



**TENDER FOR SUPPLY AND DELIVERY OF PORTABLE HAND HELD
RADIOS AT CA CENTRE**

TENDER NO: CA/PROC/OT/20/2017-2018

**Director-General
Communications Authority of Kenya
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SECTION I INVITATION TO TENDER

1.0 TENDER REF NO.: (CA/PROC/OT/20/2017-2018)

TENDER NAME: TENDER FOR SUPPLY AND DELIVERY OF PORTABLE HAND HELD RADIOS AT CA CENTRE– *OPEN TENDER*.

The *Communications Authority of Kenya (CA)* invites sealed bids from eligible firms for supply and delivery of portable hand held radios at CA Centre offices as detailed in the tender document.

Interested candidates may obtain complete tender documents *upon payment of Kenya Shillings One Thousand (Kshs.1,000) only* from Procurement Office located at CA Centre 2nd floor wing A. The tender document may also be downloaded from the IFMIS supplier portal <http://supplier.treasury.go.ke> and the Authority's website <http://www.ca.go.ke/index.php/tenders>

Prices quoted should be net inclusive of all taxes and delivery costs. The tender must be expressed in Kenya shillings and shall remain valid for period of (120) days from the closing date of the tender.

Completed tender documents in plain, sealed envelope clearly marked **CA/PROC/OT/20/2017-2018 –“TENDER FOR SUPPLY AND DELIVERY OF PORTABLE HAND HELD RADIOS AT CA CENTRE”** should be deposited in our tender box located on the ground floor of the CA Centre or mailed to the address below, so as to reach on or before **31st January, 2018 at 2.30 p.m.**

HEAD OF PROCUREMENT

Communications Authority of Kenya

P.O. Box 14448, Nairobi 00800

Tel: +254 (020) 4242000/

Mobile: +254 703-042000

+254 736 121515/121414

Email: tenders@ca.go.ke

Website: www.ca.go.ke

SECTION II - INSTRUCTIONS TO TENDERERS

2.1 Eligible Tenderers

- 2.1.1 This Invitation for Tenders is open to all tenderers who are eligible to participate in the tendering process. Successful tenderers shall complete the supply of goods/equipment by the intended completion date specified in the Schedule of Requirements.
- 2.1.2 The Authority's 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 Authority 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/equipment's 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 Authority, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 2.3.2 All firms found capable of equipment/tools as per the specifications provided with have their financial proposals considered and the most competitive bid will be considered for award

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

2.5.2 A prospective tenderer requiring any clarification of the tender document may notify the Authority in writing or by post at the Authority's address indicated in the Invitation to Tender. The Authority 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 Authority. Written copies of the Authority's 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.

2.5.3 The Authority shall reply to any clarifications sought by the tenderer within 7 days of receiving the request to enable the tenderer to make timely submission of its tender.

2.6 Amendment of Documents

2.6.1 At any time prior to the deadline for submission of tenders, the Authority 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 Authority, 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 shall be written in English language,

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 equipment and tools and ancillary services to be supplied by the tenderer are eligible good 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 .

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 it's tender is accepted.
- 2.12.2 The documentary evidence of the tenderers eligibility to tender shall establish to the Authority'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 Authority'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 Authority; and
 - (c) a clause-by-clause commentary on the Authority'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 Procurement entity in its Technical Specifications, are intended to be descriptive only and not restrictive. The tenderer may substitute alternative standards, brand names, and/or catalogue numbers in its tender, provided that it demonstrates to the Procurement entity's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

2.15 **Validity of Tenders**

2.15.1 Tenders shall remain valid for 120 days or as specified in the Invitation to tender after the date of tender opening prescribed by the Authority, pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the Authority as non-responsive.

2.15.2 In exceptional circumstances, the Authority 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 Tenderer shall prepare two copies of the tender, clearly marking each "ORIGINAL TENDER" and "COPY OF TENDER," as appropriate. In the event of any discrepancy between them, the original shall govern.

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 tender in an envelope.

2.17.2 The outer envelopes shall:

- (a) Be addressed to the Authority 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," **31st January, 2018 at 2.30 p.m.**

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 Authority will assume no responsibility for the tender’s misplacement or premature opening.

