



REPUBLIC OF KENYA
MINISTRY OF TRANSPORT, INFRASTRUCTURE,
HOUSING AND URBAN DEVELOPMENT,
STATE DEPARTMENT
OF PUBLIC WORKS
P. O. Box 30071- 00100

NAIROBI

Tel: +254-205-339-61

(SUPPLIES BRANCH)

TENDER REF. NO.: - SB/1/2016/2017

SUPPLY OF PETROLEUM PRODUCTS (BULK)

FINANCIAL YEAR 2016/2017

CLOSING DATE: 4th October 2016

TIME: 10:00AM (EAST AFRICAN TIME)

A complete tender document can be downloaded from supplier portal
<https://supplier.treasury.go.ke>

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CURRENCY UNITS, WEIGHTS AND MEASURES

Currency Unit = Kenya Shilling (Kshs.)

1 kilogram (kg) = 2.204 pounds (lb)

1 hectare (ha) = 10,000 m²

1 hectare (ha) = 2.47 acres

1 foot (ft) = 0.3048m

1 inch = 0.0254m

Fiscal Year = 1st July 20__ to 30th June 20__

SECTION 1. INVITATION TO TENDER

TENDER REF NO. SB/1/2016/2017 **Date: 19th September 2016**

TENDER NAME: - SUPPLY OF PETROLEUM PRODUCTS

1.1 The Principal Secretary, Ministry of Transport, Infrastructure, Housing and Urban Development, State Department of Public Works, Supplies Branch invites sealed bids from eligible candidates for **Supply of Petroleum Products to Government Ministries / Departments & Institutions for a period of Two (2) Years commencing on the date of Contract Signing.**

1.2 Interested eligible candidates may obtain further information from supplier portal <https://supplier.treasury.go.ke> and inspect the tender documents at the Office of **The Officer-In-Charge, Supplies Branch, Likoni Road, Industrial Area, P. O. Box 30071 - 00100, Nairobi** during normal working hours.

1.3 A complete set of tender documents may be obtained by interested candidates upon payment of non-refundable fees of KShs. **1,000 (Kenya Shillings one thousand Only)** in cash or Bankers cheque payable to **The Officer-In-Charge, Supplies Branch, Likoni Road, Industrial Area, P. O. Box 30071 - 00100, Nairobi.**

1.4 Tenderers shall be required to furnish a Tender / Bid Security of **KShs2,000,000 (Kenya Shillings Two million Only)** payable in bankers' cheque or cash to the Principal Secretary, State Department of Public Works or a bid bond from **a Commercial Bank / Eligible Insurance Company** in the format provided in the Tender Documents to remain in force for a period of 120 days from the closing date of the tender.

1.5 Where hard copy tender documents are required, they shall be enclosed in plain sealed envelopes marked with tender reference number and be deposited in the Tender Box at **Supplies Branch, Likoni Road, Industrial Area, Nairobi** or be addressed to **The Officer-In-Charge, Supplies Branch, Likoni Road, Industrial Area, P. O. Box 30071 - 00100, Nairobi so as to be received on 4th October, 2016 at 10.00 A.M (East African Time) time.**

1.6 Prices quoted should be net inclusive of all taxes and delivery must be in Kenya Shillings and shall remain valid for **120 days** from the closing date of the tender.

1.7 Tenders will be opened immediately thereafter in the presence of the Candidates or their representatives who choose to attend online or at **Supplies Branch, Likoni Road, Industrial Area, Nairobi**

OFFICER - INCHARGE

SUPPLIES BRANCH

FOR: PRINCIPAL SECRETARY

STATE DEPARTMENT OF PUBLIC WORKS

SECTION 2. INSTRUCTION TO TENDERERS

2.1 Eligible Tenderer

2.1.1 This Invitation for Tenders is open to all tenderers eligible as described in the Invitation to Tender. Successful tenderers shall complete the supply of goods by the intended completion date specified in Schedule of Requirements Section VI.

2.1.2 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.

2.1.3 Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods under this Invitation for tenders.

2.1.4 Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices.

