



**COMMUNICATIONS  
AUTHORITY OF KENYA**

**OPEN NATIONAL RE-TENDER  
FRAMEWORK CONTRACT FOR SUPPLY OF 3 PLY, KN95 SURGICAL, MASKS  
AND RE-USABLE CLOTH FACEMASKS  
TENDER NO.CA/PROC/OT/23 /2020-2021**

**SUBMISSION DEADLINE:**

**WEDNESDAY 10TH FEBRUARY 2021 AT 10:30 AM**

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## **SECTION I – INVITATION TO TENDER**

**TENDER NO. : CA/PROC/OT/23/2020-2021**

### **FRAMEWORK CONTRACT FOR THE SUPPLY OF 3 PLY, KN95 SURGICAL MASKS AND RE-USABLE CLOTH FACEMASKS.**

- 1.1 The Communications Authority of Kenya (CA) is the regulatory agency for the ICT industry in Kenya with regulatory responsibilities in the areas of telecommunications, cyber security, e-commerce, broadcasting and postal/courier services. CA is also responsible for managing the country's frequency spectrum and numbering resources, managing and administration of the Universal Service Fund (USF) as well as safeguarding the interests of consumers of ICT services through the country.
- 1.2 CA hereby invites interested and eligible bidders to participate in the tender framework contract for the supply of 3 ply surgical KN95 surgical masks and re-usable cloth Facemasks as and when need arises for a period of two (2) years.
- 1.3 The tender is open to interested and eligible firms. The potential Bidders may view and obtain further information and inspect the printed tender documents from the CA Centre on Waiyaki Way, Procurement Division, 2nd floor – Wing A, between 9am to 4pm, Monday to Friday excluding Public Holidays and weekends.
- 1.4 The tender document can also be accessed and downloaded from the Authority's website <https://ca.go.ke/about-us/do-business-with-us/open-tenders/> or Public Procurement Information Portal (PPIP) supplier portal (<http://www.tenders.go.ke/website/tenders/index> free of charge. A complete tender document may also be obtained by interested candidates upon payment of a non-refundable fee of Kshs.1,000. The payment can be remitted through Pay-Bill No.522522 and a receipt obtained from our Accounts office, located at the Ground Floor, CA Centre.
- 1.5 The firms that download the document must however arrange to forward their particulars/contacts to the Head of Procurement, Communications Authority of Kenya, through email address [tenders@ca.go.ke](mailto:tenders@ca.go.ke) before the closing date for records and for the purposes of receiving clarifications and/or addendum, if any. Additional information relating to this tender, if any, will be availed through the Authority's website and PPIP from time to time. A complete tender document may also be obtained by interested candidates upon payment of a non-refundable fee of

- Kshs.1,000.00 The payment can be remitted through Pay-Bill No.522522 and a receipt obtained from our Accounts office, located at the Ground Floor, CA Centre
- 1.6 Prices quoted should be inclusive of all taxes, must be expressed in Kenya shillings and shall remain valid for a period of not less than 150 days from the closing date of the tender. The rates must be valid for a period of one year from the dates of contract signing.
  - 1.7 Duly Completed tender documents, in a plain sealed envelope clearly marked; **CA/PROC/OT/23/2020-2021 - “FRAMEWORK CONTRACT FOR THE SUPPLY OF 3 PLY, KN95 SURGICAL MASKS AND RE-USABLE CLOTH FACEMASKS ”** should be deposited in the CA tender box on the ground floor of the CA Centre along Waiyaki Way on or before **Wednesday, 10<sup>th</sup> February 2021 at 10.30 a.m.**
  - 1.8 Bidders are required to serialize all bid documents as per the requirements of the Public Procurement and Asset Disposal Act (PPADA), 2015 clause 74(1)(i).
  - 1.9 Tenders will be opened immediately thereafter on the Ground Floor, Meeting Room 2, in the presence of the tenderers’ representatives who choose to attend.