2.18 Deadline for Submission of Tenders

2.18.1 Tenders must be received by the Authority at the address specified under paragraph 2.17.2 no later **31st January, 2018 at 2.30 p.m.**

2.18.2 The Authority 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 Authority 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 Authority 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 Authority 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 Authority 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

2.20.1 The Authority will open all tenders in the presence of tenderer' representatives who choose to attend, at 2.30 PM **on 31st January 2018** 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, and the presence or absence of requisite tender security and such other details as the Authority, at its discretion, may consider appropriate, will be announced at the opening.

2.20.3 The Authority 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 Authority 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 Authority in the Authority'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 Authority 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, the unit price shall prevail. If there is a discrepancy between words and figures the amount in words will prevail.

2.22.3 The Authority 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 affect the relative ranking of any tenderer.

2.22.4 Prior to the detailed evaluation, pursuant to paragraph 2.23 the Authority 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 Authority'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 Authority and may not subsequently be made responsive by the tenderer by correction of the non- conformity.

2.23 Evaluation Process

The tenders submitted will be evaluated in three (3) stages; General Mandatory, Technical compliance and Financial Evaluation. The evaluation process will be in stages as follows: -

- a. General Mandatory Evaluation –Pass/Fail
- b. Technical Compliance Evaluation – Complied/Not complied
- c. Financial Evaluation – Lowest cost evaluated bidder.

2.23.1 General Evaluation criteria

The bids shall undergo a general pre-qualification process in order to determine bid compliance to the following mandatory requirements. Tenderers are required to comply to the following requirements, failure to which the firm shall not proceed with the next stage of evaluation: -

Mandatory Requirements

No	Description of requirement	Pass/Fail
1.	Attach copy of Certificate of registration/Incorporation	
2.	Provide a detailed technical data sheet/brochure for the proposed equipment's to be used in the technical evaluation.	
3.	Attach a Valid KRA Tax Compliance Certificate	
4.	Tender Security of KES. 50,000.00 from a bank or insurance company approved by the Public Procurement Regulatory Authority (PPRA)	
5.	Audited accounts for the last 3 years (2014, 2015 and 2016) stamped and signed by Certified Accountants	
6.	Current Valid CA Contractor License	
7.	Fully completed, signed and stamped Confidential Business Questionnaire	
8.	Attach manufacturer's authorization letter for the equipment to be supplied as detailed in the tender document. Where the manufacturer's authorization is from a distributor or re-seller, bidders must also submit authorization letter between the manufacturer and distributor/re-seller	
9.	Bidders are required to serialize the tender documents (both original and copy) in a format of 0001.... Continuously .up to the last page as	

	provided for in the PPDA Act 2015 section 74 (i) e.g 1 of 200, 2 of 200, 115 of 200, 200 of 200 etc	
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Failure to submit any of the above-mentioned documentation; will lead to disqualification of the firm at the mandatory stage. The bidders that will meet all the mandatory requirements above will proceed to the technical evaluation stage.

Stage 2: Technical Mandatory Evaluation stage

a) Technical Specifications for supply and delivery of portable handheld radios for CA Center

Any Bid with a Non-Compliance to any of the requirements in the technical evaluation stage shall not proceed to the financial evaluation Stage .

