# RE-TENDER FOR DEVELOPMENT AND MANAGEMENT OF ADVERTISEMENT MEDIA AT KISUMU INTERNATIONAL AIRPORT

**TENDER NO: KAA/OT/MBD/0111/2023 - 2024**

**NOVENBER 2023**


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## INVITATION TO TENDER

**CONTRACT NO. KAA/OT/MBD/0111/2023 – 2024** **DATE; 14th November, 2023**

**CONTRACT NO: RE-TENDER FOR DEVELOPMENT AND MANAGEMENT OF ADVERTISEMENT MEDIA AT KISUMU INTERNATIONAL AIRPORT**

1. Kenya Airports Authority invites sealed tenders for leasing of space for the **RE-TENDER FOR DEVELOPMENT AND MANAGEMENT OF ADVERTISEMENT MEDIA AT KISUMU INTERNATIONAL AIRPORT.**

2. Tendering will be conducted under open tendering method using a standardized tender document.

3. A complete set of Tender documents are downloadable from the KAA supplier login screen using the link https://kaa.go.ke/corporate/procurement/ . Tender documents obtained electronically will be free of charge.

4. Tender documents may be viewed and downloaded for free from the website ((*www.kaa.go.ke*). Tenderers who download the tender document must forward their particulars immediately to *tenders@kaa.go.ke* to facilitate any further clarification or addendum.

5. *No other communication channel shall be used except through this email address tenders@kaa.go.ke.*

6. All Tenders must be accompanied by a tender security of **Kshs. 500,000.00.** valid for **156 days** from the date of tender opening/closing as provided in the tender data sheet and section 3 of the tender document on evaluation.

7. The Tenderer shall chronologically serialize all pages of the tender documents submitted including any attachments.

8. The tender shall be submitted online on or before **29th November, 2023 at 11.00 am**. Interested bidders who are not in KAA system and therefore do not have login credentials should contact KAA procurement through email: tenders@kaa.go.ke for login credentials early enough and not later than three (3) days before tender closing date. All relevant submission documents must be attached on the login submission screen (*On submission screen, click technical Rfx Response tab which will lead you to the second screen (Cfolder) where the system creates a folder specific to you for uploading your technical tender response documents. Here you click "Tech Bid" subfolder and create attachments. "**Caution Do not attach your documents on the collaboration folder**"*). For Financial Proposal, use the submission financial screen for inputting the Price and related financial attachments on Notes and attachments. A step by step manual/guide is available for downloading using the link https://www.kaa.go.ke/corporate/procurement/manuals/.. Bidders should note that documents submitted for purposes of registration for login credentials do not form part of the tender document.

9. All Prices quoted should be inclusive of all costs and taxes; and must be in Kenya shillings and shall remain valid for 126 days from the closing date of Tender.

10. Tenders will be opened online immediately on **29th November, 2023 at 11.00 am** at the Conference Room, 1st Floor, Kenya Airports Authority Headquarters complex building. A virtual link shall be provided to those tenderers who shall have submitted their interest to submit their tenders online and would wish to participate in the tender opening. Tenderers shall therefore be required to submit their email address to tenders@kaa.go.ke to enable them access this link during the tender opening.

11. Bidders shall not have access to the eProcurement system after the official closing time.

12. The addresses referred to above are:
    a. **Address for obtaining further information and for purchasing tender documents**
        i. Name of Procuring Entity – KENYA AIRPORTS AUTHORITY
        ii. Physical address - Kenya Airports Authority Headquarters complex building, Jomo Kenyatta International Airport, Airport North Road, 2nd Floor, Procurement & Logistics Department

iii. Postal Address – P.O Box 19001 – 00501 Nairobi
iv. Officer to be contacted. – General Manager, Procurement and Logistics, Email: tenders@kaa.go.ke

# PART 1 - TENDERING PROCEDURES

# SECTION I - INSTRUCTIONS TO TENDERERS

## A General Provisions

### 1. Scope of Tender and Definitions

1.1 The Procuring Entity as define in the Appendix to Conditions of Contract invites tenders for leasing of the real estate facilities, plant/equipment or vehicles and, if applicable, any related services incidental thereto, as specified in Section VII, Schedule of Requirements. The name, identification, and number of lots (contracts) of this Tender Document are **specified in the TDS.**

1.2 Throughout this tendering document:

a) The term "in writing" means communicated in written form (e.g. by mail, e-mail, fax, including if **specified in the TDS**, distributed or received through the electronic-procurement system used by the Procuring Entity) with proof of receipt;

b) If the context so requires, "singular" means "plural" and vice versa;

c) "Day" means calendar day, unless otherwise specified as "Business Day". A Business Day is any day that is an official working day of the Procuring Entity. It excludes official public holidays.

### 2 Fraud and Corruption

2.1 The Procuring Entity requires compliance with the provisions of the Public Procurement and Asset Disposal Act, 2015, Section 62 "Declaration not to engage in corruption". The tender submitted by a person shall include a declaration that the person shall not engage in any corrupt or fraudulent practice and a declaration that the person or his or her sub- contractors are not debarred from participating in public procurement proceedings.

2.2 The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Tenders shall be required to complete and sign the "Certificate of Independent Tender Determination" annexed to the Form of Tender.

2.3 Unfair Competitive Advantage - Fairness and transparency in the tender process require that the firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. To that end, the Procuring Entity shall indicate in the **Data Sheet** and make available to all the firms together with this tender document all information that would in that respect give such firm any unfair competitive advantage over competing firms.

2.4 Tenderers shall permit and shall cause their agents (where declared or not), subcontractors, sub-consultants, service providers, suppliers, and their personnel, to permit the Procuring Entity to inspect all accounts, records and other documents relating to any initial selection process, prequalification process, tender submission, proposal submission, and contract performance (in the case of award), and to have them audited by auditors appointed by the Procuring Entity.

### 3 Eligible Tenderers

**3.1** A Tenderer may be a firm that is a private entity, a state-owned enterprise or institution subject to ITT 4.6, or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the Tendering process and, in the event the JV is awarded the Contract, during contract execution. A firm that is a Tenderer (either individually or as a JV member) may participate in more than one Tender, offering different items that meet the requirements of the Lease. A firm that is not a Tenderer or a JV member, may participate as a subcontractor in more than one Tender. Members of a joint venture may not also make an individual tender, be a subcontractor in a separate tender or be part of another joint venture for the purposes of the same Tender. The maximum number members shall be specified in the **TDS.**

3.2 Public Officers of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.

3.3 A Tenderer shall not have a conflict of interest. Any Tenderer found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest for the purpose of this Tendering process, if the Tenderer:

a Directly or indirectly controls, is controlled by or is under common control with another Tenderer; or

b Receives or has received any direct or indirect subsidy from another Tenderer; or

c Has the same legal representative as another Tenderer; or

d Has a relationship with another Tenderer, directly or through common third parties, that puts it in a position to influence the Tender of another Tenderer, or influence the decisions of the Procuring Entity regarding this Tendering process; or

e Or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the Tender; or

f Or any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity or Procuring Entity for the Contract implementation; or

g would be providing Lease Items, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the TDS ITT 2.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or

h has a close business or family relationship with a professional staff of the Procuring Entity who:

i are directly or indirectly involved in the preparation of the tendering document or specifications of the Contract, and/or the Tender evaluation process of such Contract; or

j would be involved in the implementation or supervision of such Contract unless the conflict stemming from such relationship p has been resolved in a manner acceptable to the Procuring Entity throughout the Tendering process and execution of the Contract.

3.4 A Tenderer shall not be involved in corrupt, coercive, obstructive, collusive, or fraudulent practice. A tenderer that is proven to have been involved in any of these practices shall be automatically disqualified and would not be awarded a contract.

3.5 A firm that is a Tenderer (either individually or as a JV member) may participate in more than one Tender, offering different items that meet the requirements of the Lease. A firm that is not a Tenderer or a JV member, may participate as a subcontract or in more than one Tender.

3.6 A Tenderer may have the nationality of any country, subjecttotherestrictionspursuanttoITT4.9.ATenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or sub- consultants for any part of the Contract including related Services.

3.7 A Tenderer that has been debarred by the PPRA from participating in public procurement shall be ineligible to be prequalified for a tender or be awarded a contract. The list of debarred firms and individuals is available from the website of PPRA www.ppra.go.ke.

3.8 Tenderers that are state-owned enterprises or institutions may be eligible to compete and be awarded a Contract(s) only if they are (i) a legal public entity of the state Government and/or public administration, (ii) financiallyautonomousandnotreceivinganysignificantsubsidiesorbudget support from any public entity or Government, and (iii) operating under commercial law and vested with legal rights and liabilities similar to any commercial enterprise to enable it compete with firms in the private sector on an equal basis.

3.9 Firms and individuals may be ineligible if their countries of origin (a) as a matter of law or official regulations, Kenya prohibits commercial relations with that country, or (b) by an act of compliance with a decision of the

United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of Lease Items or contracting for supply of Lease Items or services from that country, or any payments to any country, person, or entity in that country. A tenderer shall provide such documentary evidence of eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.

3.10 For purposes of granting a margin of preference, a tender is considered a national tenderer if it is registered in Kenya, has more than 51 percent ownership by nationals of Kenya and if it does not subcontract foreign contractors more than 10 percent of the contract price, excluding provisional sums. JVs are considered as national tenderers and eligible for national preference only if the individual member firms are registered in Kenya or have more than 51percent ownership by nationals of Kenya, and the JV shall be registered in Kenya. The JV shall not subcontract to foreign firms more than10 percent of the contract price, excluding provisional sums.

3.11 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 Leases under this Invitation for tenders.

3.12 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for tender, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website www.cak.go.ke.

3.13 A Kenyan tenderer shall provide evidence of having fulfilled his/her tax obligations by producing a valid tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority.

## 4 Eligible Lease Items and Related Services

4.1 All the Lease Items and Related Services to be supplied under the Contract and financed by the Procuring Entity shall have their origin from Eligible Countries in accordance with ITT 3.8.

4.2 For purposes of this ITT, the term “Lease Items” includes, landed properties, buildings and related accommodations, vessels (land, air and sea), vehicles, machinery, plant and equipment, “related services” including services such as insurance, installation, training, and maintenance.

4.3 The term “origin” means the country where the Lease Items have been sourced from, manufactured, processed, or assembled.

4.4 A lease item may be considered ineligible it has items, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement.

## B. Contents of Tendering Document

## 5 Sections of Tendering Document

5.1 The tendering document consist of Parts1, 2, and 3, which include all the sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITT 10.

**PART 1 Tendering Procedures**

i) Section I- Instructions to Tenderers (ITT)

ii) Section II - Tendering Data Sheet (TDS)

iii) Section III – Evaluation and Qualification Criteria

iv) Section IV- Tendering Forms

**PART 2 Supply Requirements**

v) Section V - Schedule of Requirements

**PART 3 Contract**

vi) Section VI-General Conditions of Contract (GCC)

vii) Section VII-Special Conditions of Contract (SCC)

viii) Section VIII-Contract Forms

5.1.1 The Specific Procurement Notice, Invitation to Tenders Notice, issued by the Procuring Entity is not part of this tendering document.

5.1.2 Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of the document, responses to requests for clarification, the Minutes of the pre-Tender meeting (if any), or Addenda to the tendering document in accordance with ITT 10. In case of any contradiction, documents obtained directly from the Procuring Entity shall prevail.

5.1.3 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tendering document and to furnish with its Tender all information or documentation as is required by the tendering document.

## 6 Clarification of Tendering Document

A Tenderer requiring any clarification of the tendering document shall contact the Procuring Entity in writing at the Procuring Entity's address specified in the **TDS**. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received prior to the deadline for submission of Tenders within a period specified in the **TDS.** The Procuring Entity shall forward copies of its response to all Tenderers who have acquired the tendering document in accordance with ITT 6.3, including a description of the inquiry but without identifying its source. If so specified in the **TDS**, the Procuring Entity shall also promptly publish its response at the web page identified in the **TDS**. Should the clarification result in changes to the essential elements of the tendering document, the Procuring Entity shall amend the tendering document following the procedure under ITT8 and ITT 22.2.

## 7 Amendment of Tendering Document

7.1 At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the tendering document by issuing addenda.

7.2 Any addendum issued shall bepartofthetenderingdocumentandshallbecommunicatedinwritingtoallwho have obtained the tendering document from the Procuring Entity in accordance with ITT 6.3. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's webpage in accordance with ITT 7.1.

7.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders, pursuant to ITT 22.2.

## C. Preparation of Tenders

## 8 Cost of Tendering

8.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Procuring Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.

## 9 Language of Tender

10.4 The Tender, as well as all correspondence and documents relating to the Tender exchanged by the Tenderer and the Procuring Entity, shall be written in English Language**.** Supporting documents and printed literature that are part of the Tender may be in another language provided they are accompanied by an accurate translation of the relevant passages into the English Language**,** in which case, for purposes of interpretation of the Tender, such translation shall govern.

## 10 Documents Comprising the Tender

10.1 The Tender shall comprise the following:

a **Form of Tender** prepared in accordance with ITT 11;

b **Price Schedules**: completed in accordance with ITT 11 and ITT 13;

c **Tender Security** or **Tender – Securing Declaration**, in accordance with ITT 18.1;

d **Alternative Tender**: if permissible, in accordance with ITT 12;

e **Authorization**: written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 29.3;

f **Qualifications**: documentary evidence in accordance with ITT 16 establishing the Tenderer qualifications to perform the Contract if its Tender is accepted;

g **Tenderer Eligibility**: documentary evidence in accordance with ITT 16 establishing the Tenderer eligibility to tender;

h **Eligibility of Lease Items and Related Services:** documentary evidence in accordance with ITT 15, establishing the eligibility of the Lease Items and Related Services to be supplied by the Tenderer;

i **Conformity**: documentary evidence in accordance with ITT 15 and 28, that the Lease Items and Related Services conform to the tendering document; and

j Any other document required **in the TDS.**

10.2 In addition to the requirements under ITT 13.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful Tender shall be signed by all members and submitted with the Tender, together with a copy of the proposed Agreement.

10.3 The Tenderer shall furnish in the Form of Tender information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Tender.

## 11 Form of Tender and Price Schedules

11.1 The Form of Tender and Price Schedules shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITT 20.3. All blank spaces shall be filled in with the information requested. The Tenderer shall chronologically serialize pages of all tender documents submitted.

11.2 Each item on the Schedule of Requirements must be priced separately in the Price Schedules and for full quantities required. Items not priced for full quantity on the Schedule of Requirements will be rejected. TENDERERS MAY QUOTE FOR ONE OR MORE OF THE ITEMS ON THE SCHEDULE OF REQUIREMENTS. Tenders will be evaluated and awarded on basis of each item.

11.3 Where tenders are being invited for individual Items/lots (contracts) or for any combination of lots (packages), tenderers wishing to offer discounts for the award of more than one Contract shall specify so in their Tender the price reductions applicable to each Item or alternatively, to individual items. Discounts shall be submitted in accordance with ITT 13.1, provided the Tenders for all lots (contracts) are opened at the same time.

11.4 All duties, taxes, and other levies payable by the Contract or under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of Tenders, shall be included in the rates and prices and the total Tender Price submitted by the Tenderer.

## 12 Alternative Tenders

12.1 Unless otherwise specified **in the TDS,** alternative Tenders shall not be considered.

## 13 Tender Prices and Discounts

13.1 The prices and discounts quoted by the Tenderer in the Form of Tender and in the Price Schedules shall conform to the requirements specified below.

13.2 The price to be quoted in the Form of Tender in accordance with ITT 14.1 shall be the total price of all the items but the attachment of the Schedule of prices, excluding any discounts offered.

13.3 The Tenderer shall quote any discounts and indicate the methodology for their application in the Form of Tender, in accordance with ITT 14.1.

13.4 Prices quoted by the Tenderer shall be fixed during the time of the Lease under the Contract and not subject to variation on any account, unless otherwise specified **in the TDS.** A Tender submitted with an adjustable price quotation shall be treated as non-responsive and shall be rejected, pursuant to ITT 29. However, if in accordance with **the TDS**, prices quoted by the Tenderer shall be subject to adjustment during the Lease under the Contract, a Tender submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.

13.5 If so specified in ITT 1.1, Tenders are being invited for individual lots (contracts) or for any combination of lots (packages). Prices quoted shall correspond to 100 % of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Tenderers wishing to offer discounts for the award of more than one Contract shall specify in their Tender the price reductions applicable to each package, or alternatively, to individual Contracts with in the package. Discounts shall be submitted in accordance with ITT 14.4 provided the Tenders for all lots (contracts) are opened at the same time.

13.6 Prices shall be quoted as specified in each Price Schedule included in Section IV, Tendering Forms. The disaggregation of price components is required solely for the purpose of facilitating the comparison of Tenders by the Procuring Entity. This shall not in any way limit the Procuring Entity's right to contract on any of the terms offered. The Tenderer may obtain insurance services from any eligible country in accordance with ITT 3, Eligible Tenders. The tender shall include Related Services required to maintain the leased item as specified in the Schedule of Requirements (inclusive of any applicable taxes).

**14 Currencies of Tender and Payment**

14.1 The currency(ies) of the Tender and the currency(ies) of payments shall be the same. The Tenderer shall quote in Kenya shillings unless otherwise specified **in the TDS.**

**15 Documents Establishing the Eligibility and Conformity of the Lease Items and Related Services.**

15.1 To establish the eligibility of the lease items and Related Services in accordance with ITT 5, Tenderers shall complete the country of origin declarations in the Price Schedule Forms, included in Section IV, Tendering Forms.

15.2 To establish the conformity of the Lease items and Related Services to the tendering document, the Tenderer shall furnish as part of its Tender the documentary evidence that the Lease Items conform to the technical specifications and standards specified in Section VII, Schedule of Requirements.

15.3 The documentary evidence may be in the form of literature, drawings or data, and shall consist of a detailed item by item description of the essential technical and performance characteristics of the Lease Items and Related Services, demonstrating substantial responsiveness of the Lease Items and Related Services to the technical specification, and if applicable, a statement of deviations and exceptions to the provisions of the Section VII, Schedule of Requirements.

15.4 The Tenderer shall also furnish a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the Lease Items during the period **specified in the TDS** following commencement of the use of the Lease Items by the Procuring Entity.

15.5 Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by the Procuring Entity in the Schedule of Requirements, are intended to be descriptive only and not restrictive. The Tenderer may offer other standards of quality, brand names, and/or catalogue numbers, provided that it demonstrates, to the Procuring Entity's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Section VII, Schedule of Requirements.