## SECTION II - INSTRUCTIONS TO TENDERERS

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## **2.1 Eligible Tenderers**

- 2.1.1. This Invitation to tender 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 procuring entity'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 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 procuring entity, 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 of 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 candidate making inquiries of the tender document may notify the Procuring entity in writing or by post, fax or email at the entity's address indicated in the Invitation for tenders. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives no later than seven (7) days prior to the deadline for the submission of tenders, prescribed by the procuring entity. 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 who have received the tender documents”

- 2.5.2. The procuring entity 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**

- 2.6.1. At any time prior to the deadline for submission of tenders, the Procuring entity, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by issuing an addendum.
- 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 Procuring entity, 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 exchanged by the tenderer and the Procuring entity, shall be written in English language. 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 the Tender**

- 2.8.1. The tender prepared by the tenderer 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 60 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 Clause 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 Procuring entity'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 Procuring entity'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.

## **2.14 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 Procuring entity 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 Procuring entity 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 Procuring entity 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 Procuring entity.

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 procuring entity 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 Procuring entity, pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the Procuring entity as non-responsive.

2.15.2 In exceptional circumstances, the Procuring entity 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. All pages of the tender, except for un-amended 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 to tender and the words: “DO NOT OPEN BEFORE(*day, date and time of closing*),”
- 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 Procuring entity 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 Procuring entity at the address specified under paragraph 2.17.2 (under Appendix to Instructions to the Tenderers) no later than (*day, date and time of closing*)

2.18.2. The procuring entity 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 procuring entity and candidates previously subject to the deadline will thereafter 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 tender's is received by the procuring entity prior to the deadline prescribed for the 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, 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 procuring entity 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 procuring entity 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 Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, at (*day, date and time of closing*) 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 Procuring Entity, at its discretion, may consider appropriate, will be announced at the opening.

2.20.3. The procuring entity 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 procuring entity 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 shall be sought, offered, or permitted.

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

## **2.22 Preliminary Examination and Responsiveness**

2.22.1. The Procuring entity 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 quantity, 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 may be forfeited. If there is a discrepancy between words and figures, the amount in words will prevail.

2.22.3. The Procuring entity may waive any minor informality or nonconformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any tenderer.

2.22.4. Prior to the detailed evaluation, pursuant to paragraph 23, the Procuring entity 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 Procuring entity'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 Procuring entity and may not subsequently be made responsive by the tenderer by correction of the nonconformity.

## **2.23 Conversion to Single Currency**

2.23.1. Where other currencies are used, the procuring entity will convert those 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 procuring entity 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 procuring entity on any matter relating 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 procuring entity in its decisions on tender evaluation tender comparison or contract award may result in the rejection of the tenderer's tender.

## **2.27 Award of Contract**

### **a) Post qualification**

2.27.1. In the absence of pre-qualification, the Procuring entity will determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.

2.27.2. The determination will take into account the tenderer's financial and technical 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 Procuring entity 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 Procuring entity 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 Procuring entity will award the contract to the successful tenderer 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 Procuring entity 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 procuring entity reserves the right to accept or reject any tender and to annul the tendering process and reject all tenders at any time prior to contract award, without 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 procuring entity's action.

**2.28 Notification of Award**

2.28.1. Prior to the expiration of the period of tender validity, the Procuring entity 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 Procuring entity 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 Procuring entity notifies the successful tenderer that its tender has been accepted, the Procuring entity 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 Procuring entity.

## **2.30 Performance Security**

- 2.30.1. Within thirty (30) days of the receipt of notification of award from the Procuring entity, 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 Procuring entity.
- 2.30.2. Failure of the successful tenderer to comply with the requirement 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 Procuring entity may make the award to the next lowest evaluated or call for new tenders.

## **2.31 Corrupt or Fraudulent Practices**

- 2.31.1. The Procuring entity 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 any thing 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 Procuring entity, 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 Procuring entity of the benefits of free and open competition;

2.31.2. The procuring entity 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

## APPENDIX TO INSTRUCTIONS TO THE TENDERERS

The following information for procurement of goods shall complement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provisions 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.