Parameter	Specifications	If complied, Bidders explanation of compliance with reference to datasheet or bill of materials	Specifications	If complied, Bidders explanation of compliance with reference to datasheet or bill of materials
MANUFACTURER & MODEL NAME	Handheld Radios		Base Radio	
FREQUENCY RANGE	136 – 174 MHz		136 – 174 MHz	
CHANNEL SPACING	12.5/20/25 kHz(analog) 12.5 kHz (digital)		12.5/20/25 kHz(analog) 12.5 kHz (digital)	
STANDARD BATTERY	1500 mAh (lithium ion)		1400 – 3000 mAh	
LCD DISPLAY	160x128 pixels, 65536 colors, 1.8 inch, 3 lines		220x 176 pixels, 262000 colors 2.0 inch, 4 rows	
TRANSMITTING POWER	1/5 W		1-50W (RD985 only, 5-50W)	
MODULATION	11 K0F3E at 12.5 kHz		11 K0F3E at 12.5 kHz; 14K0F3E @ 20kHz; 16K0F3E @ 25 kHz	
4FSK DIGITAL MODULATION	12.5kHz (data only): 7K60FXD		12.5kHz (data only): 7K60FXD	
INTERFERING SIGNALS & HARMONICS	-36dBm (< 1 GHz)		-36dBm (< 1 GHz)	
MODULATION LIMITING	2.5 kHz at 12.5 kHz		2.5 kHz at 12.5 kHz; 4.0 kHz @20kHz; 5 kHz @ 25 kHz	
HUM & NOISE	40 dB at 12.5 kHz		40 dB at 12.5 kHz; 43dB @ 20kHz; 45Db @ 25kHz	
ADJACENT CHANNEL SELECTIVITY	60 dB at 12.5 kHz		60 dB at 12.5 kHz 70 dB @ 20/25 kHz	

MANUFACTURER & MODEL NAME	Handheld Radios	If complied, Bidders explanation of compliance with reference to datasheet or bill of materials	Base Radio	If complied, Bidders explanation of compliance with reference to datasheet or bill of materials
AUDIO SENSITIVITY	+1 dB at -3 dB		+1 dB at -3 dB	
ADJACENT CHANNEL SELECTIVITY	60 dB at 12.5 kHz/ 70 dB at 20/25 kHz (TIA & ETSI)		60 dB at 12.5 kHz/ 70 dB at 20/25 kHz	
INTERMODULATION	70 dB at 12.5/ 20/25 kHz(TIA) 65 dB at 12.5 kHz/ 20/25 kHz(ETSI)		70dB (TIA603D)	
SPURIOUS RESPONSE REJECTION	70 dB at 12.5/ 20/25 kHz(TIA & ETSI)		70 dB	
WARRANTY PERIOD	Provide a minimum of one (1) Years warranty		Provide a minimum of one (1) Years warranty	

Stage 3: Financial Evaluation stage:

The bidder that qualifies at the technical evaluation shall have their financial proposals evaluated. The evaluation committee shall determine whether the financial proposals are complete and recommend award to lowest evaluated bidder.

Bidders must break down the financial bid as detailed below: **ALL PRICES INCLUSIVE OF 16% VAT**

No	Item description	Qty.	Unit cost (Kshs)	Total cost (Kshs)
1	Supply and delivery of portable handheld radios	10		
2.	Supply and delivery of Base Radio	1		
3.	Cost of Annual preventive maintenance. The maintenance is to be carried out on a Bi-Annual basis (Annual Cost) for a period of 3 years	10 Portable Radios and one (1) Base Radio		
	Total Cost			

- ❖ **NOTE: Bidders MUST attach a separate list showing list of spares (prices in Kshs) to be supplied AS AND WHEN REQUIRED and applicable for the Contract period (NOT TO BE CARRIED TO FORM OF TENDER).**
- ❖ There shall be One (1)Year Warranty on all equipment supplied.

The award will be to one firm that will offer the most competitive rates in all the equipment.

Contacting the Authority

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

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

2.24 Award of Contract

(a) **Post-qualification**

- 2.24.1 In the absence of pre-qualification, the Authority 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.
- 2.24.2 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 Authority deems necessary and appropriate.
- 2.24.3 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 Authority will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

(b) **Award Criteria**

- 2.24.4 The Authority 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) **Authority's Right to Vary quantities**

- 2.24.5 The Authority 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) **Authority's Right to accept or Reject any or All Tenders**

- 2.24.6 The Authority 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 Authority's action.

2.25 Notification of Award

- 2.25.1 Prior to the expiration of the period of tender validity, the Authority will notify the successful tenderer in writing that its tender has been accepted.
- 2.25.2 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

2.25.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 2.28, the Authority will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.14.

2.26 Signing of Contract

2.26.1 At the same time as the Authority notifies the successful tenderer that its tender has been accepted, the Authority will send the tenderer the Contract Form provided in the tender documents, incorporating all agreements between the parties.