## 16. Documents Establishing the Eligibility and Qualifications of the Tenderer

16.1 To establish Tenderer eligibility in accordance with ITT 4, Tenderers shall complete the Form of Tender, included in Section IV, Tendering Forms.

16.2 The documentary evidence of the Tenderer qualifications to perform the Contract if its Tender is accepted shall establish to the Procuring Entity's satisfaction:

- that, if required **in the TDS**, a Tenderer that does not own the Lease Items it offers shall submit the Owner's Authorization using the form included in Section IV, Tendering Forms to demonstrate that it has been duly authorized by the Owner of the Lease Items.
- that, if required **in the TDS**, in case of a Tenderer not doing business within Kenya, the Tenderer is or will be (if awarded the Contract) represented by an Agent in the country equipped and able to carry out the related services of the leased items as obligations prescribed in the Conditions of Contract and/or Technical Specifications; and
- that the Tenderer meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.

16.3 Tenderers shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a particular lessor or group of lessors qualifies for a margin of preference. Further the information will enable the Procuring Entity identify any actual or potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between tenderers, and thereby help to prevent any corrupt influence in relation to the procurement process or contract management.

16.4 The purpose of the information described in ITT 16.3 above overrides any claims to confidentiality which a tenderer may have. There can be no circumstances in which it would be justified for a tenderer to keep information relating to its ownership and control confidential where it is tendering to undertake public sector work and receive public sector funds. Thus, confidentiality will not be accepted by the Procuring Entity as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership and control.

16.5 The Tenderer shall provide further documentary proof, information or authorizations that the Procuring Entity may request in relation to ownership and control which in formation on any changes to the information which was provided by the tenderer under ITT 16.3. The obligations to require this information shall continue for the duration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.

16.6 All information provided by the tenderer pursuant to these requirements must be complete, current and accurate as at the date of provision to the Procuring Entity. In submitting the information required pursuant to these requirements, the Tenderer shall warrant that the information submitted is complete, current and accurate as at the date of submission to the Procuring Entity.

16.7 If a tenderer fails to submit the information required by these requirements, its tenderer will be rejected. Similarly, if the Procuring Entity is unable, after taking reasonable steps, to verify to a reasonable degree the information submitted by a tenderer pursuant to these requirements, then the tender will be rejected.

16.8 If information submitted by a tenderer pursuant to these requirements, or obtained by the Procuring Entity (whether through its own enquiries, through notification by the public or otherwise), shows any conflict of interest which could materially and improperly benefit the tenderer in relation to the procurement or contract management process, then:

i) If the procurement process is still ongoing, the tenderer will be disqualified from the procurement process.
ii) If the contract has been awarded to that tenderer, the contract award will be set aside.
iii) the tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other persons have committed any criminal offence.

16.9 If a tenderer submits information pursuant to these requirements that is incomplete, in accurate or out-of-date, or attempts to obstruct the verification process, then the consequences ITT 16.8 will ensue unless the tenderer can show to the reasonable satisfaction of the Procuring Entity that any such act was not material, or was due to genuine error which was not attributable to the intentional act, negligence or recklessness of the tenderer.

## 17 Period of Validity of Tenders

17.1 Tenders shall remain valid for the Tender Validity period specified **in the TDS**. The Tender Validity period starts from the date fixed for the Tender submission deadline (as prescribed by the Procuring Entity in accordance with ITT 22.1). A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.

17.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 19, it shall also be extended for a corresponding period. A Tenderer may refuse the request without forfeiting its Tender Security. A Tenderer granting the request shall not be required or permitted to modify its Tender, except as provided in ITT 18.3.

## 18 Tender Security

18.1 The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender Security, as specified **in the TDS,** in original form and, in the case of a Tender Security**,** in the amount and currency specified **in the TDS.** In this case a Tender-Securing Declaration or a Tender Security shall be for each item. Alternatively, a tenderer may aggregate all the Items tendered for and provide one Tender-Securing Declaration or a Tender Security in the required amounts, as the case may be.

18.2 A Tender Securing Declaration shall use the form included in Section IV, Tendering Forms.

18.3 If a Tender Security is specified pursuant to ITT 19.1, the Tender Security shall be a demand bank guarantee in any of the following forms at the Tenderer option:

i. cash;

ii. a bank guarantee;

iii. a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Authority; or

iv. a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya.

**v.** Any other form specified in the **TDS.**

18.4 If an unconditional guarantee is issued by a non-Bank financial institution located outside Kenya, the issuing non-Bank financial institution shall have a correspondent financial institution located in Kenya to make it enforceable unless the Procuring Entity has agreed in writing, prior to Tender submission, that a correspondent financial institution is not required. In the case of a bank guarantee, the Tender Security shall be submitted either using the Tender Security Form included in Section IV, Tendering Forms, or in another substantially similar format approved by the Procuring Entity prior to Tender submission. The Tender Security shall be valid for twenty-eight (28) days beyond the original validity period of the Tender, or beyond any period of extension if requested under ITT 18.2.

18.5 If a Tender Security is specified pursuant to ITT 19.1, any Tender not accompanied by a substantially responsive Tender Security shall be rejected by the Procuring Entity as non-responsive.

18.6 If a Tender Security is specified pursuant to ITT 19.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer signing the Contract and furnishing the Performance Security pursuant to ITT 46.

18.7 The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract. The Procurement Entity shall also return tender security to the tenderers where;

a. The procurement proceedings are terminated

b. All tenders were determined non-responsive and

c. Where a bidder decline to extent the tender validity period.

18.8 The Tender Security may be forfeited or the Tender Securing Declaration executed:

a) If a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer in the Form of Tender, or any extension thereto provided by the Tenderer; or

i) If the successful Tenderer fails to sign the Contract in accordance with ITT 45; or

ii) Furnish or make available the Leased items.

18.9 The Tender Security or Tender- Securing Declaration of a JV must be in the name of the JV that submits the Tender. If the JV has not been legally constituted into a legally enforceable JV at the time of Tendering, the Tender Security or Tender-Securing Declaration shall be in the names of all future members as named in the letter of intent referred to in ITT 4.1 and ITT 11.2.

18.10 Where the Tender-Securing Declaration is executed the Procuring Entity will recommend to the PPRA that PPRA debars the Tenderer from participating in public procurement as provided in the law.

18.11 A tenderer shall not issue a tender security to guarantee itself.

**19 Format and Signing of Tender**

19.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 11 and clearly mark it "ORIGINAL." Alternative Tenders, if permitted in accordance with ITT 13, shall be clearly marked "ALTERNATIVE." In addition, the Tenderer shall submit copies of the Tender, in the number **specified in the TDS** and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.

19.2 Tenderers shall mark as "CONFIDENTIAL" information in their Tenders which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.

19.3 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation **as specified in the TDS** and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person signing the Tender.

19.4 In case the Tenderer is a JV, the Tender shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.

19.5 Any inter-lineation, erasures, or over writing shall be valid only if they are signed or initialed by the person signing the Tender.

**D. Submission and Opening of Tenders**

**20 Sealing and Marking of Tenders**

20.1 The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to the Procuring Entity and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, the Tenderer shall place the following separate, sealed envelopes:

a in an envelope or package or container marked "ORIGINAL", all documents comprising the Tender, as described in ITT11; and

b in an envelope or package or container marked "COPIES", all required copies of the Tender; and

c if alternative Tenders are permitted in accordance with ITT 13, and if relevant:

i. in an envelope or package or container marked "ORIGINAL –ALTERNATIVE TENDER", the alternative Tender; and

ii. in the envelope or package or container marked "COPIES- ALTERNATIVE TENDER", all required copies of the alternative Tender.

The inner envelopes or packages or containers shall:

a) bear the name and address of the Procuring Entity.

b) Bear the name and address of the Tenderer; and

c) Bear the name and Reference number of the Tender.

20.2 If an envelope or package or container is not sealed and marked as required, the *Procuring Entity* will assume no responsibility for the misplacement or premature opening of the Tender. Tenders that are misplaced or opened prematurely will not be accepted.

## 21 Deadline for Submission of Tenders

21.1 Tenders must be received by the Procuring Entity at the address and no later than the date and time specified **in the TDS. When so specified in the TDS**, Tenderers shall have the option of submitting their Tenders electronically. Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedures **specified in the TDS**.

21.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the tendering document in accordance with ITT 8, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

## 22 Late Tenders

22.1 The Procuring Entity shall not consider any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT 22. Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

## 23 Withdrawal, Substitution, and Modification of Tenders

23.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization (the power of attorney) in accordance with ITT 20.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:

a prepared and submitted in accordance with ITT 20 and 21 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," or "MODIFICATION;" and

b received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT 22.

23.2 Tenders requested to be withdrawn in accordance with ITT 24.1 shall be returned unopened to the Tenderers.

23.3 No Tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Tenderer on the Form of Tender or any extension thereof.

## 24 Tender Opening

**24.1** Except as in the cases specified in ITT 23 and ITT 24.2, the Procuring Entity shall, at the Tender opening, publicly open and read out all Tenders received by the deadline at the date, time and place specified **in the TDS** in the presence of Tenderers' designated representatives and anyone who chooses to attend Any specific electronic Tender opening procedures required if electronic tendering is permitted in accordance with ITT 22.1, shall be as specified **in the TDS.**

24.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding Tender shall not be opened, but returned to the Tenderer. If the withdrawal envelope does not contain a copy of the "power of attorney" confirming the signature as a person duly authorized to sign on behalf of the Tenderer, the corresponding Tender will be opened. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Tender opening.

24.3 Next, envelopes marked “SUBSTITUTION” shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening.

24.4 Next, envelopes marked “MODIFICATION” shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening.

24.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the total Tender Prices, per lot (contract) if applicable, including any discounts and alternative Tenders; the presence or absence of a Tender Security, if required; and any other details as the Procuring Entity may consider appropriate.

**24.6** Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further in the evaluation. The Form of Tender and the Price Schedules are to be initialed by representatives of the Procuring Entity attending Tender opening in the manner specified **in the TDS.**

24.7 The Procuring Entity shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT 23.1).

24.8 The Procuring Entity shall prepare a record of the Tender opening that shall include, as a minimum:

a The name of the Tenderer and whether there is a withdrawal, substitution, or modification;

b The Tender Price, per lot (contract) if applicable, including any discounts;

c Any alternative Tenders;

d The presence or absence of a Tender Security or Tender-Securing Declaration, if one was required.

24.9 The Tenderers' representatives who are present shall be requested to sign the record. The omission of a Tenderer signature on the record shall not invalidate the contents and effect of the record. A copy of the opening register shall be distributed to all Tenderers upon request.

## E. Evaluation and Comparison of Tenders

### 25 Confidentiality

25.1 Information relating to the evaluation of Tenders and recommendation of contract award, shall not be disclosed to Tenderers or any other persons not officially concerned with the Tendering process until the information on Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 40.

25.2 Any effort by a Tenderer to influence the Procuring Entity in the evaluation or contract award decisions may result in the rejection of its Tender.

25.3 Notwithstanding ITT 26.2, from the time of Tender opening to the time of Contract Award, if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tendering process, it should do so in writing.

### 26 Clarification of Tenders

26.1 To assist in the examination, evaluation, comparison of the Tenders, and qualification of the Tenderers, the Procuring Entity may, at its discretion, ask any Tenderer for a clarification of its Tender. Any clarification submitted by a Tenderer in respect to its Tender and that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Tender shall besought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the Evaluation of the Tenders, in accordance with ITT 31.

26.2 If a Tenderer does not provide clarifications of its Tender by the date and time set in the Procuring Entity's request for clarification, its Tender may be rejected.

## 27 Deviations, Reservations, and Omissions

27.1 During the evaluation of Tenders, the following definitions apply:

a "Deviation" is a departure from the requirements specified in the Tendering document;

b "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the tendering document; and

c "Omission" is the failure to submit part or all of the information or documentation required in the tendering document.

## 28 Determination of Responsiveness

28.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT 11.

28.2 A substantially responsive Tender is one that meets the requirements of the tendering document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:

a If accepted, would:

i. Affect in any substantial way the scope, quality, or performance of the Lease Items and Related Services specified in the Contract; or

ii. Limit in any substantial way, in consistent with the tendering document, the Procuring Entity's rights or the Tenderer obligations under the Contract; or

b if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.

28.3 The Procuring Entity shall examine the technical aspects of the Tender submitted in accordance with ITT 16 and ITT 17, in particular, to confirm that all requirements of Section VII, Schedule of Requirements have been met without any material deviation or reservation, or omission.

28.4 If a Tender is not substantially responsive to the requirements of tendering document, it shall be rejected by the Procuring Entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

## 29 Non-conformities, Errors and Omissions

29.1 Provided that a Tender is substantially responsive, the Procuring Entity may waive any non-conformities in the Tender.

29.2 Provided that a Tender is substantially responsive, the Procuring Entity may request that the Tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial non-conformities or omissions in the Tender related to documentation requirements. Such omission shall not be related to any aspect of the price of the Tender. Failure of the Tenderer to comply with the request may result in the rejection of its Tender.

29.3 Provided that a Tender is substantially responsive, the Procuring Entity shall rectify quantifiable nonmaterial non-conformities related to the Tender Price. To this effect, the Tender Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified in the **TDS**.

## 30 Correction of Arithmetical Errors

30.1 The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in anyway by any person or entity.

30.2 Provided that the Tender is substantially responsive, the Procuring Entity shall handle errors on the following basis:

a Any error detected if considered a major deviation that affects the substance of the tender, shall lead to disqualification of the tender as non-responsive.

b Any errors in the submitted tender arising from a miscalculation of unit price, quantity, subtotal and total bid price shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of the tender as non-responsive. and

c If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail

**31 Conversion to Single Currency**

31.1 No conversion to single currency is expected since all tenders will be in Kenya shillings.

**32 Margin of Preference and reservations**

32.1 No Margin of Preference and Reservations shall be allowed in this tender.

**33 Evaluation of Tenders**

33.1 The Procuring Entity shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies, the Procuring Entity shall determine the Most Advantageous Tender. This is the Tender of the Tenderer that meets the qualification criteria and whose Tender has been determined to be:

a Substantially responsive to the tendering document; and

b The lowest evaluated cost.

33.2 To evaluate a Tender, the Procuring Entity shall consider the following:

a Price adjustment due to discounts offered in accordance with ITT 14.4;

b Price adjustment due to quantifiable non material non-conformities in accordance with ITT 30.3; and

c The additional evaluation factors are specified in Section III, Evaluation and Qualification Criteria.

33.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of the Lease Contract, shall not be considered in Tender evaluation.

33.4 In the case of multiple contracts or lots, Tenderers are allowed to tender for one or more lots and the methodology to determine the lowest evaluated cost of the lot (contract) and for combinations, including any discounts offered in the Form of Tender, is specified in Section III, Evaluation and Qualification Criteria.

33.5 The Procuring Entity's evaluation of a Tender will include and consider:

a taxes, which will be payable on the Lease Items if a contract is awarded to the Tenderer;

b any allowance for price adjustment during the period of the Lease contract, if provided in the Tender.

33.6 The Procuring Entity's evaluation of a Tender may require the consideration of other factors, in addition to the Tender Price quoted in accordance with ITT 14. These factors may be related to the characteristics, performance, and terms and conditions of Lease and Related Services. The effect of the factors selected, if any, shall be expressed in monetary terms to facilitate comparison of Tenders, unless otherwise specified **in the TDS** from amongst those set out in Section III, Evaluation and Qualification Criteria. The criteria and methodologies to be used shall be as specified in ITT 34.2 (f).

**34 Comparison of Tenders**

34.1 The Procuring Entity shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 34.2 to determine the Tender that has the lowest evaluated cost. The comparison shall be on the basis of total cost for all Lease Items, and related services, together with prices for any required installation, training, commissioning and other services.

## 35 Abnormally Low Tenders and Abnormally High

### Tenders Abnormally Low Tenders

35.1 An Abnormally Low Tender is one where the Tender price, in combination with other elements of the Tender, appears so low that it raises material concerns as to the capability of the Tenderer in regards to the Tenderer's ability to perform the Contract for the offered Tender Price.

35.2 In the event of identification of a potentially Abnormally Low Tender, the Procuring Entity shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Tender document.

35.3 After evaluation of the price analyses, in the event that the Procuring Entity determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, the Procuring Entity shall reject the Tender.

### Abnormally High Tenders

35.4 An abnormally high tender price is one where the tender price, in combination with other constituent elements of the Tender, appears unreasonably too high to the extent that the Procuring Entity is concerned that it (the Procuring Entity) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Tenderers is compromised.

35.5 In case of an abnormally high price, the Procuring Entity shall make a survey of the market prices, check if the estimated cost of the contract is correct and review the Tender Documents to check if the specifications, scope of work and conditions of contract are contributory to the abnormally high tenders. The Procuring Entity may also seek written clarification from the tenderer on the reason for the high tender price. The Procuring Entity shall proceed as follows:

i) If the tender price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the tender depending on the Procuring Entity's budget considerations.

ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, the Procuring Entity shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work and conditions of contract, as the case may be.

35.6 If the Procuring Entity determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (*often due to collusion, corruption or other manipulations*), the Procuring Entity shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before retendering.

## 36 Qualification of the Tenderer

36.1 The Procuring Entity shall determine, to its satisfaction, whether the eligible Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender, meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

36.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer qualifications submitted by the Tenderer, pursuant to ITT 17. The determination shall not take into consideration the qualifications of other firms such as the Tenderer subsidiaries, parent entities, affiliates, subcontractors (other than specialized subcontractors if permitted in the tendering document), or any other firm(s) different from the Tenderer.

36.3 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event the Procuring Entity shall proceed to the Tenderer who offers a substantially responsive Tender with the next lowest evaluated cost to make a similar determination of that Tenderer qualifications to perform satisfactorily.

**37 Procuring Entity's Right to Accept Any Tender, and to Reject Any or All Tenders**

37.1 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 there by incurring any liability to Tenderers. In case of annulment, all Tenders submitted and specifically, tender securities, shall be promptly returned to the Tenderers.

## F. Award of Contract

**38. Award Criteria**

38.1 The Procuring Entity shall award the Contract to the successful tenderer whose tender has been determined to be the lowest Evaluated Tender.