Instructions to tenderers	Particulars of appendix to instructions to tenderers
2.1.1	The tender is Open National to eligible bidders
2.1.2	CA employees, committee members, Board Members and their relative (spouse and children) are not eligible
2.2.2	The price to be charged for a printed copy of the tender document collected from CA offices shall be Kshs.1, 000/= . The payment can be remitted through Pay-Bill No.522522 and a receipt obtained from our Accounts office, located at the Ground Floor, CA Centre
2.3.1	Additional applicable forms: xiv) Anti Corruption Declaration Form xv) Declaration form for not debarred in public procurement xvi) Letter of Notification of Award  Not Applicable forms: xi) Bank Guarantee for Advance Payment Form xii) Manufacturer’s Authorization Form
2.5.2	All prospective tenderers who have obtained the tender documents and registered will be notified of any amendment by email and such amendment will be binding on them.
2.12.2	The tender security is not required
2.12.7 (c)	Not applicable
2.13.1	Tender shall be valid for a period of not less than 150 days from the date of tender opening.
2.15.2	Tenders must be received by the Authority at the address <b>shown below</b> ;

	<p><b>Director General</b>  <b>Communications Authority of Kenya</b>  <b>P.O. Box 14448</b>  <b>Westlands 00800</b>  <b>NAIROBI</b></p>																								
2.16.1	Tenders must be received by the Authority not later than <b>Wednesday, 10<sup>th</sup> February 2021 at 10.30am.</b> (Tenderers to drop their tenders in the tender box located at the CA building ground floor.)																								
2.18.1	The CA shall open all tenders in the presence of tenderers' representatives who choose to attend, at <b>10.30am on Wednesday 10th February 2021</b> at Meeting Room 2, Ground Floor – CA Centre. The tenderers' representatives present shall be required to sign an attendance register.																								
3.1.1	Performance Security will not be required																								
2.20.1	<p>The tenders submitted by the closing date shall be subjected to three (3) stages of the evaluation process, namely:</p> <ol style="list-style-type: none"> <li>i. Mandatory Evaluation Stage- Pass/ Fail Basis</li> <li>ii. Technical Compliance Evaluation- Pass/Fail Basis</li> <li>iii. Financial Evaluation- lowest evaluated unit cost per item.</li> </ol> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="3" style="text-align: center;"><b>MANDATORY REQUIREMENTS</b></th> </tr> <tr> <th style="width: 5%;"><b>No</b></th> <th style="width: 70%;"><b>Description of requirement</b></th> <th style="width: 25%;"><b>Pass/Fail</b></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1.</td> <td>Attach copy of Certificate of registration/Incorporation or equivalent</td> <td></td> </tr> <tr> <td style="text-align: center;">2.</td> <td>Attach a copy of Valid Tax Compliance Certificate as at date of Tender opening</td> <td></td> </tr> <tr> <td style="text-align: center;">3.</td> <td>Copy of a valid business permit</td> <td></td> </tr> <tr> <td style="text-align: center;">4.</td> <td>Submit a duly filled and signed Form of Tender</td> <td></td> </tr> <tr> <td style="text-align: center;">5.</td> <td>Attach a current CR12 for Ltd Companies</td> <td></td> </tr> <tr> <td style="text-align: center;">6.</td> <td>Copy of a valid KEBS permit certificate for KEBS Standard Specification (number and title) is KS2636</td> <td></td> </tr> </tbody> </table>	<b>MANDATORY REQUIREMENTS</b>			<b>No</b>	<b>Description of requirement</b>	<b>Pass/Fail</b>	1.	Attach copy of Certificate of registration/Incorporation or equivalent		2.	Attach a copy of Valid Tax Compliance Certificate as at date of Tender opening		3.	Copy of a valid business permit		4.	Submit a duly filled and signed Form of Tender		5.	Attach a current CR12 for Ltd Companies		6.	Copy of a valid KEBS permit certificate for KEBS Standard Specification (number and title) is KS2636	
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	Kenya Standards – Surgical Masks  In the case of resellers attach authorization to offer and supply mask from the producer/manufacture and attach producers/manufacturers valid KEBS permit certificate KS2636.	
7.	One sample of; -  1. Branded 3-ply Surgical Mask, KN95 facemasks and Reusable cloth Mask with the CA logo.  2. Unbranded Reusable Cloth Mask, 3 Ply surgical facemask and KN95 Face masks.	
8.	Submit a duly filled and signed confidential Business Questionnaire.	
9.	Duly filled and signed declaration statement of not being debarred from participating in public procurement in Kenya in the format provided	
10.	Duly filled and signed Anti-Corruption Declaration Commitment/Pledge in the format provided	
<p><b>NOTE:</b></p> <p>Failure to submit any of the documents listed above shall lead to disqualification. Tenderers who qualify at this stage will proceed to the Mandatory Technical Evaluation stage.</p>		
2.22.1 – 2.22.6	<p>The Technical Evaluation shall be scored on a Compliance or Non-compliance basis. The evaluation will be done strictly in accordance with all the technical specifications as described in Section V. Tenderers shall be expected to indicate whether the product "<b>Complies</b>" or "<b>Does not comply</b>" to the specifications. Where a Tenderer indicates, "<b>Does not Comply</b>" to any of the specifications below, they shall be eliminated from the evaluation and shall not proceed to the financial evaluation stage. Failure to indicate a response in the Bidders response column will lead to disqualification. Tenderers are cautioned against giving false.</p>	