2.26.2 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.

2.26.3 Within thirty (30) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Authority.

2.27 Performance Security (Not Required)

2.27.1 Prior to execution of contract, the successful tenderer shall furnish the performance security of **5%** of the bid price in accordance with the Conditions of Contract, in the Performance Security Form provided in the tender documents, or in another form acceptable to the Authority.

2.27.2 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 Authority may make the award to the next lowest evaluated Candidate or call for new tenders.

2.28 Corrupt or Fraudulent Practices

2.28.1 The Authority 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 Authority, 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 Authority of the benefits of free and open competition;

2.28.2 The Authority 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.

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

Appendix to Instructions to Tenderers

SECTION III - GENERAL CONDITIONS OF CONTRACT

3.1 Definitions

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

- (a) “The Contract” means the agreement entered into between the Authority 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 Authority under the Contract.
- (d) “The Authority” 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 Authority 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 Authority'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 Authority 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 Authority'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 Authority and shall be returned (all copies) to the Authority on completion of the Tenderer's performance under the Contract if so required by the Authority

3.6 Patent Rights

- 3.6.1 The tenderer shall indemnify the Authority 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 Authority's country

3.7 Performance Security Not Required

- 3.7.1 The proceeds of the performance security shall be payable to the Authority as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.
- 3.7.2 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Authority 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 Authority, in the form provided in the tender documents.
- 3.7.3 The performance security will be discharged by the Authority 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 Authority or its representative shall have the right to inspect and/or to test the goods to confirm their conformity to the Contract specifications. The Authority 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 Authority.

- 3.8.3 Should any inspected or tested goods fail to conform to the Specifications, the Authority 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 Authority.
- 3.8.4 The Authority'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 Authority 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 Authority 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 Authority 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 Authority 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 Authority's Authority' prior written consent

3.15 Subcontracts

- 3.15.1 The tenderer shall notify the Authority 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 Authority 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 period(s) specified in the Contract, or within any extension thereof granted by the Authority
 - (b) if the tenderer fails to perform any other obligation(s) under the Contract
 - (c) if the tenderer, in the judgment of the Authority has engaged in corrupt or fraudulent practices in competing for or in executing the Contract

- 3.16.2 In the event the Authority 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 Authority 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 Authority shall, without prejudice to its other remedies under the Contract levy liquidated damages sum of Kshs 20,000 per week.

3.18 Resolution of Disputes

- 3.18.1 The Authority 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.

SECTION IV - STANDARD FORMS/APPENDIX

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. Duly authorized representatives of the tenderer must also duly sign it.
2. Confidential Business Questionnaire Form - This form must be completed by the tenderer and submitted with the tender documents.
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 may be required to provide performance security in the form provided herein or in another form acceptable to the Authority.

8.1 FORM OF TENDER

Date _____

Tender No. _____

To: _____

[Communications Authority of Kenya]

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 and install (..... (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 Authority 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(Authority).

4. We agree to abide 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

<i>Part 1 – General:</i>			
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
.....			

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

	3. 4.																												
	<p style="text-align: center;">Part 2 (c) – Registered Company</p> <p style="text-align: center;">Private or Public</p> <p>State the nominal and issued capital of company-</p> <p style="margin-left: 40px;">Nominal Kshs.</p> <p style="margin-left: 40px;">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> <p>Date</p> <p>Signature of Candidate</p>		Name	Nationality	Citizenship Details	Shares				1.	2.	3.	4.	5.
	Name	Nationality	Citizenship Details																										
Shares																													
1.																										
2.																										
3.																										
4.																										
5.																										

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

8.3 CONTRACT FORM-NOT TO BE FILLED

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

WHEREAS the Authority 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 Authority’s Notification of Award
3. In consideration of the payments to be made by the Authority to the tenderer as hereinafter mentioned, the tender hereby covenants with the Authority to provide the goods and to remedy defects therein in conformity in all respects with the provisions of the Contract
4. The Authority 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 Authority

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

(Amend accordingly if provided by Insurance Company)

8.6 MANUFACTURER'S AUTHORIZATION FORM

To *[name of the Authority]*

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.