**39. Notice of Intention to enter into a Contract/Notification of award**

39.1 Upon award of the contract and Prior to the expiry of the Tender Validity Period the Procuring Entity shall issue a Notification of Intention to Enter into a Contract/Notification of award to all tenderers which shall contain, at a minimum, the following information:

a) The name and address of the Tenderer submitting the successful tender;

b) The Contract price of the successful tender;

c) a statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was unsuccessful, unless the price information in (c) above already reveals the reason;

d) the expiry date of the Standstill Period; and

e) instructions on how to request a debriefing and/or submit a complaint during the standstill period;

**40. Standstill Period**

40.1 The Contract shall not be signed earlier than the expiry of a Standstill Period of 14 days to allow any dissatisfied tender to launch a complaint. Where only one Tender is submitted, the Standstill Period shall not apply.

40.2 Where a Standstill Period applies, it shall commence when the Procuring Entity has transmitted to each Tenderer the Notification of Intention to Enter into a Contract with the successful Tenderer.

**41 Debriefing by the Procuring Entity**

41.1 On receipt of the Procuring Entity's Notification of Intention to Enter into a Contract referred to in ITT 43, an unsuccessful tenderer may make a written request to the Procuring Entity for a debriefing on specific issues or concerns regarding their tender. The Procuring Entity shall provide the debriefing within five days of receipt of the request. .2 Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending such a debriefing meeting.

**42 Letter of Award**

42.1 Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 42.1, upon addressing a complaint that has been filed within the Standstill Period, the Procuring Entity shall transmit the Letter of Award to the successful Tenderer. The letter of award shall request the successful tenderer to furnish the Performance Security within 21 days of the date of the letter.

**43 Signing of Contract**

43.1 Upon the expiry of the fourteen days of the Notification of Intention to enter into contract and upon the parties meeting their respective statutory requirements, the Procuring Entity shall send the successful Tenderer the Contract Agreement.

43.2 Within fourteen (14) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to the Procuring Entity.

43.3 The written contract shall be entered into within the period specified in the notification of award and before expiry of the tender validity period.

**44 Performance Security**

44.1 Within twenty-one (21) days of the receipt of Letter of Acceptance from the Procuring Entity, the successful Tenderer, if required, shall furnish the Performance Security in accordance with the GCC 18, using for that purpose the Performance Security Form included in Section X, Contract Forms, or another Form acceptable to the Procuring Entity. If the Performance Security furnished by the successful Tenderer is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Tenderer to be acceptable to the Procuring Entity. A foreign institution providing a bond shall have a correspondent financial institution located in Kenya, unless the Procuring Entity has agreed in writing that a correspondent financial institution is not required.

44.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security. In that event the Procuring Entity may award the Contract to the Tenderer offering the next Most Advantageous Tender.

44.3 Performance security shall not be required for contracts estimated to cost less than Kenya shillings five million shillings.

**45. Publication of Procurement Contract**

45.1 Within fourteen days after signing the contract, the Procuring Entity shall publish the awarded contract at its notice boards and websites; and on the Website of the Authority. At the minimum, the notice shall contain the following information:

a) name and address of the Procuring Entity;

b) name and reference number of the contract being awarded, a summary of its scope and the selection method used;

c) the name of the successful Tenderer, the final total contract price, the contract duration.

d) dates of signature, commencement and completion of contract;

e) names of all Tenderers that submitted Tenders, and their Tender prices as read out at Tender opening.

**46 Procurement Related Complaint**

The procedures for making a Procurement-related Complaint are as specified in the **TDS.**

## Section II - Tender Data Sheet (TDS)

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

| ITT Reference | A. General |
|---|---|
| ITT1.1 | The reference number is: **KAA/OT/MBD/0111/2023-2024.**<br>The Procuring Entity is **Kenya Airports Authority**<br>The name of the contract is: **RE-TENDER FOR DEVELOPMENT AND MANAGEMENT OF ADVERTISEMENT MEDIA AT KISUMU INTERNATIONAL AIRPORT**.<br><br>**Successful tenderer shall be contracted for a term of Ten (10) years with a review of terms at the end of every three (3) years.** |
| ITT1.2(a) | Upon accessing the tender documents, you will be required to respond to the tender **online** using the following link https://suppliers.kaa.go.ke/irj/portal.<br>1. Interested bidders who are not in KAA system and therefore do not have login credentials should contact KAA procurement through email: tenders@kaa.go.ke for login credentials early enough and not later than three (3) days before tender closing date.<br>2. All relevant submission documents must be attached on the login submission screen (*On submission screen, click technical Rfx Response tab which will lead you to the second screen (Cfolder) where the system creates a folder specific to you for uploading your technical tender response documents. Here you click "Tech Bid" subfolder and create attachments. "**Caution Do not attach your documents on the collaboration folder**"*). For Financial Proposal, use the submission financial screen for inputting the Price and related financial attachments on Notes and attachments. A step by step manual/guide is available for downloading using the link https://www.kaa.go.ke/corporate/procurement/manuals/.<br><br>Completed Tender documents and its attachments shall be submitted **online before the closing date 29th November, 2023 at 11.00 am.** |
| ITT3.1 | Eligible tenderers or their Joint Venture (JV) partners are Firms who operate the specific retail outlet in:<br>i. An airport<br>ii. Commercial street<br>iii. Shopping malls with a leading supermarket as the anchor tenant or commercial streets.<br><br>The tender is opened to all bidders who are able to demonstrable capacity of advertising media development and management services. Firms who are interested in bidding for the business either individually or as a consortium / joint venture must show proof of relevant experience.<br>Successful tenderers shall be contracted for a Period of **Ten (10) years** with a review of performance terms at the end of every **three (3) years**.<br><br>Maximum number of joint ventures partners shall be **Two (2).** |
| | **B. Contents of Tendering Document** |
| ITT6. | For clarification of tender purposes, the Procuring Entity's address is; -<br>For **Tender submission purposes** only the following the Procuring Entity's address is approved:<br><br>Name of Procuring Entity: Kenya Airports Authority<br>Postal Address and name of Officer to be intentioned:<br>General Manager (Procurement & Logistics)<br>P.O. BOX 19001-00501 Nairobi<br><br>Physical Address for hand courier delivery of the tender security only to our office:<br>Kenya Airports Authority Headquarters Complex Building,<br>Jomo Kenyatta International Airport, Airport North Road,<br>2nd Floor, Procurement & Logistics Department |

| | |
|---|---|
| | Date and time for submission of Tenders **29th November, 2023 at 11.00 am**.<br><br>Please note that all our tenders shall be **submitted** electronically except the original tender security which shall submitted to the office of the General Manager (Procurement & Logistics) on or before the closing time which is on **29th November, 2023 at 11.00 am.**<br><br>Clarification from the bidders to be sent through the email address tenders@kaa.go.ke not later than 3 days from the tender opening date. |
| | **C. Preparation of Tenders** |
| **ITT10(j)** | The tenderer shall submit the following additional in its tender documents as provided in the evaluation and qualification criteria in section III. |
| **ITT12.1** | Alternative tenders shall not be accepted |
| **ITT13.4** | Prices quoted by the tenderer shall be fixed during the contract or reviewed as per policy during the contract period. |
| **ITT14.1** | The minimum annual guarantee is in KES and is exclusive of all taxes, space fees and service charge. Bidders are required to quote their proposed minimum annual guarantee. |
| **ITT17.3(a)** | The tender price shall not be adjusted save as provided under the applicable law. |
| ITT 18.1 | The Tender Security shall be required of **Kshs. 500,000.00** valid for **156 days** from the date of tender opening/closing date.<br>The tender security shall be in any of the following forms:<br>a) cash or banker's cheque, or<br>b) a bank guarantee, or<br>c) guarantee issued by a reputable insurance company approved by Public Procurement Regulatory Authority (PPRA) or<br>d) Letter of credit<br><br>Bidders are required to note the following:<br><br>(i)Those who have obtained a digital tender security must provide it online with their tender document in the KAA portal. The digital tender security must have a mechanism to verify such as use of quick response (QR) code or an online portal. They do not need to provide a hard copy of the tender security physically.<br><br>(ii)Those who do not provide a digital tender security as per (i) above will be required to submit an original Tender Security physically to the office of the General Manager, Procurement and Logistics department, KAA Headquarters, 2nd Floor on or before the closing/opening date and time. |
| ITT 24.1 | Tenders will be opened online immediately on **29th November, 2023 at 11.00 am** at the Conference Room, 2nd Floor, Kenya Airports Authority Headquarters complex building. A virtual link shall be provided to those tenderers who shall submit their tenders online and would wish to participate in the tender opening.<br><br>Tenderers shall therefore be required to submit their email address to tenders@kaa.go.ke to enable them access this link during tender opening |
| ITT 24.6 | Tenders will be opened online immediately on **29th November, 2023 at 11.00 am** at the Conference Room, 2nd Floor, Kenya Airports Authority Headquarters complex building. A virtual link shall be provided to those tenderers who shall submit their tenders online and would wish to participate in the tender opening. Tenderers shall therefore be required to submit their email address to tenders@kaa.go.ke to enable them access this link during tender opening.<br><br>Please note that all our tenders shall be **submitted** electronically except the original tender security which shall submitted to the office of the General Manager (Procurement & Logistics) on or before the closing time which is on **29th November, 2023 at 11.00 am.**<br><br>The original tender security shall be initialed by the opening committee members. |

| | |
|---|---|
| ITT 29.3 | The manner of rectify quantifiable non-material nonmaterial non-conformity described below; N/A |
| E. | Evaluation and Comparison |
| ITT 34.6 | The factors selected and expressed in monetary terms to facilitate comparison of Tenders are to be based on the highest evaluated bidder |
| F. | Award of Contract – Shall be to the highest evaluated bidder |
| ITT 42 | The highest evaluated bidder subject to them having meet the mandatory and technical requirement. |
| ITT 43 | The performance Security shall be in form of one-year minimum annual guarantee in cash form deposited in a designated account as advised by the procuring entity. |
| ITT 46.1 | The procedure for making a procurement related complaint are detailed in the "Notice of Intention to Award the Contract" herein and are also available from the PPRA website www.ppra.go.ke or email compliance@ppra.go.ke .<br>If a tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following the procedures in writing (by the quickest means available, that is by email for the attention of the full name and person receiving the complaints, the title, procuring entity and email address. |

## SECTION III - EVALUATION AND QUALIFICATION CRITERIA

### 1. General Provision

1.1 Wherever a Tenderer is required to state a monetary amount, Tenderers should indicate the Kenya Shilling equivalent using the rate of exchange determined as follows:

a) For business turnover or financial data required for each Year-Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year is to be converted) was originally established.

b) Value of single contract- Exchange rate prevailing on the date of the contract signature.

c) Exchange rates shall be taken from the publicly available source identified in the ITT. Any error in determining the exchange rates in the Tender may be corrected by the Procuring Entity.

1.2 This section contains the criteria that the Employer shall use to evaluate tender and qualify tenderers. No other factors, methods or criteria shall be used other than specified in this tender document. The Tenderer shall provide all the information requested in the forms included in Section IV, Tendering Forms. The Procuring Entity should use **the Standard Tender Evaluation Report for Goods and Works** for evaluating Tenders.

### 1.3 Evaluation and contract award Criteria

The Procuring Entity shall use the criteria and methodologies listed in this Section to evaluate tenders and arrive at the Highest Evaluated Tender. The tender that (i) meets the qualification criteria, (ii) has been determined to be substantially responsive to the Tender Documents, and (iii) is determined to have the Lowest Evaluated Tender price shall be selected for award of contract.

### 2 Preliminary examination for Determination of Responsiveness

2.1 The Procuring Entity will start by examining all tenders to ensure they meet in all respects the eligibility criteria and other mandatory requirements in the ITT, and that the tender is complete in all aspects in meeting the requirements provided for in the preliminary evaluation criteria outlined below. The Standard Tender Evaluation Report Document for Goods and Works for evaluating Tenders provides very clear guide on how to deal with review of these requirements. Tenders that do not pass the Preliminary Examination will be considered non- responsive and will not be considered further.

Evaluation of duly submitted tenders will be conducted in three main parts as follows: -

**Part I: Preliminary Evaluation Criteria, Mandatory requirements.**

| No | Requirement | Remarks |
|---|---|---|
| 1. | Duly filled, signed and stamped form of tender inclusive of the following areas;<br>• Not having been declared ineligible by the PPRA as described in ITT 3.7<br>• lNo conflicts of interest in accordance with ITT3.3 | Must Meet |
| 2. | The Tender Security shall be required of **Kshs. 500,000.00** valid for **156 days** from the date of tender opening/closing date.<br>The tender security shall be in any of the following forms:<br>a) cash or banker's cheque, or<br>b) a bank guarantee, or<br>c) guarantee issued by a reputable insurance company approved by Public Procurement Regulatory Authority (PPRA) or<br>d) Letter of credit | Must Meet |

| | | |
|---|---|---|
| | Bidders are required to note the following:<br><br>(i)Those who have obtained a digital tender security must provide it online with their tender document in the KAA portal. The digital tender security must have a mechanism to verify such as use of quick response (QR) code or an online portal. They do not need to provide a hard copy of the tender security physically.<br><br>(ii)Those who do not provide a digital tender security as per (i) above will be required to submit an original Tender Security physically to the office of the General Manager, Procurement and Logistics department, KAA Headquarters, 2nd Floor on or before the closing/opening date and time. | |
| 3. | Copy of certificate of Registration/Incorporation or partnership deed to show that the applicant is a registered company and legally authorized to do business in Kenya In case of joint venture, all parties must submit. | Must Meet |
| 4. | A valid and current KRA tax compliance certificate. In case of joint venture, all parties must submit. | Must Meet |
| 5. | A written power of Attorney authorizing the signatory of the tender to commit the Tenderer certified by a commissioner for oath. This requirement is not applicable to sole proprietorships. | Must Meet |
| 6. | Duly filled Confidential Business Questionnaire form. In case of joint venture, all parties must submit. | Must Meet |
| 7. | Duly filled Statement of Financial Compliance form In case of joint venture, all parties must submit. | Must Meet |
| 8. | Copy of CR12. Where one or more of the shareholders is a company (Beneficial Ownership) the CR12 of such a company shall be provided. This requirement is not applicable to sole proprietorships and partnerships.<br>However, where the CR12 of the beneficial shareholders is not available, as at the time of the tender submission, the successful bidder shall be required to submit it before execution of the contract. In case of joint venture, all parties must submit. | Must Meet |
| 9. | Recommendation letters from three site owners confirming that the bidder is a digital advertising media owner and/or manager in an Airport, Rail Station, Mall or Commercial Streets, signed by legally authorized signatory, addressed to the Managing Director/ CEO, KENYA AIRPORTS AUTHORITY with reference to this tender. In case of joint venture, all parties must submit. | Must meet |
| 10. | Tender Document to be sequentially serialized from the first to the last page including all the attachments in numerical digits format. All blank pages must clearly marked **"BLANK".** | Must Meet |
| 11. | Duly filled Certificate Of Independent Tender Determination | Must Meet |
| 12. | Self Declaration that the Person/Tenderer is not Debarred in the Matter of the Public Procurement And Asset Disposal Act 2015 | Must Meet |
| 13. | Duly filled and stamped Self Declaration that the Person/Tenderer will not engage in any corrupt or fraudulent practice.. | Must Meet |
| 14. | Duly filled Declaration and commitment to the Code of Ethics | Must Meet |

| | | |
|---|---|---|
| 15. | Copies of the following documents as proof of access to liquid assets of not less than Kshs.6.5 Million or capacity to have a minimum cash flow of Kshs. 6.5 million. This shall be evidenced by any of the following:<br>1. Letter of line of credit from approved financial institution specific to this tender and indicating the amount available.<br>2. Overdraft facility from a commercial bank specifically for this project and indicating the amount to be availed.<br>3. Current bank statement for the last three months<br>4. Or a combination of the above | Must Meet |
| 1. 16.<br>2. | Have you been a retailer at any of the Kenya Airports Authority aerodromes within the last three years- Yes or No?<br>1. If Yes, the retailers confirm that the they are not having an outstanding debt to Kenya Airports Authority.<br>2. If No, the retailer to indicate that they are not a retailer in any Airport.<br>Retailers whose contracts have been terminated by Kenya Airports Authority within the last three years or have outstanding concession fees /rental payments/dues that have been outstanding for the more than 90 days as at the date of submission of this tender, shall be disqualified at preliminary stage irrespective of whether they have met all the other criteria or not; | Must meet |
| 17. | Copy of valid Business Permit. In case of joint venture, all parties must submit. | Must meet |

NB: **Bidders who do not meet any of the above requirements shall be disqualified and will not be evaluated further**

## Part II: Evaluation of Tenderer's Technical Requirements

Having met the mandatory requirements, the firms shall be subjected to a technical evaluation based on the criteria below.

| | REQUIREMENT | | |
|---|---|---|---|
| 1 | **Experience** | Bidders must provide evidence that they have the necessary experience and capacity to develop and manage advertising (static and digital) at international airports, rail terminals, ports, shopping malls in major urban centers, major urban highways/streets and cities.<br><br>At a minimum, bidders should have at least five (5) years of experience, developing and managing advertising infrastructure across.<br><br>**1.** Firms to provide detailed company profile outlining years of experience and locations/area of operation (as detailed above), which shall be demonstrated by way of business permits/licenses or contracts/agreements from site owners. Documentary proof must outline the following details: i. Client ii. Scope iii. contract term iv. Annual gross revenues for each operation.<br><br>**2.** Provide listing of sites where they have installed and are | Must Meet |

managing advertising media as follows;

| | Minimum number of listed sites | Of the listed sites the following numbers must be Digital Sites |
|---|---|---|
| Indoor & Outdoor KIA | 25 | 5 |

The listed sites are limited to the following locations airports, rail terminals, ports, shopping malls in major urban centers, major urban highways/streets and cities. Proof of listed sites above shall be by way of contracts/agreements or County approval where applicable.

3. For each site, firms should provide a detailed description of the media type e.g. billboard. This should be summarized in a table form which clearly states but not limited to the following: Location, Owner of the Site, Contact details including the name, contact person, telephone number, email, whether the site is active or not, etc.