**Technical Evaluation****Description****Bidders response  
"Complies" or "Does  
not Comply"**

I. Unbranded 3 Ply surgical facemask

II Unbranded KN95 face masks

III. Branded 3ply surgical face mask with CA logo

IV. Branded KN95 face masks with CA logo

V. Branded Re-usable cloth masks with CA logo as per KEBS guidelines attached in section V of the tender document.

VI. Delivery timelines within 7- 15 days after LPO issuance to the successful bidder

**NOTE:****FOR THE SUPPLY AND DELIVERY OF FACEMASKS.**

The product specification is as follows:

- I. Unbranded 3 Ply surgical facemask
- II. Unbranded KN95 Face Masks
- III. Branded 3ply surgical face mask with full colour CA logo
- IV. Branded KN95 face masks with full colour CA logo
- V. Branded Re-usable cloth masks with CA logo as per KEBS guidelines attached in section V of the tender document.
- VI. Certification by KEBS: The KEBS Standard Specification (number and title) is KS2636 Kenya Standards – for Surgical Masks
- VII. Delivery timelines within 7- 15 days after LPO issuance to the successful bidder.

**Financial evaluation**

The lowest evaluated bidder (Unit Price) per item will be recommended for award, under the framework contract as and when need arises during the contract period of

	two (2) years.
2.24 (b)	<b>Award Criteria</b> The lowest evaluated bidder per item will be awarded, under the framework contract as and when need arises during the contract <b>period of two (2) years.</b>



## SECTION III – GENERAL CONDITIONS OF CONTRACT

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## **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 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 Procuring entity 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 Procuring entity’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 Procuring entity 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 Procuring entity’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 Procuring entity 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 Procuring entity

### **3.6 Patent Rights**

3.6.1 The tenderer shall indemnify the Procuring entity against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof in the Procuring entity'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 Procuring entity 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 Procuring entity 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 Procuring entity 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 Procuring entity, in the form provided in the tender documents.

3.7.4 The performance security will be discharged by the Procuring entity 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 Procuring entity or its representative shall have the right to inspect and/or to test the goods to confirm their conformity to the Contract specifications. The Procuring entity 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 Procuring entity.
- 3.8.3 Should any inspected or tested goods fail to conform to the Specifications, the Procuring entity 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 Procuring entity.
- 3.8.4 The Procuring entity'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 Procuring entity 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 Procuring entity 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.

