation(s) under the tender conditions, because we: (a) have withdrawn our Tender during the period of Tender validity specified in the Form of Tender; or (b) does not accept the Procuring Entity's corrections of arithmetic errors in accordance with the Instructions to Tenderers; or (c) having been notified of the acceptance of our Tender by the Procuring Entity during the period of Tender validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the ITT.

We understand this Tender Securing Declaration shall expire if we are not the successful Tenderer, upon the earlier of (i) our receipt of your notification to us of the name of the successful Tenderer; or (ii) twenty eight (28) days after the expiration of our Tender validity period. Signed: [insert signature of person whose name and capacity are shown] Name: [insert complete name of person signing the Tender Securing Declaration] In the capacity of [insert legal capacity of person signing the Tender Securing Declaration] Duly authorized to sign the Tender for and on behalf of: [insert complete name of Tenderer]

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ [insert date of signing]  
Corporate Seal (where appropriate) [Note: In case of a Joint Venture, the Tender Securing Declaration must be in the name of all partners to the Joint Venture that submits the tender.]

## Appendix CRITERIA OF TECHNICAL EVALUATION

No.	Particulars	MAX. SCORE
<b>1.</b>	<b>Stage one: Mandatory</b>	<b>Yes/No</b>
1.1	Incorporation certificate,	Yes
1.2	PIN certificate	Yes
1.3	Valid Tax compliance certificate,	Yes
1.4	Tender security and or duly filled tender securing declaration form for AGPO	Yes
1.5	Duly filled Self Declaration Form not to engage in Corruption /Fraudulent practices in line with section 62 of PPADA, 2015,	Yes
1.6	Paginating/serialization of tender document,	Yes
1.7	Dully filled and signed form of tender	Yes
1.8	Completely filled business questionnaire	Yes
1.9	Manufacturer's Authorization/dealership	Yes
1.8	<b>A bidder must get all Yes to proceed to the next stage</b>	
<b>2</b>	<b>Stage Two: Technical</b>	<b>Maximum</b>
2.1	Compliance to the technical specifications i)Provide technical brochures/literature of the offer-20 ii)Provide CVs for at least two technical staff for installation-20	40
2.2	Specific experience Provide two evidences of having dealt with similar goods for the past five years the evidence to include copies of LPO or contracts	20
2.3	Provide manufacturer's authorization/Dealership	10
2.4	Copy of the audited accounts for the previous 3 years and or bank references/statements	20
2.5	Warranty for one year	5
2.6	Details of after sales service including schedule of maintenance	5
2.6	The pass mark for this stage shall be 70. Bidders not attaining 70 and above shall be disqualified from further evaluation	



	<b>Total technical scores</b>	<b>100</b>
<b>3.0</b>	<b>Stage Three: Financial</b>	
3.1	Comparison of rates of the only responsive bidders under stage Two	

### **Financial scores**

The evaluation team shall compare the prices offered by the tenderers and the financial scores (Fs) will be determined using the formulae below. The score will be allocated a maximum of 20%.

$$F_s = 20 \times F_m / F$$

Where  $F_s$  is the financial score,  $F_m$  is the lowest priced responsive financial bid and  $F$  is the price of the bid under consideration.

### **Technical scores**

The technical scores shall take a weight of 80%

Tenders will be ranked according to their combined technical ( $S_t$ ) and financial ( $S_f$ ) scores using the weights ( $T$ =the weight given to the Technical Proposal;  $P$  = the weight given to the Financial Proposal;  $T + p = 1$ ) indicated in the Appendix. The combined technical and financial score,  $S$ , is calculated as follows: -  $S = S_t \times T \% + S_f \times P \%$ . The firm achieving the highest combined technical and financial score may be invited for negotiations and or demonstration.

### **Award of the tender**

The recommendation of the award by the evaluation committee shall be to the firm which attains the highest combined technical and financial scores using the above formula.