4. Due diligence may be undertaken to confirm information provided on the experience and any bidder who may be found to have misrepresented will be disqualified at whatever stage of the tendering or contracting process.

| | | | |
|---|---|---|---|
| 2 | **Proposed Concept** | Bidders will be expected to provide concepts for proposed installations at various locations. These proposed installations will be evaluated on appropriateness and in meeting overall expectation for projected revenues and general outlook of the airport.<br><br>The proposed conceptual advertising infrastructure Must integrate with architectural look and feel. The design concept at minimum should demonstrate;<br><br>• The overall conceptual diagram for the proposed installations – schematics to demonstrate installation of proposed digital and static structures. With emphasis on digital structures.<br>• Proposed mapping and layout of advertising infrastructure. | Must Meet |
| 3 | **Business Plan** | Bidders to provide a Business Plan in a structured format and must contain the<br>following standard contents:<br>1. Title page.<br>2. Project summary.<br>3. Operator's description – include current images of various owned<br>advertising media and sites<br>4. Digital advertising strategy – bidders to develop a detailed customized<br>digital advertising strategy for the airport.<br>5. Market analysis.<br>6. Promotion strategy - Advertisement and Sales & Marketing plans<br>7. Personnel plan. | Must Meet |

| | | | |
|---|---|---|---|
| | | 8. Organizational setup and management.<br>9. Financial plan – to include 5-year revenue projections<br>10. Risk analysis.<br>11. Methodology and Work Plan - This should include, but not limited to,<br>development and implementation of the following Plans;<br>i) Construction<br>ii) Initial installation of equipment<br>iii) Maintenance schedule<br>iv) Operations<br>v) Technology upgrades<br>12. Proposed Standard Operating procedure for the following:<br>i. Security<br>ii. Safety<br>iii. Environment and waste management<br>iv. Fire regulations. | |
| 4 | **Personnel** | Provide CV and copies of academic and professional certificates of the<br>following key personnel:<br>□ 1 Account Manager<br>□ 1 Sales and Marketing Manager<br>□ 1 Digital Media/Content Developer<br>□ 2 Technicians<br><br>Each of the above roles shall be evaluated as follows;<br><br>**1. Account Manager (1)**<br>General Qualifications (technical /professional qualifications/certifications<br>□ Minimum –Degree in Business Administration or related field;<br>□ Adequacy for the assignment (adequate skills, expertise advertising<br>media management, and a Minimum of not less than seven (7) years cumulative experience.<br>□ A written undertaking signed by the nominee confirming his/her availability to carry out the assignment upon winning the bid. The written undertaking shall be addressed to MD/CEO Kenya Airports Authority and must be specific to this tender.<br><br>**2. Sales and Marketing Manager (1)**<br>General Qualifications (technical /professional qualifications/certifications)<br>□ Minimum – Degree in Sales and Marketing or Business related field;<br>□ Adequacy for the assignment (adequate skills, expertise in a commercial environment, and a Minimum of not less than five (5) years cumulative experience.<br>□ A written undertaking signed by the nominee confirming his/her availability to carry out the assignment upon winning the bid. The written undertaking shall be addressed to MD/CEO Kenya Airports Authority and must be specific to this tender.<br><br>**3. Digital Media/Content Developer (1)**<br>General Qualifications (technical /professional qualifications/certifications<br>□ Minimum – Diploma in Digital Media Development or related field; | Must Meet |

| | | | |
|---|---|---|---|
| | | Adequacy for the assignment (adequate skills, expertise in a commercial environment, and a Minimum of not less than three (3) years cumulative experience;<br>A written undertaking signed by the nominee confirming his/her availability to carry out the assignment upon winning the bid. The written undertaking shall be addressed to MD/CEO Kenya Airports Authority and must be specific to this tender.<br>**4. Technicians (2)**<br>General Qualifications (technical /professional qualifications/certifications)<br>Minimum -Diploma in any technical field;<br>Adequacy for the assignment (adequate skills, expertise in similar position, and a Minimum of not less than three (3) years cumulative experience.<br>A written undertaking signed by the nominee confirming his/her availability to carry out the assignment upon winning the bid. The written undertaking shall be addressed to MD/CEO Kenya Airports Authority and must be specific to this tender. | |
| 5 | **Financial performance, and Recording System** | Bidders shall generate and submit Monthly, Quarterly and Annual reports on sales.<br><br>Each report submitted Must be accompanied by corresponding Contract/agreement/LPO's with advertisers. | Must Meet |
| 6 | **Implementation Plan/Schedule** | Proposed work plan for development of proposed new media for the first six months.<br><br>For existing sites implementation plan should be within **3 months.** | |

**NB: Bidders who do not meet any of the above requirements will be disqualified and not evaluated further.**

3 **Price evaluation for each item**: in addition to the criteria listed in ITT 34.2 (a)–(d) the following criteria shall apply:

a) Any additional evaluation factors as per ITT 33.2 (e) specified as follows:

_____

_____

*b)* **Deviation in payment schedule**. *[insert one of the following]*

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

**or**

*ii) The SCC stipulates the payment schedule specified by the Procuring Entity. If a Tender deviate from the schedule and if such deviation is considered acceptable to the Procuring Entity, the Tender will be evaluated by calculating interest earned for any earlier payments involved in the terms outlined in the Tender as compared with those stipulated in the SCC, at the rate per annum* ***[insert adjustment rate]****.*

*This clause is not applicable for this tender.*

## PART III: Tenderer's Financial Proposal and Statement of Financial Proposal

<table>
<tr><th>Financial Requirements</th><th>/Statement Of Financial Compliance</th><th>Remarks</th></tr>
<tr><td>Minimum Annual Guarantee</td><td>Bidders to propose minimum annual guarantee quarterly in advance
<table>
<tr><th>A</th><th>B</th><th>C</th></tr>
<tr><td>LOT</td><td>Acceptable Minimum Annual Guarantee (KES)</td><td>Bidders proposed Minimum Annual Guarantee and should not be less than amounts in column B (KES.)</td></tr>
<tr><td>Indoor & Outdoor KIA</td><td>5,000,000</td><td></td></tr>
</table>
Bidders are advised to propose realistic figures</td><td>Bidders to propose the minimum annual guarantee and sign statement of financial compliance.<br><br>Bidders whose proposed Minimum annual guarantee shall be less than amounts stated in column B will be disqualified</td></tr>
<tr><td>Annual concession fee</td><td>Payment of a fixed concession rate based on gross receipts/ sales as captured by management accounts and/ or EPOS as outlined below;<br><br>Existing Static Installations
<table>
<tr><td></td><td>Applicable rate as a % of Gross Annual receipts /sales for existing static sites</td></tr>
<tr><td></td><td>Year 1-10</td></tr>
<tr><td>Indoor & Outdoor KIA</td><td>70</td></tr>
</table>
New Static Installations:
<table>
<tr><td></td><td colspan="2">Applicable rate as a % of Gross Annual receipts /sales for new static sites</td></tr>
<tr><td></td><td>First 2 years</td><td>Remainder period</td></tr>
<tr><td>Indoor & Outdoor KIA</td><td>50</td><td>70</td></tr>
</table>
New Digital:
<table>
<tr><td></td><td colspan="2">Applicable rate as a % of Gross Annual receipts /sales for new digital sites</td></tr>
<tr><td></td><td>First 3 years</td><td>Remainder period</td></tr>
<tr><td>Indoor & Outdoor KIA</td><td>30</td><td>60</td></tr>
</table>
Bidders should note that:</td><td>Bidders to sign statement of financial compliance.</td></tr>
</table>

| | | |
|---|---|---|
| | **(1)** All site installations shall remain property of Kenya Airports Authority at the end of the contract period irrespective of when it was installed.<br><br>**(2)** Kenya Airports Authority shall be party to all contracts executed with the advertisers for each site.<br><br>Payments shall be made quarterly in arrears after reconciliation with minimum annual guarantee.<br><br>The following rationale shall apply during reconciliation;<br><br>(a)Where the concession fee is greater than the minimum guarantee, the Authority shall bill the concessionaire for the difference.<br><br>(b) Where the concession fee is less than the minimum guarantee, the Authority shall take the minimum guarantee.<br><br>Note: Bidders are advised to propose realistic figures. | |

**Name of the person duly authorized to sign the Tender on behalf of the tenderer**: ……..

**Title of the person signing the Tender**: …….

**Signature of the person named above**: …….

**Date signed …….day of** ……. *month*, …….. *year*.

**4 Multiple Contracts (ITT 34.4) N/A**

Multiple contracts will be permitted in accordance with ITT 34.4. Tenderers are evaluated on basis of Lots and the highest evaluated tenderer identified for each Lot. The Procuring Entity will select one Option of the two Options listed below for award of Contracts.

**OPTION 1**

i) If a tenderer wins only one Lot, the tenderer will be awarded a contract for that Lot, provided the tenderer meets the Eligibility and Qualification Criteria for that Lot.
ii) If a tenderer wins more than one Lot, the tender will be awarded contracts for all won Lots, provided the tenderer meets the aggregate Eligibility and Qualification Criteria for all the Lots. The tenderer will be awarded the combination of Lots for which the tenderer qualifies and the others will be considered for award to second highest tenderers.

**OPTION 2**

The Procuring Entity will consider all possible combinations of won Lots [contract(s)] and determine the combinations with the highest evaluated price. Tenders will then be awarded to the Tenderer or Tenderers in the combinations provided the tenderer meets the aggregate Eligibility and Qualification Criteria for all the won Lots.

**5 Alternative Tenders (ITT 12.1) N/A**

*An alternative if permitted under ITT 12.1, will be evaluated as follows:*

"A tenderer may submit an alternative Tender with or without a Tender for the base case. The Procuring Entity shall consider Tenders offered for alternatives as specified in the Technical Specifications of Section VII, Schedule of Requirements. All Tenders received, for the base case, as well as alternative Tenders meeting the specified requirements, shall be evaluated on their own merits in accordance with the same procedures, as specified in the ITT 34 to determine the Highest Evaluated Tender."

**6 Qualification (ITT 35)**

6.1 After determining the substantially responsive Tender which offers the highest -evaluated income in accordance with ITT 33, and, if applicable, the assessment of any Abnormally Low or high Tender (in accordance with ITT35) the Procuring Entity shall carry out the post-qualification of the tenderer in accordance with ITT36, using only the requirements specified. Requirements not included in the text below shall not be used in the evaluation of the Tenderer qualifications.

6.2 For lease of infrastructural facilities (real estate)

List the requirements (*e.g. the property is in the right location, it is in good status of maintenance, there are proper services for water, power, etc., the space is adequate, access, there is case of lease litigation, etc.*

Make a physical check to ensure that each listed item is met. Determine if the facility is acceptable or not acceptable.

6.3 For lease of plant/equipment, vehicles (movable assets)

i) Confirm the offered items meet the specifications, and the capacity, age etc.

ii) Confirm their availability, etc.

*iii)* **Financial Capability -** The tenderer shall furnish documentary evidence that it meets the following financial requirement(s): *[list the requirement(s) including period]*

*iv)* **Documentary Evidence-** The tenderer shall furnish documentary evidence to demonstrate that the Lease Items it offers meet the following usage requirement: *[list the requirement(s)]*

Make a physical check to ensure that each listed item is met. Determine if the facility is acceptable or not acceptable.

6.4 After determining the substantially responsive Tender which offers the highest -evaluated minimum annual guarantee meets the requirements in Items 6.2 and 6.3 above, the Procuring Entity shall carry out the post-qualification using the following criteria:

a) **History of non-performing lease contracts**:

Tenderer and each member of JV in case the Tenderer is a JV, shall demonstrate that Non-performance of a contract did not occur because of the default of the Tenderer, or the member of a JV in the last (*five (5) years* ). The required information shall be furnished in the appropriate form.

**b) Pending Litigation**

Financial position and prospective long-term profitability of the Single Tenderer, and in the case the Tenderer is a JV, of each member of the JV, shall remain sound according to criteria established with respect to Financial Capability under Paragraph (a) above if all pending litigation will be resolved against the Tenderer. Tenderer shall provide information on pending litigations in the appropriate form.

**c) Litigation History**

There shall be no consistent history of court/arbitral award decisions against the Tenderer, in the last (*five (5) years* ). All parties to the contract shall furnish the information in the appropriate form about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the years specified. A consistent history of awards against the Tenderer or any member of a JV may result in rejection of the tender.

## Section IV - Tendering Forms

i) Form of Tender
ii) Tenderer Information Form
iii) Tenderer JV Members Information Form
iv) Price Schedule -Schedule of Requirements (Lease Items).
v) Form of Tender Security – Demand Guarantee
vi) Form of Tender Security (Tender Bond)
vii) Form of Tender- Securing Declaration
viii) Owner's Authorization

**Other Forms to be completed**

i) Tenderer's Eligibility- Confidential Business Questionnaire
ii) Certificate of Independent Tender Determination
iii) Self-Declaration Form
iv) Appendix 1- Fraud and Corruption

**SECTION IV – TENDERING FORMS**

**FORM OF TENDER**

**(Amended and issued pursuant to PPRA Circular No. 02/2023)**

**INSTRUCTIONS TO TENDERERS**

*i)* *The Tenderer must prepare this Form of Tender on stationery with its letter head clearly showing the Tenderer's complete name and business address.*

*ii)* *All italicized text is to help Tenderer in preparing this form.*

*iii)* *Tenderer must complete and sign and* TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE, *CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELF DECLARATION OF THE TENDERER,* all *attached to this Form of Tender.*

*iv)* *The Form of Tender shall include the following Forms duly completed and signed by the Tenderer.*

- *Tenderer's Eligibility- Confidential Business Questionnaire*
- *Certificate of Independent Tender Determination*
- *Self-Declaration of the Tenderer*

**Date of this Tender submission**:

**Tender Name and Identification**: **KAA/OT/MBD/0111/2023-2024 RE-TENDER FOR DEVELOPMENT AND MANAGEMENT OF ADVERTISEMENT MEDIA AT KISUMU INTERNATIONAL AIRPORT** *at the following rates*

| | Minimum acceptable Guaranteed Minimum per annum (KES) | Proposed guarantee minimum per annum (KES) |
|---|---|---|
| Indoor & Outdoor KIA | 5,000,000 | |

**Alternative No.**: N/A

To: **Kenya Airports Authority.**

a) **No reservations:** We have examined and have no reservations to the Tendering document, including Addenda issued in accordance with Instructions to tenderers (ITT 7);

b) **Eligibility**: We meet the eligibility requirements and have no conflict of interest in accordance with ITT 3;

c) **Tender/Proposal- Securing Declaration**:
We have not been debarred by the Authority based on execution of a Tender-Securing Declaration or Tender Securing Declaration in Kenya in accordance with ITT 3.7;

d) **Performance Security**: If our Tender is accepted, we commit to obtain a performance security in accordance with the Tendering document;

e) **Conformity:** We offer to lease in conformity with the Tendering Document and in accordance with the lease periods, the Lease items specified in the Schedule below:

*[insert completed* **LIST OF LEASE ITEMS AND PRICES***]*

f) **Tender Price**: The total price of our Tender, excluding any discounts offered in item (f) below is:

**Option 1**, in case of one lot: Total price is: .....*[insert the total price of the Tender in*

*words and figures, indicating the various amounts and the respective currencies];*

or

**Option 2**, in case of lots: (a) Total price of each lot *[insert the total price of each lot in words and figures, indicating the various amounts and the respective currencies]*; and (b) Total price of all lots (sum of all lots) *[insert the total price of all lots in words and figures, indicating the various amounts and the respective currencies]*;

g) **Discounts**: The discounts offered and the methodology for their application are:

*i)* The discounts offered are: *[Specify in detail each discount offered.]*

ii) The exact method of calculations to determine the net price after application of discounts are shown below: *[Specify in detail the method that shall be used to apply the discounts]*;

h) **Tender Validity Period**: Our Tender shall be valid for the period specified in TDS 17.1 (as amended, if applicable) from the date fixed for the Tender submission deadline specified in TDS 21.1 (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

i) **Performance Security**: If our Tender is accepted, we commit to obtain a performance security in accordance with the Tendering document;

j) **Suspension and Debarment**: We, along with any of our subcontractors, Lessors, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the Procuring Entity. Further, we are not ineligible under the Kenya laws or official regulations or pursuant to a decision of the United Nations Security Council;

*k)* **State-owned enterprise or institution**: *[select the appropriate option and delete the other] [We are not a state- owned enterprise or institution]/ [We are a state-owned enterprise or institution but meet the requirements of ITT 3.8];*

*l)* **Commissions, gratuities, fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the Tendering process or execution of the Contract: *[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity]*.

| Name of Recipient | Address | Reason | Amount |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

(If none has been paid or is to be paid, indicate "none.")

m) **Binding Contract**: We understand that this Tender, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;

n) **Procuring Entity Not Bound to Accept**: We understand that you are not bound to accept the lowest evaluated cost Tender, the Most Advantageous Tender or any other Tender that you may receive; and

o) **Fraud and Corruption**: We here by certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption.

p) Collusive practices: We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the "Certificate of Independent Tender Determination" attached below.

o) **Code of Ethical Conduct:** We undertake to adhere by the Code of Ethical Conduct for Persons Participating

in Public Procurement and Asset Disposal Activities in Kenya, copy available from ***www.pppra.go.ke*** during the procurement process and the execution of any resulting contract.

p) **Beneficial Ownership Information:** We commit to provide to the procuring entity the Beneficial Ownership Information in conformity with the Beneficial Ownership Disclosure Form upon receipt of notification of intention to enter into a contract in the event we are the successful tenderer in this subject procurement proceeding.

q) We, the Tenderer, have duly completed, signed and stamped the following Forms as part of our Tender:

a) Tenderer's Eligibility; Confidential Business Questionnaire – to establish we are not in any conflict to interest;

b) Certificate of Independent Tender Determination – to declare that we completed the tender without colluding with other tenderers;

c) Self-Declaration of the Tenderer – to declare that we will, if awarded a contract, not engage in any form of fraud and corruption; and

d) Declaration and Commitment to the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal.

Further, we confirm that we have read and understood the full content and scope of fraud and corruption as informed in **"Appendix 1- Fraud and Corruption**" attached to the Form of Tender.

**Name of the tenderer**: *[*insert complete name of the tenderer*]

**Name of the person duly authorized to sign the Tender on behalf of the tenderer**: ……

**Title of the person signing the Tender**: ……

**Signature of the person named above**: ……..

**Date signed** …….. **day of** ……. *Month* ……. *Year*.

***:** In the case of the Tender submitted by a Joint Venture specify the name of the Joint Venture as tenderer.

**: Person signing the Tender shall have the power of attorney given by the tenderer. The power of attorney shall be attached with the Tender Schedules.

## TENDERER'S ELIGIBILITY - CONFIDENTIAL BUSINESS QUESTIONNAIRE

**Instruction to Tenderer**

Tender is instructed to complete the particulars required in this Form, *one form for each entity if Tender is a JV.* Tenderer is further reminded that it is an offence to give false information on this Form.