## **6. 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 Procuring entity 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 procuring entity 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 Procuring entity's prior written consent

### **3.15 Subcontracts**

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

### **3.16 Termination for default**

3.16.1 The Procuring entity 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

- (b) 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 Procuring entity
- (c) if the tenderer fails to perform any other obligation(s) under the Contract
- (d) if the tenderer, in the judgment of the Procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the Contract

3.16.2 In the event the Procuring entity 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 Procuring entity 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 procuring entity 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 procuring entity 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**

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



**SECTION IV – SPECIAL CONDITIONS OF CONTRACT**

4.1. Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, between the General Conditions of Contract (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

<b>General conditions of contract reference</b>	<b>Special conditions of contract</b>
3.1 (d)	“The Procuring entity” means Communications Authority of Kenya
3.6	The Performance Security will not be required
3.8	All supplied goods must meet all the market requirements and technical specifications (Quality)
3.12.1	Payment shall be: <ul style="list-style-type: none"> <li>a) Made upon inspection and acceptance and</li> <li>b) Within 30 days from the date of receipt of Invoice.</li> <li>c) Made in Kenya shillings and upon inspection and acceptance of the goods.</li> </ul>
3.13.1	Prices quoted must be expressed in Kenya shillings
3.18	Resolution of disputes shall be through Arbitrations per the Arbitration Act
3.19	The Contract shall be interpreted in accordance with the laws of Kenya
	Conditions of this contract  The contract period shall be two (2) years.  ii. Orders will be placed as and when need arises by the client during the framework contract period.

## **SECTION V – TENDER SPECIFICATIONS**

### **5.1 General**

- 5.1.1 These specifications describe the requirements for goods. Tenderers are requested to submit with their offers the detailed specifications, samples, 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.

The product specification is as follows:

- I. Unbranded 3 Ply surgical facemask
- II. Unbranded KN95 Face Masks
- III. Branded 3ply surgical face mask with full colour CA logo
- IV. Branded KN95 face masks with full colour CA logo
- V. Branded Re-usable cloth masks with CA logo as per KEBS guidelines attached.
- VI. Certification by KEBs: The KEBs Standard Specification (number and title) is KS2636 Kenya Standards – for Surgical Masks
- VII. Delivery timelines within 7- 15 days after LPO issuance to the successful bidder.

## Reusable Cloth Mask-Specification

### 1.0 Scope

This document specifies the requirements for reusable masks for general public use.

### 2.0 Requirements

#### 2.1 Materials

All materials used in the composition of a mask shall be free from latex and glass.

##### 2.1.1 General

##### 2.1.2 Mask layers

The mask shall be made of two layers of woven fabrics, preferably white or light in color. The requirements for each layer shall be given in Table 1.

These layers comprise an outer layer and an absorption layer. Both layers shall be pleated horizontally and at the front of the mask (the outer layer side) the pleats shall face downwards.

The top and bottom of the mask shall be bound with a binding tape to a depth of 10 mm, the binding shall continue in each direction beyond the mask to give a tying tape of nominal length 380mm. A synthetic elastomeric material tape of width 5 mm may be provided to attach the mask over the ears of the wearer. The length of elastic tape shall be such that the elastic fits comfortably over the ears of the wearer.

Each side of the mask shall be bound with tape to a depth of 10 mm or overlapped

##### 2.1.3 Tape

The tensile strength of attachment of the tape to the mask shall be at least 20 N when tested in accordance with KS ISO 13934-1.

#### 2.2 Workmanship

The masks shall be free from defects that affect their appearance and serviceability and free from marks, spots or stains incurred in the making up. The masks shall be manufactured under hygienic conditions.

#### 2.3 Design and size

The masks shall be rectangular in shape and pleated horizontally. The finished dimensions shall be as specified in Table 2.

Table 1: Requirements of Mask layers

<b>Fibre composition</b>	
1 <sup>st</sup> layer (outermost)	100% polyester or blend of cotton and polyester with minimum 60% Polyester
2 <sup>nd</sup> layer	100% cotton
<b>Mass per unit area, g/m<sup>2</sup>, max</b>	
1 <sup>st</sup> layer(outermost)	120
2 <sup>nd</sup> layer	150
<b>Threads per cm, min</b>	
1 <sup>st</sup> layer (outermost)	Ends 40, Picks 25
2 <sup>nd</sup> layer	Ends 30, Picks 20

Table 2: Dimensions

	Infants (2-4 years )	Children (4-12 years )	Adults
Width, mm (minimum )	150	170	180
Depth, mm (minimum )	50	60	60
Pleats depth, mm (minimum)	10	10	15
Number of pleats	2	3	3

### 3.0 Packaging

The following packaging requirements shall apply for the reusable masks;

3.1 Reusable masks shall be packed in 20 pieces of the same size in a suitable packaging.

3.2 The packaging shall be free of contaminants.

### 4.0 Labelling

The following information shall be legibly marked on delivery packages;

- a) Manufacturers name and address.
- b) Country of origin.
- c) Size or age group as per Table 2.
- d) Number of masks packaged.
- e) The words 'Not for surgical use'
- f) The words 'Wash with soap and water before use'

**SECTION VI- SCHEDULE OF REQUIREMENTS**

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

<b>Item</b>	<b>Description</b>	<b>Quantity</b>
1.	Unbranded KN95 Face Masks	1
2.	Unbranded 3Ply Disposable Mask	<u>1</u>
3.	Branded KN95 face Mask with CA logo	<u>1</u>
4.	Branded 3ply disposable surgical Facemask with CA logo	<u>1</u>
5.	Branded reusable face mask with CA logo	<u>1</u>

The lowest evaluated bidder per item will be awarded, under the framework contract as and when need arises during the contract **period of two (2) years.**

---

<sup>1</sup> The Procuring entity must specify here the date from which the delivery schedule will start. That date should

**SECTION VII - PRICE SCHEDULE FOR GOODS**

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

<b>Item</b>	<b>Description</b>	<b>Quantity</b>	<b>Unit Price inclusive of VAT</b>
<u>1.</u>	Unbranded KN95 Face Masks	1	
<u>2.</u>	Unbranded 3Ply Disposable Face Masks	<u>1</u>	
<u>3.</u>	Branded KN 95 Face Mask with CA logo	<u>1</u>	
<u>4.</u>	Branded 3ply disposable surgical Facemask with CA logo	<u>1</u>	
<u>5.</u>	Branded reusable Face mask with CA logo	<u>1</u>	

The lowest evaluated bidder per item will be awarded, under the framework contract as and when need arises during the contract period of **two (2) years**.

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

## **SECTION VIII- STANDARD FORMS**

1. Form of Tender
2. Contract Form
3. Confidential Questionnaire Form
4. Tender Security Form
5. Performance Security Form
6. Letter of Notification of Award
7. Anti – Corruption Declaration Form
8. Self declaration that a person/tenderer is not debarred

## 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 of which is hereby duly acknowledged, we, the undersigned, offer to provide *[the following services]* 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.

Item	Description	Quantity	Unit Price inclusive of VAT
<u>1.</u>	Unbranded KN95 Face Masks	1	
<u>2.</u>	Unbranded 3Ply Disposable Face Mask	<u>1</u>	
<u>3.</u>	Branded KN 95 Face Mask with CA logo	<u>1</u>	
<u>4.</u>	Branded 3ply disposable surgical Facemask with CA logo	<u>1</u>	
<u>5.</u>	Branded Reusable Face mask with CA logo	<u>1</u>	

2. We undertake, if our Tender is accepted, to provide the services in accordance with the services schedule specified in the Schedule of Requirements.
3. If our Tender is accepted, we will obtain the tender guarantee in a sum 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 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. Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20  
*[signature]* *[In the capacity of]*

Duly authorized to sign tender for and on behalf of \_\_\_\_\_

## 8.2 CONTRACT FORM

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 materials and spares. Viz.....[brief description of materials and spares] and has accepted a tender by the tenderer for the supply of those materials and spares in the sum of .....[contract price in words and figures]

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 tenderer hereby covenants with the Procuring entity to provide the materials and spares 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 provision of the materials and spares 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 \_\_\_\_\_.

### 8.3 CONFIDENTIAL BUSINESS QUESTIONNAIRE

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.