**a) Tenderer's details**

| | ITEM | DESCRIPTION |
|---|---|---|
| 1 | Name of the Procuring Entity | **Kenya Airports Authority** |
| 2 | Reference Number of the Tender | **KAA/OT/MBD/0111/2023-2024** |
| 3 | Date and Time of Tender Opening | |
| 4 | Name of the Tenderer | |
| 5 | Full Address and Contact Details of the Tenderer. | 1. Country<br>2. City<br>3. Location<br>4. Building<br>5. Floor<br>6. Postal Address<br>7. Name and email of contact person. |
| 6 | Current Trade License Registration Number and Expiring date | |
| 7 | Name, country and full address (*postal and physical addresses, email, and telephone number*) of Registering Body/Agency | |
| 8 | Description of Nature of Business | |
| 9 | Maximum value of business which the Tenderer handles. | |
| 10 | State if Tenders Company is listed in stock exchange, give name and full address (*postal and physical addresses, email, and telephone number*) of<br>state which stock exchange | |

**<u>General and Specific Details</u>**

**b) Sole Proprietor,** provide the following details.

Name in full_____Age_____

Nationality_____Country of Origin_____

Citizenship _____

**c) Partnership,** provide the following details.

| | Namesof Partners | Nationality | Citizenship | %Sharesowned |
|---|---|---|---|---|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |

**d)** **Registered Company,** provide the following details.

I) Private or public Company.....

ii) State the nominal and issued capital of the Company: -

Nominal Kenya Shillings (Equivalent).....

Issued Kenya Shillings (Equivalent).....

iii) Give details of Directors as follows.

| | NamesofDirector | Nationality | Citizenship | %Sharesowned |
|---|---|---|---|---|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |

**e)** **DISCLOSURE OF INTEREST - Interest of the Firm in the Procuring Entity.**

i) Are there any person/persons in…… (*Name of Procuring Entity)* who has/have an interest or relationship in this firm? Yes/No……

If yes, provide details as follows.

| | Names of Person | Designation in the Procuring Entity | Interest or Relationship with Tenderer |
|---|---|---|---|
| 1 | | | |
| 2 | | | |
| 3 | | | |

**ii) Conflict of interest disclosure**

| | Type of Conflict | Disclosure YES OR NO | If YES provide details of the relationship with Tenderer |
|---|---|---|---|
| 1 | Tenderer is directly or indirectly controls, is controlled by or is under common control with another tenderer. | | |
| 2 | Tenderer receives or has received any direct or indirect subsidy from another tenderer. | | |
| 3 | Tenderer has the same legal representative as another tenderer | | |
| 4 | Tender has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process. | | |
| 5 | Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender. | | |
| 6 | Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract specifiedin this Tender Document. | | |
| 7 | Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract. | | |
| 8 | Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision of the such Contract. | | |
| 9 | Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract. | | |

**f) Certification**

On behalf of the Tenderer, I certify that the information given above is complete, current and accurate as at the date of submission.

Full Name_____

Title or Designation_____

_____ _____

*(Signature)* *(Date)*

## CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

I, the undersigned, in submitting the accompanying Letter of Tender to the **Kenya Airports Authority** for: **KAA/OT/MBD/0111/2023-2024 RE-TENDER FOR DEVELOPMENT AND MANAGEMENT OF ADVERTISEMENT MEDIA AT KISUMU INTERNATIONAL AIRPORT** in response to the request for tenders made by:_____*[Name of Tenderer]* do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of_____[Name of Tenderer] that:

1. I have read and I understand the contents of this Certificate;

2. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;

3. I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;

4. For the purposes of this Certificate and the Tender, I understand that the word "competitor" shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:
   a) Has been requested to submit a Tender in response to this request for tenders;
   b) could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;

5. The Tenderer discloses that [check one of the following, as applicable]:
   a) The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
   b) The Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements;

6. In particular, without limiting the generality of paragraphs (5) (a) or (5) (b) above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
   a) prices;
   b) methods, factors or formulas used to calculate prices;
   c) the intention or decision to submit, or not to submit, a tender; or
   d) the submission of a tender which does not meet the specifications of the request for Tenders; except as specifically disclosed pursuant to paragraph (5) (b) above;

7. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this request for tenders relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph (5) (b) above;

8. The terms of the Tender have not been, and will not be, knowingly disclosed by the Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official tender opening, or of the awarding of the Contract, whichever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph (5) (b) above.

Name_____
Title_____
Date_____

_____
*[Name, title and signature of authorized agent of Tenderer and Date]*

## SELF-DECLARATION FORMS

### FORM SD1

### 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 **KAA/OT/MBD/0111/2023-2024 RE-TENDER FOR DEVELOPMENT AND MANAGEMENT OF ADVERTISEMENT MEDIA AT KISUMU INTERNATIONAL AIRPORT** and duly authorized and competent to make this statement.

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 here in above is true to the best of my knowledge, information and belief.

| | | |
|---|---|---|
| ……. | ……. | …….....…… |
| (Title) | (Signature) | (Date) |

Bidder Official Stamp

## FORM SD2

**SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE.**

I, …….....……. of P. O. Box ……. being a resident of …….. in the Republic of ……. do hereby make a statement as follows: -

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of……..... …… *(insert name of the Company)* who is a Bidder in respect of **KAA/OT/MBD/0111/2023-2024 RE-TENDER FOR DEVELOPMENT AND MANAGEMENT OF ADVERTISEMENT MEDIA AT KISUMU INTERNATIONAL AIRPORT** and duly authorized and competent to make this statement.

2. THAT the aforesaid Bidder, its servants and/or agents /subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/or agents of…….. *(insert name of the Procuring entity)* which is the procuring entity.

3. THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of…….. *(name of the procuring entity).*

4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject tender.

5. THAT what is deponed to here in above is true to the best of my knowledge information and belief.

| …… | …… | …… |
|---|---|---|
| (Title) | (Signature) | (Date) |

Bidder's Official Stamp

## DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

I……..……. (person) on behalf of ***(Name of the Business/ Company/Firm***) ……. declare that I have read and fully understood the contents of the Public Procurement & Asset Disposal Act, 2015, Regulations and the Code of Ethics for persons participating in Public Procurement and Asset Disposal Activities in Kenya and my responsibilities under the Code.

I do hereby commit to abide by the provisions of the Code of Ethics for persons participating in Public Procurement and Asset Disposal.

Name of Authorized signatory…….....…….

Sign…….....…….....

Position…….…….....

Office address…….....…. Telephone…….…….

E-mail…….....……

Name of the Firm/Company…….....……

Date…….....……

***(Company Seal/ Rubber Stamp where applicable)***

Witness

Name…….....……

Sign…….....……

Date…….....…….....

## APPENDIX 1- FRAUD AND CORRUPTION

*(Appendix 1 shall not be modified)*

**1. Purpose**

1.1 The Government of Kenya's Anti-Corruption and Economic Crime laws and their sanction's policies and procedures, Public Procurement and Asset Disposal Act *(no. 33 of 2015)* and its Regulation, and any other Kenya's Acts or Regulations related to Fraud and Corruption, and similar offences, shall apply with respect to Public Procurement Processes and Contracts that are governed by the laws of Kenya.

**2. Requirements**

2.1 The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts, and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1 above.

2.2 Kenya's public procurement and asset disposal act *(no. 33 of 2015)* under Section 66 describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted below highlight Kenya's policy of no tolerance for such practices and behavior:

1. A person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
2. A person referred to under subsection (1) who contravenes the provisions of that sub-section commits an offence;
3. Without limiting the generality of the subsection (1) and(2), the person shall be—
   a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
   b) if a contract has already been entered into with the person, the contract shall be voidable;
4. The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
5. An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement—
   a) Shall not take part in the procurement proceedings;
   b) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
   c) shall not be a subcontractor for the tenderer to whom was awarded contract, or a member of the group of tenderers to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.

7 An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;

8 If a person contravenes subsection (1) with respect to a conflict of interest described in subsection (5) (a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer. Etc.

2.3 In compliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:

a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
   i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

(ii) "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;

iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

v) "obstructive practice" is:

- Deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

- Acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3 e. below.

b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers 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.

c) Rejects a proposal for award[1] of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;

d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or recommend to appropriate authority (ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;

e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub- consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect[2] all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and

f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a "Self-Declaration Form" as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

---

[1] *For the avoidance of doubt, a party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in A consultancy, and tendering, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract.*

[2] *Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Investigating Authority or persons appointed by the Procuring Entity to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/audit, and making copies there of as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.*

## 1. COMMITMENT TO PROVIDE BENEFICIAL OWNERSHIP INFORMATION

I, …….....……. of P. O. Box ……. being a resident of …….. in the Republic of ……. do hereby make a state as follows: -

1. THAT I am the Chief Executive Officer/Managing Director/Principal Officer/Director/ Authorized Officer of.....……..... *(Insert name of the Company)* who is a Bidder in respect of **Tender No KAA/OT/MBD/0111/2023-2024 RE-TENDER FOR DEVELOPMENT AND MANAGEMENT OF ADVERTISEMENT MEDIA AT KISUMU INTERNATIONAL AIRPORT** advertised by Kenya Airports Authority ( the **Procuring Entity**) and duly authorized and competent to make this statement.

2. THAT I do hereby commit to provide Beneficial Ownership Information in conformity with the Beneficial Ownership Disclosure Form to the procuring entity upon receipt of notification of award in the event we are the successful tenderer in this subject procurement proceeding. I fully understand that failure to furnish the procuring entity with the Beneficial Ownership Information within the period provided for in the letter of award shall invalidate my award and may considered as refusal to enter into a written contract which is punishable under Section 41(1) (e ) of the Public Procurement and Asset Disposal Act, 2015.

Name of the Firm/Company……..

Registered Physical Address of the Company……...

Posta Address……

Telephone No…… Mobile Number …….....

Email Address ……...

Name of Authorised Signatory……..

Designation ……...

Signatory……

Date……...…….

Witnessed by …….

Signature of Witness……..

Date……

**BENEFICIAL OWNERSHIP DISCLOSURE FORM**

***INSTRUCTIONS TO TENDERERS***

*This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful tenderer* pursuant to Regulation 4 of the Companies (Beneficial Ownership Information) (Amendment) Regulations, 2023. *In case of joint venture, the tenderer must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.*

*For the purposes of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the legal person (tenderer) or arrangements or a natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person (Tenderer) or arrangement.*

Tender No.: **KAA/OT/MBD/0111/2023-2024 RE-TENDER FOR DEVELOPMENT AND MANAGEMENT OF ADVERTISEMENT MEDIA AT KISUMU INTERNATIONAL AIRPORT.**

In response to the requirement in your notification of award dated___*[insert date of notification of award]* to furnish additional information on beneficial ownership: _____*[select one option as applicable and delete the options that are not applicable]*

I) We here by provide the following beneficial ownership information.

***Details of beneficial ownership***

| | **Details of all Beneficial Owners** | | **% of shares a person holds in the company Directly or indirectly** | **% of voting rights a person holds in the company** | **Directly or indirectly having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer (Yes / No)** | **directly or indirectly exercises significant influence or control over the tenderer /company (Yes / No)** |
|---|---|---|---|---|---|---|
| **1.** | Full Name | | Directly---------- % of shares<br><br>Indirectly---------- % of shares | Directly……% of voting rights<br><br>Indirectly----------% of voting rights | | |
| | National identity card number or Passport number | | | | | |
| | Personal Identification Number (where applicable) | | | | | |
| | Nationality | | | | | |
| | Date of birth *[dd/mm/yyyy]* | | | | | |
| | Postal address | | | | | |

| | **Details of all Beneficial Owners** | | **% of shares a person holds in the company Directly or indirectly** | **% of voting rights a person holds in the company** | **Directly or indirectly having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer (Yes / No)** | **directly or indirectly exercises significant influence or control over the tenderer /company (Yes / No)** |
|---|---|---|---|---|---|---|
| | Residential address | | | | | |
| | Telephone number | | | | | |
| | Email address | | | | | |
| | Occupation or profession | | | | | |
| | | | | | | |
| **2.** | Full Name | | Directly---------- % of shares<br><br>Indirectly---------- % of shares | Directly……% of voting rights<br><br>Indirectly----------% of voting rights | | |
| | National identity card number or Passport number | | | | | |
| | Personal Identification Number (where applicable) | | | | | |
| | Nationality | | | | | |
| | Date of birth *[dd/mm/yyyy]* | | | | | |
| | Postal address | | | | | |
| | Residential address | | | | | |
| | Telephone number | | | | | |
| | Email address | | | | | |
| | Occupation or profession | | | | | |
| | | | | | | |
| **3.** | | | | | | |
| | | | | | | |
| **e.t.c** | | | | | | |
| | | | | | | |

II) Am fully aware that beneficial ownership information above shall be reported to the Public Procurement Regulatory Authority together with other details in relation to contract awards and shall be maintained in the Government Portal, published and made publicly available pursuant to Regulation 5 of the Companies (Beneficial Ownership Information) (Amendment) Regulations, 2023

III) What is stated to herein above is true to the best of my knowledge, information and belief.

*Name of the Tenderer: .....*[insert complete name of the Tenderer]*_____

*Name of the person duly authorized to sign the Tender on behalf of the Tenderer: ** [insert complete name of person duly authorized to sign the Tender]*

*Designation of the person signing the Tender: ..... [insert complete title of the person signing the Tender]*

*Signature of the person named above: ..... [insert signature of person whose name and capacity are shown above]*

*Date this ..... [insert date of signing] day of..... [Insert month], [insert year]*

Bidder Official Stamp/ Company Seal.

**Tenderer Information Form**

*[The tenderer shall fill in this Form in accordance with the instructions indicated below. No alterations to its format shall be permitted and no substitutions shall be accepted.]*

Date: ..... *[insert date (as day, month and year) of Tender submission*]

**Tender Name and Identification**: ..... [*insert identification*

| |
|---|
| 1. Tenderer's Name *[insert Tenderer's legal name]* |
| 2. In case of JV, legal name of each member: *[insert legal name of each member in JV]* |
| 3. Tenderer's actual or intended country of registration: *[insert actual or intended country of registration]* |
| 4. Tenderer's year of registration: *[insert Tenderer's year of registration]* |
| 5. Tenderer's Address in country of registration: *[insert Tenderer's legal address in country of registration]* |
| 6. Tenderer's Authorized Representative Information<br>Name: *[insert Authorized Representative's name]*<br>Address: *[insert Authorized Representative's Address]*<br>Telephone/Fax numbers: *[insert Authorized Representative's telephone/fax numbers]*<br>Email Address: *[insert Authorized Representative's email address]* |
| 7. Attached are copies of original documents of *[check the box(es) of the attached original documents]*<br>☐ Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 3.1.<br>☐ In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 3.1.<br>☐ Tax Obligations for Kenyan Tenderers, attach copy of current tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 4.14.<br>☐ In case of state-owned enterprise or institution, in accordance with ITT 3.8 documents establishing:<br>(i) Legal and financial autonomy<br>(ii) Operation under commercial law<br>(iii) Establishing that the tenderer is not under the supervision of the Procuring Entity<br><br>2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. |

## Tenderer's JV Members Information Form

*[The tenderer shall fill in this Form in accordance with the instructions indicated below. The following table shall be filled in for the tenderer and for each member of a Joint Venture]].*

Date: *[insert date (as day, month and year) of Tender submission*]

**Tender Name and Identification**: [*insert identification* Alternative No.: *[insert identification No if this is a Tender for an alternative]*

Page_____of_____pages

| |
|---|
| 1. Tenderer's Name: *[insert Tenderer's legal name]* |
| 2. Tenderer's JV Member's name: *[insert JV's Member legal name]* |
| 3. Tenderer's JV Member's country of registration: *[insert JV's Member country of registration]* |
| 4. Tenderer's JV Member's year of registration: *[insert JV's Member year of registration]* |
| 5. Tenderer's JV Member's legal address in country of registration: *[insert JV's Member legal address in country of registration]* |
| 6. Tenderer's JV Member's authorized representative information<br>Name: *[insert name of JV's Member authorized representative]*<br>Address: *[insert address of JV's Member authorized representative]*<br>Telephone/Fax numbers: *[insert telephone/fax numbers of JV's Member authorized representative]*<br>Email Address: *[insert email address of JV's Member authorized representative]* |
| 7. Attached are copies of original documents of *[check the box(es) of the attached original documents]*<br>☐ Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITT 3.1<br>☐Tax Obligations for Kenyan Tenderers, attach copy of current tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 3.14.<br>☐ In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not under the supervision of the Procuring Entity, in accordance with ITT 3.8. |
| 8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. |

## LIST OF LEASE ITEMS AND PRICES

*[The tenderer shall fill in this Price Schedule in accordance and insert in Form of Tender as instructed. The list of line items in Columns 1 and 2 of the Price Schedules shall coincide with the List of Lease Items and Related Services specified by the Procuring Entity in the Schedule of Requirements.]*

| 1 | 2 | 3 | 4 | 4 | 5 | 6 |
|---|---|---|---|---|---|---|
| **Lease Item N°** | **Description of Lease Item and Related Services.** | **Quantity and physical unit** | **Location of Use** | **Duration of Lease (in Months)** | **Unit Price per Month (ksh)** | **Total price for whole lease period (ksh)** |
| *No1* | | | | | | |
| No 2 | | | | | | |
| No3 | | | | | | |
| No4 | | | | | | |
| No5 | | | | | | |
| No6 | | | | | | |

Name of Tender_____

Signed by the Tenderer_____

Dated_____

**FORM OF TENDER SECURITY - Demand Bank Guarantee**

**Beneficiary:**_____

**ITT No:**_____

**Date:**_____

**TENDER GUARANTEE No.:**_____

**Guarantor:** _____

1. We have been informed that_____(herein after called" the Applicant") has submitted or will submit to the Beneficiary its Tender (herein after called "the Tender") for the execution of _____under Request for Tenders No._____(“the ITT”).

2. Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.

3. At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of_____(_____) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:

(a) has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Letter of Tender (“the Tender Validity Period”), or any extension thereto provided by the Applicant; or

b) having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension thereto provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the Performance.

4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) twenty-eight days after the end of the Tender Validity Period.

5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

_____

*[signature(s)]*

**Form of Tender Security- Demand Bank**

**Guarantee Beneficiary: _____**

**Request for Tenders No:_____**

**Date: _____**

**TENDER GUARANTEE No.:_____**

**Guarantor: _____**

1. We have been informed that_____(herein after called "the Applicant") has submitted or will submit to the Beneficiary its Tender (herein after called" the Tender") for the execution of_____under Request for Tenders No._____("the ITT").

2. Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.

3. At the request of the Applicant, we, as Guarantor, here by irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *(*_____) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:

   a) Has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Applicant; or

   b) Having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension thereto provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the Performance.

4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) twenty-eight days after the end of the Tender Validity Period.

5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

_____

*[signature(s)]*

**Form of Tender Security (Tender Bond)** *[The Surety shall fill in this Tender Bond*

*Form in accordance with the instructions indicated.]* BOND NO._____

1. BY THIS BOND *[name of tenderer ]* as Principal (herein after called "the Principal"), and *[name, legal title, and address of surety]*, **authorized to transact business in** *[name of country of Procuring Entity]*, as Surety (hereinafter called "the Surety"), are held and firmly bound unto *[name of Procuring Entity]* as Obligee (herein after called "the Procuring Entity") in the sum of *[amount of Bond]*[1] *[amount in words]*, for the payment of which sum, well and truly to be made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

2. WHEREAS the Principal has submitted or will submit a written Tender to the Procuring Entity dated the day of_____, 20, for the supply of *[name of Contract]* (herein after called the "Tender").

3. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal:

(a) Has withdrawn its Tender during the period of Tender validity set forth in the Principal's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Principal; or

(b) Having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity Period or any extension thereto provided by the Principal; (i) failed to execute the Contract agreement; or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to tenderers ("ITT") of the Procuring Entity's Tendering document.

Then the Surety undertakes to immediately pay to the Procuring Entity up to the above amount upon receipt of the Procuring Entity's first written demand, without the Procuring Entity having to substantiate its demand, provided that in its demand the Procuring Entity shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.

4. The Surety hereby agrees that its obligation will remain in full force and effect up to and including the date 28 days after the date of expiration of the Tender Validity Period set forth in the Principal's Letter of Tender or any extension thereto provided by the Principal.

5. IN TESTIMONY WHEREOF, the Principal and the Surety have caused these presents to be executed in their respective names this_____day of_____20_____.

Principal:_____
Corporate Seal (where appropriate)

_____
*(Signature)*

*(Printed name and title)*

Surety:_____

_____
*(Signature)*

*(Printed name and title)*

[1]*The amount of the Bond shall be denominated in the currency Kenya shillings or the equivalent amount in a freely convertiblecurrency.*

**TENDER-SECURING DECLARATION FORM {r 46 and 155(2)}**

*[TheBiddershallcompletethisForminaccordancewiththeinstructionsindicated]*

Date: .....*[insert date (as day, month and year) of Tender Submission]*

Tender No.: ..... *[insert number of tendering process]*

To: .....*[insert complete name of Purchaser]*

I/We, the undersigned, declare that:

1. I/We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.

2. I/We accept that I/we will automatically be suspended from being eligible for tendering in any contract with the Purchaser for the period of time of.....*[insert number of months or years]* starting on [insert date], if we are in breach of our obligation(s) under the bid conditions, because we:- (a) have withdrawn our tender during the period of tender validity specified by us in the Tendering Data Sheet; or (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or(ii)fail or refuse to furnish the Performance Security, in accordance with the instructions to tenders.

3. I/We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer(s), upon the earlier of:

   a) Our receipt of a copy of your notification of the name of the successful Tenderer; or

   b) Thirty days after the expiration of our Tender.

4. I/We understand that if I am/we are/in a Joint Venture, the Tender Securing Declaration must be in the name of the Joint Venture that submits the bid, and the Joint Venture has not been legally constituted at the time of bidding, the Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed:……..……..

Capacity / title (director or partner or sole proprietor, etc.) …….…….

Name: …….

Duly authorized to sign the bid for and on behalf of: .....*[insert complete name of Tenderer]*

Dated on ……. day of ……., ……. *[Insert date of signing]*

Seal or stamp

## FORM OF TENDER SECURITY (TENDER BOND)

*[The Surety shall fill in this Tender Bond Form in accordance with the instructions indicated.]*

1. BY THIS BOND..... *[name of tenderer]* as Principal (hereinafter called "the Principal"), and.....*[name, legal title, and address of surety]*, **authorized to transact business in**..... *[name of country of Procuring Entity]*, as Surety (herein after called "the Surety"), are held and firmly bound unto.....*[name of Procuring Entity]* as Obligee (herein after called "the Procuring Entity") in the sum of.....*[amount of Bond]*[2] *[amount in words]*, for the payment of which sum, well and truly to be made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

2. WHEREAS the Principal has submitted or will submit a written Tender to the Procuring Entity dated the _____Day of_____, 20, for the supply of..... *[name of Contract]* (herein after called the "Tender").

3. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal:

   a) has withdrawn its Tender during the period of Tender validity set forth in the Principal's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Principal; or

   b) having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity Period or any extension thereto provided by the Principal; (i)failed to execute the Contract agreement; or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to tenderers ("ITT") of the Procuring Entity's Tendering document.

   Then the Surety undertakes to immediately pay to the Procuring Entity up to the above amount upon receipt of the Procuring Entity's first written demand, without the Procuring Entity having to substantiate its demand, provided that in its demand the Procuring Entity shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.

4. The Surety hereby agrees that its obligation will remain in full force and effect up to and including the date 28 days after the date of expiration of the Tender Validity Period set forth in the Principal's Letter of Tender or any extension thereto provided by the Principal.

5. IN TESTIMONY WHEREOF, the Principal and the Surety have caused these presents to be executed in their respective names this_____day of_____20_____.

Principal:_____

Corporate Seal (where appropriate)

*(Printed name and title)*

Surety:_____

_____

*(Signature)*

*(Printed name and title)*

[2] *TheamountoftheBondshallbedenominatedinthecurrencyKenyashillingsortheequivalentamountinafreelyconvertiblecurrency.*

**TENDER-SECURING DECLARATION FORM {r 46 and 155(2)}**

*[TheBiddershallcompletethisForminaccordancewiththeinstructionsindicated]*

Date: .....*[insert date (as day, month and year) of Tender Submission]* Tender No.: .....*[insert number of tendering process]*

To: .....*[insert complete name of Purchaser]* I/We, the undersigned, declare that:

1. I/We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.

2. I/We accept that I/we will automatically be suspended from being eligible for tendering in any contract with the Purchaser for the period of time of [insert number of months or years] starting on [insert date], if we are in breach of our obligation(s) under the bid conditions, because we:- (a) have withdrawn our tender during the period of tender validity specified by us in the Tendering Data Sheet; or (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the instructions to tenders.

3. I/We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer(s), upon the earlier of:

   a) Our receipt of a copy of your notification of the name of the successful Tenderer; or

   b) Thirty days after the expiration of our Tender.

4. I/We understand that if I am /we are/in a Joint Venture, the Tender Securing Declaration must be in the name of the Joint Venture that submits the bid, and the Joint Venture has not been legally constituted at the time of bidding, the Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed: ……..…….....

Capacity/title (director or partner or sole proprietor, etc.) …….…….....

Name: …….....

Duly authorized to sign the bid for and on behalf of: .....*[insert complete name of Tenderer]* Dated on…….....…. day of…….…… *[Insert date of signing]*

**Seal or stamp**

***[Note:*** *In case of a Joint Venture, the Tender-Securing Declaration must be in the name of all members to the Joint Venture that submits the Tender.]*

## OWNER'S AUTHORIZATION

*[The tenderer shall require the Owner to fill in this Form in accordance with the instructions indicated. This letter of authorization should be on the letterhead of the Owner and should be signed by a person with the proper authority to sign documents that are binding on the Owner. The tenderer shall include it in its Tender, if so indicated in the* ***TDS.****]*

Date: .....*[insert date (as day, month and year) of Tender submission]*

ITT No.: .....*[insert number of ITT process]*

Alternative No.: .....*[insert identification No if this is a Tender for an alternative]*

To: .....*[insert complete name of Procuring*

*Entity]* WHEREAS

We.....*[insert complete name of Manufacturer]*, who are official manufacturers of.....*[insert type of Lease Items manufactured]*, having factories at.....*[insert full address of Manufacturer's factories]*, do hereby authorize.....*[insert complete name of tenderer]* to submit a Tender the purpose of which is to provide the following Lease Items, manufactured by us *[insert name and or brief description of the Lease Items]*, and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 28 of the General Conditions of Contract, with respect to the Lease Items offered by the above firm.

Signed: .....*[insert signature(s) of authorized representative(s) of the Owner]*

Name: .....*[insert complete name(s) of authorized representative(s) of the Owner]*

Title: ..... *[insert title]*

Dated on_____day of_____,_____*[insert date of signing]*

# PART 2 - LEASE REQUIREMENTS

## SECTION VI - SCHEDULE OF REQUIREMENTS

### (A) BACKGROUND

Advertising within Airports offers a unique opportunity to various categories of Airport users, i.e. passenger and business people to have interaction medium. Airport users are thereby able to revisit their brand preference or new products available when confronted with a display of an advertising message.

Most Airports worldwide have therefore developed this medium as a business unit, which generates substantial revenues accounting for up to 15% of total revenue generated.

The advertising concession shall cover all designated sites and places within the airports (specific sites and layout if possible) that the Airport management shall in its discretion determine to be suitable and make available for the display of advertisements.

### (B) OBJECTIVES

The objectives of this request for proposal are;

1. Identify suitably qualified agents to manage the advertising concession at Kisumu International Airport;
2. Generate revenues by developing and sourcing for adverts for the various media at the airport.
3. To advise the Authority on matters relating to the advertising concession.

### ( C ) INDOOR AND OUTDOOR ADVERTISING SITES

| Proposed Airport Advertising sites | No., Type of Advert | Proposed Size | Area in Sq. Mt. |
|---|---|---|---|
| City Clock ( 3 ) four sided clocks) | 3 sites | 3-Four side clocks | 5.4 |
| Light box | 2 site, 1 sided | 900 x 3600mm | 6.48 |
| Street Light Pole Ads) | 14 sites, 2 sided | 1200 x 2400mm | 40.32 |
| Fascia Backlit Sign | 1 site, 1 sided | 900x 7200mm | 6.48 |
| Mega light box | 1 site, 1 sided | 12.9m x 1.2m | 15.48 |
| Mega light box | 1 site, | 6m x 1.5m | 9 |
| Snapper frame | 1 site | 900mm x 2400mm | 2.16 |
| Mega lightbox | 1 site | 6m x 1.5m | 9 |
| Bill Board | 1 site | 10m x 4m | 40 |
| Total | | | 134.32 |

### (D) SCOPE OF CONTRACT

The key elements of the management contract shall cover the following;

1. **Marketing, Sales and Administration**

- Sourcing for clients
- Targeting and positioning sites as premium products
- Develop Advertising rate cards
- Develop sales in liaison with the Authority

- Product packaging
- Promote the sites – website, develop marketing material
- Client relations
- Prepare and submit monthly reports to M&BD and Finance Departments.

**2. Co-ordination of production**

- Advertising material productions from various media agencies or directly from clients.
- Ensure that standards are maintained with regard to quality of advertising material.
- Oversee the "flighting", erection, installation or placement of advertising materials on site.
- First installation will be free; further replacements will be at the cost of the client.

**3. Infrastructure and Site Maintenance**

- Ensure that sites are kept tidy and clean always.
- Trim grass and clear bushes around sites.
- Polish indoor structures regularly and paint outdoor structures twice a year.
- Replace tubes and bulbs where necessary.
- Undertake minor repair works. These would include Cabling, adequate power supply to existing sites, cladding.
- General up keep

**4. Research and development**

- Research on new media.
- Identify unique clients requirement.
- Develop, evaluate and implement custom-build media solutions for clients on an infrastructure ***lease purchase option***.

**5. Financial Deposits / Securities**

- Security Deposit on rent – 3 months rental fee
- Deposit on Concession fee - 3 months Minimum Annual Guarantee

## E. OTHER OPERATIONAL CONDITIONS

In execution of their operations, the facility shall be expected to observe the following operations terms.

a. Use of airport infrastructure

The airport infrastructure includes but is not limited to the following: -

- Assigned space and associated equipment.
- Security facilities including doors and access points.
- Fixed power supply.
- Fresh water supply.
- Flight Information System.

b. Safety & Environmental Management

- Keep your work area clean.
- Observe "No Smoking" regulations.
- Do not block access to fire extinguishers.
- Do not tamper with electric controls or switches.
- Do not operate appliances or equipment until you have been properly instructed and authorized to do so.
- Do not engage in practices that are inconsistent with ordinary and reasonable safety rules.
- Report any unsafe condition or acts to your supervisor.
- Help to prevent accidents.
- Use designated passages when moving from one place to another; never take hazardous shortcuts (i.e., between moving equipment or across roadways).
- Do not throw objects.
- Clean up spilled liquid, oil, or grease immediately.

- Wear proper shoes for slippery floors and appropriate clothing (i.e., shorts or mini dresses are not permitted).
- Place trash and paper in proper containers

NOTE: Personnel shall be expected to report any incident, accident or infringement to the Airport Authority immediately

c. Staff

The airport recognizes the importance of training and regards a well-trained and educated workforce as an essential element in achieving its safety, operational and commercial objectives. The personnel are expected to have continuous training. Staff to be uniformed in conspicuous colors and in addition wear reflective jackets while at the airside.

NOTE: Your supervisor will see that you receive the protective clothing and equipment required for your job. Use them as instructed and take care of them. You will be charged for loss or destruction of these articles only when it occurs through negligence

d. Communication

- The operator shall maintain a telephone communication with Operations office, Customer Service and Marketing KAA at all times.

e. Applicable rules and regulations

- The operator shall be expected to comply with all applicable Laws related to the services and all pertinent international rules and regulations as well as with all rules, regulations, technical standards & codes, manuals and procedures established from time to time by KAA.

f. Space allocation

- The Airport Authority shall assign appropriate space/offices within the premises of the airport, in order for the operator to execute its obligation.

g. Approvals

- The operator shall be expected to seek requisite approvals in respect but not limited to the following;
- Construction design or facility improvements through the Marketing Department
- Installation of equipment's such as CCTV, fire extinguishers, electrical fittings

h. Management of accounts.

- The operator shall be expected to present their interim quarterly management accounts for the computation of concession fee.
- These accounts to be presented in the Months of July, October, January and April.
- The operator shall present audited books of accounts at the end of the year for reconciliation.

i. Amendments

The Authority reserves the right to alter or amend the minimum standards and operational requirements as contained in this document.

## SCHEDULE OF REQUIREMENTS (FULL DESCRIPTIONS OF LEASE ITEMS, RELATED SERVICES AND PRICES)

| **Lease Item N°** | **Description of Lease Item and Related Services.** | **Quantity and physical unit** | **Location of Use** | **Duration of Lease (in Months)** | **Full description of the item** *[to be completed by Procuring Entity]* |
|---|---|---|---|---|---|
| *No1* | | | | | |
| No2 | | | | | |
| No3 | | | | | |
| No4 | | | | | |
| No5 | | | | | |
| No6 | | | | | |

## 2. Technical Specifications

2.1 The purpose of the Technical Specifications (TS), is to define the technical characteristics of the Lease Items and Related Services required by the Procuring Entity. The Procuring Entity shall prepare the detailed TS consider that:

i) The TS constitute the benchmarks against which the Procuring Entity will verify the technical responsiveness of Tenders and subsequently evaluate the Tenders. Therefore, well-defined TS will facilitate preparation of responsive Tenders by tenderers, as well as examination, evaluation, and comparison of the Tenders by the Procuring Entity.

ii) The TS shall require that all Lease Items and materials to be incorporated in the Lease Items be new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided for otherwise in the contract.

iii) The TS shall make use of best practices. Samples of specifications from successful similar procurements in the same country or sector may provide a sound basis for drafting the TS.

iv) The PPRA encourages the use of metric units.

v) Standardizing technical specifications may be advantageous, depending on the complexity of the Lease Items and the repetitiveness of the type of procurement. Technical Specifications should be broad enough to avoid restrictions on workmanship, materials, and equipment commonly used in manufacturing similar kinds of Lease Items.

vi) Standards for equipment, materials, and workmanship specified in the Tendering document shall not be restrictive. Recognized international standards should be specified as much as possible. Reference to brand names, catalogue numbers, or other details that limit any materials or items to a specific manufacturer should be avoided as far as possible. Where unavoidable, such item description should always be followed by the words “or substantially equivalent.” When other particular standards or codes of practice are referred to in the TS, whether from the Procuring Entity's or from other eligible countries, a statement should follow other authoritative standards that ensure at least a substantially equal quality, then the standards mentioned in the TS will also be acceptable.

vii) Reference to brand names and catalogue numbers should be avoided as far as possible; where unavoidable the words “or at least equivalent” shall always follow such references.

viii) Technical Specifications shall be fully descriptive of the requirements in respect of, but not limited to, the following:

a) Standards of materials and workmanship required for the production and manufacturing of the Lease Items.

b) Any sustainable procurement technical requirements shall be clearly specified.

2.2 The requirements to be specified shall be specific enough to not demand evaluation based on rated criteria/merit point system. Tenderers may be invited to offer Lease Items that exceeds the specified minimum sustainable procurement requirements.

2.3 The TS shall specify all essential technical and performance characteristics and requirements, including guaranteed or acceptable maximum or minimum values, as appropriate. Whenever necessary, the Procuring Entity shall include an additional ad-hoc Tendering form (to be an Attachment to the Letter of Tender), where the tenderer shall provide detailed information on such technical performance characteristics in respect to the corresponding acceptable or guaranteed values.

2.4 When the Procuring Entity requests that the tenderer provides in its Tender a part or all of the Technical Specifications, technical schedules, or other technical information, the Procuring Entity shall specify in detail the nature and extent of the required information and the manner in which it has to be presented by the tenderer in its Tender.

2.5 If a summary of the Technical Specifications (TS) has to be provided, the Procuring Entity shall insert information in the table below. The tenderer shall prepare a similar table to justify compliance with the requirements.

**Summary of Technical Specifications -** The Lease Items and Related Services shall comply with following Technical Specifications and Standards:

| Lease Item No | Name of Lease Items or Related Service | Technical Specifications and Standards |
|---|---|---|
| [insert item No] | [insert name] | [insert TS and Standards] |
| | | |
| | | |

**Detailed Technical Specifications and Standards**.....*[insert whenever necessary]*.

*[Insert detailed description of TS]*

**3. Maintenance obligations and standards**

*(describe in detail how these will be handled and by which party).*

## 4. Drawings

This Tendering document includes the following *[insert "the following" or "no"]* drawings.