<p>Part 1 General</p> <p>Business Name.....</p> <p>Location of Business Premises .....</p> <p>Plot No,.....Street/Road.....</p> <p>Postal address .....Tel No. ....Fax Email.....</p> <p>.....</p> <p>Nature of Business .....</p> <p>Registration Certificate No. ....</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

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

Name of your bankers.....

.....

Branch.....

	<p style="text-align: center;">Part 2 (a) – Sole Proprietor</p> <p>Your name in full.....Age.....</p> <p>Nationality.....Country of Origin.....</p> <p>Citizenship details</p> <p>.....</p>																				
	<p style="text-align: center;">Part 2 (b) – Partnership</p> <p>Given details of partners as follows</p> <table border="0"> <thead> <tr> <th style="text-align: left;">Name</th> <th style="text-align: left;">Nationality</th> <th style="text-align: left;">Citizenship details</th> <th style="text-align: left;">Shares</th> </tr> </thead> <tbody> <tr> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>	Name	Nationality	Citizenship details	Shares	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
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	<p style="text-align: center;">Part 2 (c) – Registered Company</p> <p>Private or Public</p> <p>State the nominal and issued capital of company</p> <p>Nominal Kshs.</p>																				

	<p>Issued Kshs.</p> <p>Given details of all directors as follows</p> <table border="0"> <thead> <tr> <th data-bbox="245 304 331 338">Name</th> <th data-bbox="523 304 676 342">Nationality</th> <th data-bbox="823 304 1066 342">Citizenship details</th> <th data-bbox="1190 304 1283 338">Shares</th> </tr> </thead> <tbody> <tr> <td colspan="4">.....</td> </tr> <tr> <td colspan="4">.....</td> </tr> <tr> <td colspan="4">.....</td> </tr> <tr> <td colspan="4">.....</td> </tr> </tbody> </table>	Name	Nationality	Citizenship details	Shares	.....				.....				.....				.....			
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	<p>Date.....Signature of Candidate.....</p>																				

**8.4 TENDER SECURITY FORM (not required)**

Whereas .....[name of the tenderer]  
(hereinafter called “the tenderer”)has submitted its tender dated.....[date of submission of tender ] for the provision of .....  
[name and/or description of the services]  
(hereinafter called “the Tenderer”).....

KNOW ALL PEOPLE by these presents that WE.....

Of.....having registered office at  
[name of procuring entity](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 21 \_\_\_\_\_.

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 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)*

**8.5 PERFORMANCE SECURITY FORM**

To: .....  
[name of the 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 services](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 figures],*

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 your 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

\_\_\_\_\_  
Signature and seal of the Guarantors

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

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

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

*(Amend accordingly if provided by Insurance Company)*

**8.6 LETTER OF NOTIFICATION OF AWARD**

Address of Procuring Entity

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

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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.

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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)* \_\_\_\_\_

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SIGNED FOR ACCOUNTING OFFICER

**8.7 - ANTI-CORRUPTION DECLARATION COMMITMENT/ PLEDGE** (*Section 62  
PPADA, 2015*)

I/We/..... of Street, Building, P O  
Box.....

.....  
Contact/Phone/E mail.....

I/We .....  
declare that I/We will not offer or facilitate, directly or indirectly, any inducement or reward

to any public officer, their relations or business associates, in connection with

Tender name.....

Tender No .....for or in the subsequent  
performance of the contract if I/We am/are successful.

Authorized Signature..... Name and

Title of Signatory.....



**8.8 SELF DECLARATION THAT THE PERSON/TENDERER IS NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015.**

I, ....., of Post Office Box .....

being a resident of ..... in the Republic of

..... do hereby make a statement as follows:-

1. THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Director of..... (insert name of the..... Company) who is a Bidder in respect of Tender No. ....for .....(Insert tender title/description) for .....(insert...

name of the Procuring entity) and duly authorized and competent to make this statement. Kenya Subsidiary Legislation, 2020 853

2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.

3. THAT what is deponed to hereinabove is true to the best of my knowledge, information and belief.

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

Bidder Official Stamp