*[If documents shall be included, insert the following List of Drawings]*

| **List of Drawings** | | |
|---|---|---|
| **Drawing No.** | **Drawing Name** | **Purpose** |
| 1.1 | PROPOSED WATCH AND CLOCK STORE LOCATION IN TERMINAL 1 B LEVEL 1 | THE STORE LOCATION IN THE DEPARTURE TERMINAL TO GUIDE BIDDERS |
| | | |
| | | |
| | | |
| | | |

## 5. Inspections and Tests

The following inspections and tests shall be performed: *[insert list of inspections and tests]*

# PART 3 - CONTRACT

## SECTION VII - GENERAL CONDITIONS OF CONTRACT

### 1. Definitions

The following words and expressions shall have the meanings hereby assigned to them:

a) "Contract" means the Contract Agreement entered into between the Procuring Entity and the Lessor, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.

b) "Contract Documents" means the documents listed in the Contract Agreement, including any amendments thereto.

c) "Contract Price" means the price payable to the Lessor as specified in the Contract Agreement, subject to such additions and adjustments there to or deductions there from, as may be made pursuant to the Contract.

d) "Day" means calendar day.

e) "Completion" means the fulfillment of the Related Services by the Lessor in accordance with the terms and conditions set forth in the Contract.

f) "GCC" means the General Conditions of Contract.

g) "Lease Items" means all of the infrastructural facilities, plant/equipment vehicles or such other physical items the Lessor is required to lease to the Procuring Entity under the Contract.

h) "Procuring Entity" means the Procuring Entity purchasing the Lease Items and Related Services, as **specified in the SCC.**

i) "Related Services" means the services incidental to the supply of the Lease Items, such as insurance, installation, training and initial maintenance and other such obligations of the Lessor under the Contract.

j) "SCC" means the Special Conditions of Contract.

k) "Subcontractor" means any person, private or government entity, or a combination of the above, to whom any part of the Lease Items to be supplied or execution of any part of the Related Services is subcontracted by the Lessor.

l) "Lessor" means the person, private or government entity, or a combination of the above, whose Tender for the Lease Contract has been accepted by the Procuring Entity and is named as such in the Contract Agreement.

m) "Lessee" means the Procuring Entity whose has accepted the Tender for the Lease Contract and is named as such in the Contract Agreement as "Procuring Entity".

### 2. Contract Documents

2.1 Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

### 3. Fraud and Corruption

3.1 The Government of Kenya requires compliance with anti-corruption laws and guidelines and its prevailing sanctions policies and procedures as set forth in Laws of Kenya.

3.2 The Procuring Entity requires the Lessor to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the Tendering process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

### 4 Interpretation

1.3 If the context so requires it, singular means plural and vice versa.

1.4 **Entire Agreement- The Contract constitutes the entire agreement between the Procuring Entity and the** Lesser. and supersedes all communications, negotiations and agreements (whether written or oral) of the parties with respect thereto made prior to the date of Contract.

1.5 **Amendment**

No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.

**2 Non-waiver**

a Subject to GCC Sub-Clause 4.5 (b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

b Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

2.2 **Severability**

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

**3 Language**

3.2 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Lessor and the Procuring Entity, shall be written in the **English Language.** Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the **English Language,** in which case, for purposes of interpretation of the Contract, this translation shall govern.

3.3 The Lessor shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Lessor.

**4 Joint Venture, Consortium or Association**

7.1 If the Lessor is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Procuring Entity for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Procuring Entity.

**5 Eligibility**

8.1 The Lessor and its Subcontractors shall have the nationality of an eligible country. A Lessor or Sub-Lessor shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates inconformity with the provisions of the laws of that country.

**6 Notices**

6.2 Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the **SCC.** The term “in writing” means communicated in written form with proof of receipt.

6.3 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

**7 Governing Law**

The Contract shall be governed by and interpreted in accordance with the laws of Kenya.
Throughout the execution of the Contract, the Lessor shall comply with the import of Lease Items and services prohibitions in Kenya:

a) as a matter of law or official regulations, Kenya prohibits commercial relations with that country; or

b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of Lease Items from that country or any payments to any country, person, or entity in that country.

**8 Settlement of Disputes**

8.2 The Procuring Entity and the Lessor shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.

8.3 If, after twenty-eight (28) days, the parties have failed to resolve their dispute or difference by such mutual consultation, the neither the Procuring Entity or the Lessor may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Lease Items under the Contract. Arbitration proceedings shall be conducted in accordance with the rules of procedure specified in the **SCC.**

8.4 Notwithstanding any reference to arbitration herein,

a the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and

b the Procuring Entity shall pay the Lessor any monies due the Lessor.

**9 Inspections and Audit by the Procuring Entity**

9.2 The Lessor shall keep, and shall make all reasonable efforts to cause its Subcontractors to keep, accurate and systematic accounts and records in respect of the Lease Items in such form and details as will clearly identify relevant time changes and costs.

9.3 Pursuant to paragraph 2.2 e. of Appendix to the General Conditions the Lessor shall permit and shall cause its subcontractors and sub consultants to permit, the Procuring Entity and/or persons appointed by the Procuring Entity or by other statutory bodies of the Government to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by the Procuring Entity. The Lessor's and its Subcontractors' and sub consultants' attention is drawn to Sub-Clause 3.1 which provides, interalia, that acts intended to materially impede the exercise of the Procuring Entity's inspection and audit rights constitute a prohibited practice subject to contract termination, as well as to a determination of ineligibility.

**10 Scope of Lease Supply**

12.1 The Lease Items and Related Services to be supplied shall be as specified in the Schedule of Requirements.

**11 Delivery and Documents**

13.1 Subject to GCC Sub-Clause 33.1, the Delivery of the Lease Items and Completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in the Schedule of Requirements. The details of Lease and other documents to be furnished by the Lessor are specified in the **SCC.**

**12 Lessor's Responsibilities**

14.1 The Lessor shall supply the Lease Items and Related Services included in the Scope of Supply in accordance with GCC Clause12, and the Delivery and Completion Schedule, as per GCC Clause 13.

**13 Contract Price**

15.1 Prices charged by the Lessor for the Lease Items supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Lessor in its Tender, with the exception of any price adjustments authorized in the **SCC.**

## 14 Terms of Payment

14.1 The Contract Price, including any Advance Payments, if applicable, shall be paid as specified below and in the SCC. The currencies in which payments shall be made to the Lessor under this Contract shall be those in which the Tender price is expressed.

14.2 The Procuring Entity shall pay to Lessor the advance payment stated in the **SCC** upon or before taking possession of the property. Thereafter, the Procuring Entity shall pay the Lessor the sum of stated in the **SCC** on or before the day of each month as stated in the **SCC** until the expiration of this lease.

14.3 If the Procuring Entity fails to pay all amounts due within the number of days specified in the **SCC** of their due dates, then the Lessor may terminate the contract under this lease and take back possession and control of the Lease Item(s). In the event of termination for non-payment, the Procuring Entity shall remain liable for the balance due under this lease.

14.4 If the Procuring Entity fails to make a payment on or before its due date, a late fee of an amount specified in the **SCC** shall be due and payable immediately to Lessor.

14.5 In the event that the Procuring Entity fails to pay the Lessor any payment by its due date or within the period set forth in the **SCC,** the Procuring Entity shall pay to the Lessor interest on the amount of such delayed payment at the rate shown in the **SCC,** for the period of delay until payment has been made in full, whether before or after judgment or arbitration award.

## 15 Taxes and Duties

The Lessor shall be responsible for paying all taxes levied in Kenya.

## 16 Performance Security

16.2 If required as specified in the SCC, the Lessor shall, within twenty-eight (28) days of the notification of contract award, provide a performance security for the performance of the Contract in the amount specified in the **SCC.**

16.3 The proceeds of the Performance Security shall be payable to the Procuring Entity as compensation for any loss resulting from the Lessor's failure to complete its obligations under the Contract.

16.4 As specified in **the SCC**, the Performance Security, if required, shall be denominated in Kenya Shillings; and shall be in one of the formats stipulated by the Procuring Entity in **the SCC**, or in another form at acceptable to the Procuring Entity.

16.5 The Performance Security shall be discharged by the Procuring Entity and returned to the Lessor not later than twenty-eight (28) days following the date of Completion of the Lessor's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the **SCC.**

## 17 Copyright

20.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Procuring Entity by the Lessor herein shall remain vested in the Lessor, or, if they are furnished to the Procuring Entity directly or through the Lessor by any third party, including Lessors of materials, the copyright in such materials shall remain vested in such third party

## 18 Confidential Information

18.2 The Procuring Entity and the Lessor shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Lessor may furnish to its Sub-Lessor such documents, data, and other information it receives from the Procuring Entity to the extent required for the Sub Lessor to perform its work under the Contract, in which event the Lessor shall obtain from such Sub Lessor an undertaking of confidentiality similar to that imposed on the Lessor under GCC Clause 20.

18.3 The Procuring Entity shall not use such documents, data, and other information received from the Lessor for any purposes unrelated to the contract. Similarly, the Lessor shall not use such documents, data, and other information received from the Procuring Entity for any purpose other than the performance of the Contract.

18.4 The obligation of a party under GCC Sub-Clauses 20.1 and 20.2 above, however, shall not apply to information that:

**a** the Procuring Entity or the Lessor need to share with other arms of Government or other bodies participating in the financing of the Contract; such parties shall de disclosed in the **SCC;**

b now or hereafter enters the public domain through no fault of that party;

c can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or

d otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

18.5 The above provisions of GCC Clause 20 shall not in any way modify any undertaking of confidentiality given by either of the parties here to prior to the date of the Contract in respect of the Supply or any part thereof.

18.6 The provisions of GCC Clause 20 shall survive completion or termination, for whatever reason, of the Contract.

**19 Subcontracting**

19.2 The Lessor shall notify the Procuring Entity in writing of all subcontracts awarded under the Contract if not already specified in the Tender. Such notification, in the original Tender or later shall not relieve the Lessor from any of its obligations, duties, responsibilities, or liability under the Contract.

19.3 Subcontracts shall comply with the provisions of GCC Clauses 3 and 7.

**20 Specifications and Standards**

Technical Specifications and Drawings

a) The Lease Items and Related Services supplied under this Contract shall conform to the technical specifications and standards mentioned in Section VI, Schedule of Requirements and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the Lease Items' country of origin.

b) The Lessor shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Procuring Entity, by giving a notice of such disclaimer to the Procuring Entity.

c) Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Schedule of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Procuring Entity and shall be treated in accordance with GCC Clause 33.

**21 Packing and Documents**

No parking services and documents are needed, and if any, they are specified **in the SCC**, and in any other instructions ordered by the Procuring Entity.

**22 Insurance**

24.1 Unless otherwise specified in the **SCC,** the Lease Items supplied under the Contract shall be fully insured by the Lessor - in a freely convertible currency from an eligible country - against loss or damage incidental to use, transportation, storage, and delivery, in a manner specified in the **SCC.**

**23 Transportation and Incidental Services**

23.2 The Lessor may be required to provide any or all of the following services, including additional services, if any, specified **in SCC:**

a Performance or supervision of on-site assembly and/or start-up of the supplied Lease Items;

b Furnishing of tools required for assembly and/or maintenance of the supplied Lease Items;

c furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied Lease Items;

d performance or supervision or maintenance and/or repair of the supplied Lease Items, for a period of time agreed by the parties, provided that this service shall not relieve the Lessor of any warranty obligations under this Contract; and

e training of the Procuring Entity's personnel, at the Lessor's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied Lease Items.

23.3 Prices charged by the Lessor for incidental services, if not included in the Contract Price for the Lease Items, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Lessor for similar services

**24 Inspections and Tests**

24.2 The Lessor shall at its own expense and at no cost to the Procuring Entity carry out all such tests and/or inspections of the Lease Items and Related Services as are specified in the **SCC.**

24.3 The inspections and tests may be conducted on the premises of the Lessor or its Subcontractor, at point of delivery, and/or at the Lease Items' final destination, or in another place in Kenya as specified in the **SCC.** Subject to GCC Sub-Clause 26.3, if conducted on the premises of the Lessor or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring Entity.

24.4 The Procuring Entity or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 26.2, provided that the Procuring Entity bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

24.5 Whenever the Lessor is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Procuring Entity. The Lessor shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Procuring Entity or its designated representative to attend the test and/or inspection.

24.6 The Procuring Entity may require the Lessor to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Lease Items comply with the technical specification codes and standards under the Contract, provided that the Lessor's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Lessor's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.

24.7 The Lessor shall provide the Procuring Entity with are port of the results of any such test and/or inspection.

24.8 The Procuring Entity may reject any Lease Items or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Lessor shall either rectify or replace such rejected Lease Items or parts thereof or make alterations necessary to meet the specifications at no cost to the Procuring Entity, and shall repeat the test and/or inspection, at no cost to the Procuring Entity, upon giving a notice pursuant to GCC Sub-Clause 26.4.

24.9 The Lessor agrees that neither the execution of a test and/or inspection of the Lease Items or any part thereof, nor the attendance by the Procuring Entity or its representative, nor the issue of any report pursuant to GCC Sub- Clause 26.6, shall release the Lessor from any warranties or other obligations under the Contract.

**25 Liquidated Damages**

27.1 Except as provided under GCC Clause 32, if the Lessor fails to deliver any or all of the Lease Items by the Date(s) of delivery or perform the Related Services within the period specified in the Contract, the Procuring Entity may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the **SCC** of the delivered price of the delayed Lease Items or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those **SCC.** Once the maximum is reached, the Procuring Entity may terminate the Contract pursuant to GCC Clause 35.

## 26 Warranty

26.2 The Lessor warrants that all the Lease Items are in conformity with the specifications of the Lease Items and are in good condition for use under the Lease agreement.

26.3 The Procuring Entity will be entitled to refuse acceptance of any Lease Items not meeting the warranty under ITT 28.1 and demand for replacements.

## 27 Patent Indemnity

27.2 The Lessor shall, subject to the Procuring Entity's compliance with GCC Sub-Clause 29.2, indemnify and hold harmless the Procuring Entity and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Procuring Entity may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

a The installation of the Lease Items by the Lessor or the use of the Lease Items in the country where the Site is located; and

b the sale in any country of the products produced by the Lease Items.

Such indemnity shall not cover any use of the Lease Items or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Lease Items or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Lessor, pursuant to the Contract.

27.3 If any proceedings are brought or any claim is made against the Procuring Entity arising out of the matters referred to in GCC Sub-Clause 29.1, the Procuring Entity shall promptly give the Lessor a notice thereof, and the Lessor may at its own expense and in the Procuring Entity's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

27.4 If the Lessor fails to notify the Procuring Entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Procuring Entity shall be free to conduct the same on its own behalf.

27.5 The Procuring Entity shall, at the Lessor's request, afford all available assistance to the Lessor in conducting such proceedings or claim, and shall be reimbursed by the Lessor for all reasonable expenses incurred in so doing.

27.6 The Procuring Entity shall indemnify and hold harmless the Lessor and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Lessor may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Procuring Entity.

## 28 Limitation of Liability

28.2 Except in cases of criminal negligence or willful misconduct,

a The Lessor shall not be liable to the Procuring Entity, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Lessor to pay liquidated damages to the Procuring Entity, and

b The aggregate liability of the Lessor to the Procuring Entity, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Lessor to indemnify the Procuring Entity with respect to patent infringement.

## 29 Change in Laws and Regulations

31.1 Unless otherwise specified in the Contract, if after the date of 28 days prior to date of Tender submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in Kenya (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Lessor has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Clause 15.

## 30 Force Majeure

30.2 The Lessor shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

30.3 For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Lessor that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Lessor. Such events may include, but not be limited to, acts of the Procuring Entity in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

30.4 If a Force Majeure situation arises, the Lessor shall promptly notify the Procuring Entity in writing of such condition and the cause thereof. Unless otherwise directed by the Procuring Entity in writing, the Lessor shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

## 31 Change Orders and Contract Amendments

31.2 The Procuring Entity may at any time order the Lessor through notice in accordance GCC Clause 8, to make changes within the general scope of the Contract in any one or more of the following:

a drawings, designs, or specifications, where Lease Items to be furnished under the Contract are to be specifically manufactured for the Procuring Entity;

b the method of shipment or packing;

c the place of delivery; and

d the Related Services to be provided by the Lessor.

31.3 If any such change causes an increase or decrease in the cost of, or the time required for, the Lessor's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Lessor for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Lessor's receipt of the Procuring Entity's change order.

31.4 Prices to be charged by the Lessor for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Lessor for similar services.

31.5 **Value Engineering:** The Lessor may prepare, at its own cost, a value engineering proposal at any time during the performance of the contract. The value engineering proposal shall, at a minimum, include the following;

a the proposed change(s), and a description of the difference to the existing contract requirements;

b a full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (including life cycle costs) the Procuring Entity may incur in implementing the value engineering proposal; and

c a description of any effect(s) of the change on performance/functionality.

31.6 The Procuring Entity may accept the value engineering proposal if the proposal demonstrates benefits that:

a accelerates the delivery period; or

b reduces the Contract Price or the life cycle costs to the Procuring Entity; or

c improves the quality, efficiency or sustainability of the Lease Items; or

d yields any other benefits to the Procuring Entity, without compromising the necessary functions of the Facilities.

31.7 If the value engineering proposal is approved by the Procuring Entity and results in:

a a reduction of the Contract Price; the amount to be paid to the Lessor shall be the percentage specified **in the SCC** of the reduction in the Contract Price; or

b an increase in the Contract Price; but results in a reduction in lifecycle costs due to any benefit described in c to (d) above, the amount to be paid to the Lessor shall be the full increase in the Contract Price.

31.8 Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

**32 Extensions of Time**

32.2 If at any time during performance of the Contract, the Lessor or its subcontractors should encounter conditions impeding timely delivery of the Lease Items or completion of Related Services pursuant to GCC Clause 13, the Lessor shall promptly notify the Procuring Entity in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Lessor's notice, the Procuring Entity shall evaluate the situation and may at its discretion extend the Lessor's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.

32.3 Except in case of Force Majeure, as provided under GCC Clause 32, a delay by the Lessor in the performance of its Delivery and Completion obligations shall render the Lessor liable to the imposition of liquidated damages pursuant to GCC Clause 26, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 34.1.

**33 Termination**

33.2 Termination for Default

a The Procuring Entity, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Lessor, may terminate the Contract in whole or in part:

i. if the Lessor fails to deliver any or all of the Lease Items within the period specified in the Contract, or within any extension thereof granted by the Procuring Entity pursuant to GCC Clause 34;

ii. if the Lessor fails to perform any other obligation under the Contract; or

iii. if the Lessor, in the judgment of the Procuring Entity has engaged in Fraud and Corruption, as defined in paragraph 2.2a of the Appendix to the GCC, in competing for or in executing the Contract.

b In the event the Procuring Entity terminates the Contract in whole or in part, pursuant to GCC Clause 35.1(a), the Procuring Entity may procure, upon such terms and in such manner as it deems appropriate, Lease Items or Related Services similar to those undelivered or not performed, and the Lessor shall be liable to the Procuring Entity for any additional costs for such similar Lease Items or Related Services. However, the Lessor shall continue performance of the Contract to the extent not terminated.

33.3 Termination for Insolvency.

The Procuring Entity may at any time terminate the Contract by giving notice to the Lessor if the Lessor becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Lessor, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Procuring Entity

36.3 Termination for Convenience.

a) The Procuring Entity, by notice sent to the Lessor, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Procuring Entity's convenience, the extent to which performance of the Lessor under the Contract is terminated, and the date upon which such termination becomes effective.

b) The Lease Items that are complete and ready for shipment within twenty-eight (28) days after the Lessor's receipt of notice of termination shall be accepted by the Procuring Entity at the Contract terms and prices. For the remaining Lease Items, the Procuring Entity may elect:

i) to have any portion completed and delivered at the Contract terms and prices; and/or

ii) to cancel the remainder and pay to the Lessor an agreed amount for partially completed Lease Items and Related Services and for materials and parts previously procured by the Lessor.

**34 Assignment**

36.1 Neither the Procuring Entity nor the Lessor shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

**35 Import Restrictions**

37.1 Notwithstanding any obligation under the Contract to complete all import formalities, any import restrictions attributable to the Procuring Entity, to Kenya, or to the use of the products/Lease Items, systems or services to be supplied, which arise from trade regulations from a country supplying those products/Lease Items, systems or services, and which substantially impede the Lessor from meeting its obligations under the Contract, shall release the Lessor from the obligation to provide deliveries or services, always provided, however, that the Lessor can demonstrate to the satisfaction of the Procuring Entity that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the import of the products/Lease Items, systems or services under the terms of the Contract. Termination of the Contract on this basis shall be for the Procuring Entity's convenience pursuant to Sub-Clause 35.3.

## Section VIII - Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement and/or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

*[The Procuring Entity shall select insert the appropriate wording using the samples below or other acceptable wording, and delete the text in italics],*

| | |
|---|---|
| **GCC1.1(j)** | The Procuring Entity is Kenya Airports Authority |
| **GCC1.1(o)** | The final destination is **Kisumu International Airport** |
| **GCC 4.2 (a)** | The meaning of the trade terms shall be as prescribed by Incoterms. If the meaning of any trade term and the rights and obligations of the parties thereunder shall not be as prescribed by Incoterms, they shall be as prescribed by: *[exceptional; refer to other internationally accepted trade terms]* |
| **GCC4.2(b)** | The version edition of Incoterms shall be *INCOTERMS 2015* |
| **GCC8.1** | Name of Procuring Entity – KENYA AIRPORTS AUTHORITY<br>Physical address - Kenya Airports Authority Headquarters complex building, Jomo Kenyatta International Airport, Airport North Road, 2nd Floor, Procurement & Logistics Department<br>Postal Address – P.O Box 19001 – 00501 Nairobi<br>Officer to be contacted. – General Manager, Procurement and Logistics, Email: tenders@kaa.go.ke |
| **GCC10.2** | The rules of procedure for arbitration proceedings pursuant to GCC Clause 10.2 shall be as follows:<br>*[The Tendering document should contain one clause to be retained in the event of a Contract with a foreign Lessor and one clause to be retained in the event of a Contract with a Lessor who is a national of Kenya. At the time of finalizing the Contract, the respective applicable clause should be retained in the Contract. The following explanatory note should therefore be inserted as a header to GCC 10.2 in the Tendering document.*<br>*"Clause 10.2 (a) shall be retained in the case of a Contract with a foreign Lessor and clause 10.2 (b) shall be retained in the case of a Contract with a national of Kenya"]*<br>***(a) Contract with foreign Lessor:***<br>*[For contracts entered into with foreign Lessors, International commercial arbitration may have practical advantages over other dispute settlement methods. Among the rules to govern the arbitration proceedings, the Procuring Entity may wish to consider the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules of 1976, the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC), the Rules of the London Court of International Arbitration or the Rules of Arbitration Institute of the Stockholm Chamber of Commerce.]*<br>(i) ***If the Procuring Entity chooses the UNCITRAL Arbitration Rules, the following sample clause should be inserted:***<br>GCC 10.2 (a)—Any dispute, controversy or claim arising out of or relating to this Contract, or breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.<br>(ii) ***If the Procuring Entity chooses the Rules of ICC, the following sample clause should be inserted:***<br>GCC 10.2 (a)—Any dispute, controversy or claim arising out of or in connection with this Contract, or the breach termination or invalidity thereof, shall be settled by arbitration in accordance with the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce. |

| | |
|---|---|
| | (i) **If the Procuring Entity chooses the Rules of the London Court of International Arbitration, the following clause should be inserted**:<br><br>GCC 10.2 (a) – Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which rules are deemed to be incorporated by reference to this clause. – Law is not applicable<br><br>(b**) Contracts with Lessor who is a national of Kenya:**<br>In the case of a dispute between the Procuring Entity and the Lessor who is a national of Kenya, the dispute shall be referred to as arbitration in accordance with the laws of Kenya. |
| GCC 13.1 | Details of Shipping and other Documents to be furnishes by the Lessor are [not applicable] |
| GCC 15 | The prices charged for the Lease Items supplied and the related Services performed **shall not** be adjustable. |
| GCC 16& 18 | The Performance security shall be equivalent to **10%** of the bidder's proposed minimum annual guarantee. |
| GCC 24 | The insurance coverage shall be insurance covers applicable for the advertising media – structure and advert. And all utilities. |
| GCC 26 | The Inspection shall be carried out jointly with the Procuring Entity to ensure compliance to all the advertising media development and management requirements |
| GCC 27 | The maximum amount of liquidated damages one-year minimum annual guarantee. |

## SECTION IX - CONTRACT FORMS

This Section contains forms which, once completed, will form part of the Contract. The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful tenderer after contract award.

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## FORM No 1: NOTIFICATION OF INTENTION TO AWARD

This Notification of Intention to Award shall be sent to each Tenderer that submitted a Tender. Send this Notification to the Tenderer's Authorized Representative named in the Tender Information Form on the format below.

---

**FORMAT**

1. For the attention of Tenderer's Authorized Representative

   i) Name: .....*[insert Authorized Representative's name]*

   *ii)* Address: .....*[insert Authorized Representative's Address]*

   *iii)* Telephone: .....*[insert Authorized Representative's telephone/fax numbers]*

   *iv)* Email Address: .....*[insert Authorized Representative's email address]*

   *[IMPORTANT: insert the date that this Notification is transmitted to Tenderers. The Notification must be sent to all Tenderers simultaneously. This means on the same date and as close to the same time as possible.]*

2. Date of transmission: ..... *[email]*_____ on.....*[date]* _____ *(local time)* This

   Notification is sent by (*Name and designation*)_____

   _____

3. Notification of Intention to Award

   *i)* Procuring Entity: .....*[insert the name of the Procuring Entity]*
   *ii)* Project: .....*[insert name of project]*
   *iii)* Contract title: .....*[insert the name of the contract]*
   *iv)* Country: .....*[insert country where ITT is issued]*
   *v)* ITT No: .....*[insert ITT reference number from Procurement Plan]*

   This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period. During the Standstill Period, you may:

4. Request a debriefing in relation to the evaluation of your tender

   Submit a Procurement-related Complaint in relation to the decision to award the contract.

   a) The successful tenderer

      i) Name of successful Tender_____

      _____

      ii) Address of the successful Tender _____

      _____

      iii) Contract price of the successful Tender Kenya Shillings_____
      (in words_____)

   b) Other Tenderers

      Names of all Tenderers that submitted a Tender. If the Tender's price was evaluated include the evaluated price as well as the Tender price as read out. For Tenders not evaluated, give one main reason the Tender was unsuccessful.

| Lease Item N° | Description of Lease Item and Related Services. | Tender Price as readout | Tender's evaluated price (Note a) | One Reason Why not Evaluated |
|---|---|---|---|---|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| | | | | |

*(Note a) State NE if not evaluated*

5. How to request a debriefing

a) DEADLINE: The deadline to request a debriefing expires at midnight on [*insert date*] (*local time*).

b) You may request a debriefing in relation to the results of the evaluation of your Tender. If you decide to request a debriefing your written request must be made within three (5) Business Days of receipt of this Notification of Intention to Award.

c) Provide the contract name, reference number, name of the Tenderer, contact details; and address the request for debriefing as follows:

i) Attention: [*insert full name of person, if applicable*]

ii) Title/position: [*insert title/position*]

iii) Agency: [*insert name of Procuring Entity*]

iv) Email address: [*insert email address*]

d) If your request for a debriefing is received within the 3 Days deadline, we will provide the debriefing within five (3) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (3) Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.

e) The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.

f) If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Days from the date of publication of the Contract Award Notice.

6. How to make a complaint

a) Period: Procurement-related Complaint challenging the decision to award shall be submitted by midnight, [*insert date*] (local time).

b) Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-related Complaint as follows:

i) Attention: [*insert full name of person, if applicable*]

ii) Title/position: [*insert title/position*]

iii) Agency: [*insert name of Procuring Entity*]

iv) Email address: [*insert email address*]

c) At this point in the procurement process, you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.

d) Further information: For more information refer to the Public Procurement and Disposals Act 2015 and its Regulations available from the Website www.ppra.go.ke or email complaints@ppra.go.ke.

You should read these documents before preparing and submitting your complaint.

e) There are four essential requirements:

i) You must be an 'interested party'. In this case, that means a Tenderer who submitted a Tender in this tendering process, and is the recipient of a Notification of Intention to Award.

ii) The complaint can only challenge the decision to award the contract.

iii) You must submit the complaint within the period stated above.

iv) You must include, in your complaint, all of the information required to support your complaint.

**7. <u>Standstill Period</u>**

i) DEADLINE: The Standstill Period is due to end at midnight on [*insert date*] (local time).

ii) The Standstill Period lasts ten (14) Days after the date of transmission of this Notification of Intention to Award.

iii) The Standstill Period may be extended as stated in paragraph Section 5 (d) above.

If you have any questions regarding this Notification pleased do not hesitate to contact us. On behalf of the Procuring Entity:

**Signature:**_____

**Name:**_____

**Title/position:**_____

**Telephone:**_____

**Email:**_____

**FORM NO 2: NOTIFICATION OF AWARD-LETTER OF ACCEPTANCE**

*[letter head paper of the Procuring Entity]*

.....*[date]*

To: .....*[name and address of the Contractor]*

This is to notify you that your Tender dated *[date]* for execution of the..... *[name of the Contract and identification number, as given in the Contract Data]* for the Accepted Contract Amount..... *[amount in numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers, is hereby accepted by…… *(name of Procuring Entity)*.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using, for that purpose, one of the Performance Security Forms included in Section VIII, Contract Forms, of the Tender Document.

Authorized Signature: .....

Name and Title of Signatory: .....

Name of Procuring Entity: .....

Attachment: *Contract Agreement*

## NOTIFICATION OF AWARD - LETTER OF ACCEPTANCE

*[use letterhead paper of the Procuring Entity]*

.....*[date]*

To: .....*[name and address of the Lessor]*

Subject: ***Notification of Award Contract No***.....

This is to notify you that your Tender dated.....*[insert date]* for the Lease Items on the list below is hereby accepted by our Agency.

**OFFERED ITEMS AND PRICES**

| 1 | 2 | 3 |
|---|---|---|
| **Lease Item N°** | **Description of Lease Item and Related Services.** | **Tender Price** |
| 1 | | |
| 2 | | |
| 3 | | |
| 4 | | |
| TOTAL TENDER PRICE | | xxxx |

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose the of the Performance Security Form included in Section X, Contract Forms, of the Tendering document.

Authorized Signature: .....

Name and Title of Signatory: .....

Name of Agency: .....

**Attachment: Contract Agreement**

## FORM NO 3 - CONTRACT AGREEMENT

*[The successful tenderer shall fill in this form in accordance with the instructions indicated]*

THIS AGREEMENT made the *[insert: **number**]* day of *[insert: **month**]*, *[insert: **year**]*.

BETWEEN

(1) *[insert complete name of Procuring Entity* and having its principal place of business at *[insert: address of Procuring Entity]* (herein after called "Procuring Entity"), of the one part;

and

(2) *[insert name of Lessor**]**,* a corporation incorporated under the laws of *[insert: country of Lessor**]*** and having its principal place of business at *[insert: address of Lessor]* (herein after called "the Lessor"), of the other part.

3. WHEREAS the Procuring Entity invited Tenders for certain Lease Items and ancillary services, viz., *[insert brief description of Lease Items and Services]* and has accepted a Tender by the Lessor for the supply of those Lease Items and Services, the Procuring Entity and the Lessor agree as follows:

   i) In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.

   ii) The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other contract documents.
      a) the Letter of Acceptance
      b) the Letter of Tender
      c) the Addenda Nos._____(if any)
      d) Special Conditions of Contract
      e) General Conditions of Contract
      f) the Specification (including Schedule of Requirements and Technical Specifications)
      g) the completed Schedules (including Price Schedules)
      h) any other document listed in GCC as forming part of the Contract

   iii) In consideration of the payments to be made by the Procuring Entity to the Lessor as specified in this Agreement, the Lessor hereby covenants with the Procuring Entity to provide the Lease Items and Services and to remedy defects the rein inconformity in all respects with the provisions of the Contract.

4. The Procuring Entity hereby covenants to pay the Lessor inconsideration of the provision of the Lease Items and Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

5. IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Kenya on the day, month and year indicated above.

<u>For and on behalf of the Procuring Entity</u>

Signed: .....*[insert signature]* in the capacity of .....*[insert title or other appropriate designation]*

In the presence of .....*[insert identification of official witness]*

<u>For and on behalf of the Lessor</u> Signed: .....*[insert signature of authorized representative(s) of the Lessor]*

in the capacity of .....*[insert title or other appropriate designation]*

in the presence of .....*[insert identification of official witness]*

**FORM NO. 4 - PERFORMANCE SECURITY [Option 1 - Unconditional Demand Bank Guarantee]**

*[Guarantor letterhead]*

**Beneficiary:**_____*[insert name and Address of* Procuring Entity*]*

**Date:**_____*[Insert date of issue]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letter head]*

1. We have been informed that_____(hereinafter called "the Contractor") has entered into Contract No._____dated_____with (*name of Procuring Entity*)_____(the Procuring Entity as the Beneficiary), for the execution of _____(herein after called "the Contract").

2. Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

3. At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ (*in words* ),[1] such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

4. This guarantee shall expire, no later than the…….. Day of……, 2...…[2], and any demand for payment under it must be received by us at the office indicated above on or before that date.

5. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months] [one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

_____

*[Name of Authorized Official, signature(s) and seals/stamps*]

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

[1]*The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency of the Contract or a freely convertible currency acceptable to the Beneficiary.*

[2]*Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9. The Procurement Entity should note that in the event of an Extension of this date for completion of the Contract, the Procurement Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.*

**FORM No. 5 - PERFORMANCE SECURITY [Option 2– Performance Bond]**

*[Note: Procuring Entities are advised to use Performance Security–Unconditional Demand Bank Guarantee instead of Performance Bond due to difficulties involved in calling Bond holder to action]*

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:**_____*[insert name and Address of Procuring*

Entity*]* **Date:**_____*[Insert date of issue]*

**PERFORMANCE BOND No.:**_____

**Guarantor: [***Insert name and address of place of issue, unless indicated in the letterhead]*

1. By this Bond_____ as Principal (hereinafter called "the Contractor") and_____] as Surety (hereinafter called "the Surety"), are held and firmly bound unto] as Obligee (hereinafter called "the Procuring Entity") in the amount of_____for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

2. WHEREAS the Contractor has entered into a written Agreement with the Procuring Entity dated the____day of, 20, for in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

3. NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Procuring Entity to be, in default under the Contract, the Procuring Entity having performed the Procuring Entity's obligations there under, the Surety may promptly remedy the default, or shall promptly:

   1) complete the Contract in accordance with its terms and conditions; or

   2) obtain a tender or tenders from qualified tenderers for submission to the Procuring Entity for completing the Contract in accordance with its terms and conditions, and upon determination by the Procuring Entity and the Surety of the lowest responsive Tenderers, arrange for a Contract between such Tenderer, and Procuring Entity and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "Balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by Procuring Entity to Contractor under the Contract, less the amount properly paid by Procuring Entity to Contractor; or

   3) pay the Procuring Entity the amount required by Procuring Entity to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

4. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

5. Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking - Over Certificate. No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Procuring Entity named herein or the heirs, executors, administrators, successors, and assigns of the Procuring Entity.

6. In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this day___of_____20_____.

SIGNED ON_____on behalf of

by_____in the capacity

of in the presence of

SIGNED ON_____on behalf

of by_____in the capacity

of in the presence of

**FORM NO. 6 - ADVANCE PAYMENT SECURITY [Demand Bank Guarantee]**

*[Guarantor letterhead]*

**Beneficiary:** _____*[Insert name and Address of* Procuring Entity*]*

**Date:** _____*[Insert date of issue]*

**ADVANCE PAYMENT GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor: [***Insert name and address of place of issue, unless indicated in the letter head]*

1. We have been informed that_____(hereinafter called "the Contractor") has entered into Contract No._____*dated*_____with the Beneficiary, for the execution of_____ (herein after called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum _____(*in words*_____) is to be made against an advance payment guarantee.
3. At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of_____(*in words*_____)[1] upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:
   (a) has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or
   (b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.
4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Contract or on its account number at……
5. The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the day of_____, 2 ,[2] whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.
6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months] [one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

_____

*[Name of Authorized Official, signature(s) and seals/stamps]*

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

[1]*The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency of the advance payment as specified in the Contract.*

[2]*Insert the expected expiration date of the Time for Completion. The Procurement Entity should note that in the event of an extension of the time for completion of the Contract, the Procurement Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.*