2.2 Eligible Goods

2.2.1 All goods to be supplied under the contract shall have their origin in eligible source countries.

2.2.2 For purposes of this clause, "origin" means the place where the goods are mined, grown, or produced. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially-recognized product results that is substantially different in basic characteristics or in purpose or utility from its components

2.2.3 The origin of goods is distinct from the nationality of the tenderer.

2.3 Cost of Tendering

2.3.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the procuring entity, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

2.3.2 The price to be charged for the tender document shall not exceed Kshs.....

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

2.4 Contents of Tender Document

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

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

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

2.5 Clarification of Documents

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

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

2.6 Amendment of Documents

2.6.1 At any time prior to the deadline for submission of tenders, the Procuring entity, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by amendment.

2.6.2 All prospective candidates that have received the tender documents will be notified of the amendment in writing through email or by post and will be binding on them.

2.6.3 In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, the Procuring entity, at its discretion, may extend the deadline for the submission of tenders.

2.7 Language of Tender

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

2.8 Documents Comprising the Tender

2.8.1 The tender prepared by the tenderers shall comprise the following components

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

2.9 Tender Forms

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

2.9.2 This is a Term Contract to be used by all Public Procurement entities and orders will be placed as and when required basis (AWR).

2.10 Tender Prices

2.10.1 The tenderer shall indicate on the appropriate Price Schedule the unit prices and total tender price of the goods it proposes to supply under the contract.

2.10.2 Quantity to determine total tender price shall be on an “**As and When Required**” (AWR) basis.

2.10.3 Prices indicated on the Price Schedule shall include all costs including taxes, insurances and delivery to the premises of the entity.

2.10.4 Prices quoted by the tenderer shall be fixed during the Tender’s performance of the contract and not subject to variation on any account. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.22

2.11 Tender Currencies

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

2.12 Tenderers Eligibility and Qualifications

2.12.1 Pursuant to paragraph 2.1. the tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.

2.12.2 The documentary evidence of the tenderers eligibility to tender shall establish to the Procuring entity's satisfaction that the tenderer, at the time of submission of its tender, is from an eligible source country as defined under paragraph 2.1

2.12.3 The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted, shall be established to the Procuring entity's satisfaction;

(a) that, in the case of a tenderer offering to supply goods under the contract which the tenderer did not manufacture or otherwise produce, the tenderer has been duly authorized by the goods' Manufacturer or producer to supply the goods.

(b) that the tenderer has the financial, technical, and production capability necessary to perform the contract;

(c) that, in the case of a tenderer not doing business within Kenya, the tenderer is or will be (if awarded the contract) represented by an Agent in Kenya equipped, and able to carry out the Tenderer's maintenance, repair, and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.

2.13 Goods Eligibility and Conformity to Tender Documents

2.13.1 Pursuant to paragraph 2.2 of this section, the tenderer shall furnish, as part of its tender documents establishing the eligibility and conformity to the tender documents of all goods which the tenderer proposes to supply under the contract

2.13.2 The documentary evidence of the eligibility of the goods shall consist of a statement in the Price Schedule of the country of origin of the goods and services offered which shall be confirmed by a certificate of origin issued at the time of shipment.

2.13.3 The documentary evidence of conformity of the goods to the tender documents may be in the form of literature, drawings, and data, and shall consist of:

(a) a detailed description of the essential technical and performance characteristic of the goods;

(b) a list giving full particulars, including available source and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the goods for a period of two (2) years, following commencement of the use of the goods by the Procuring entity; and

(c) a clause-by-clause commentary on the Procuring entity's Technical Specifications demonstrating substantial responsiveness of the goods and service to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.

2.13.4 For purposes of the documentary evidence to be furnished pursuant to paragraph 2.13.3(c) above, the tenderer shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by the Procurement entity in its Technical Specifications, are intended to be descriptive only and not restrictive. The tenderer may substitute alternative standards, brand names, and/or catalogue numbers in its tender, provided that it demonstrates to the Procurement Entity's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

2.14 Tender Security

2.14.1 The tenderer shall furnish, as part of its tender, a tender security for the amount specified in the Appendix to Invitation to Tenderers.

2.14.2 The tender security shall be in the amount of per cent of the tender price.

2.14.3 The tender security is required to protect the Procuring entity against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 2.14.7

2.14.4 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form of a bank guarantee or a bank draft issued by a reputable bank located in Kenya or abroad, or a guarantee issued by a reputable insurance company in the form provided in the tender documents or another form acceptable to the Procuring entity and valid for thirty (30) days beyond the validity of the tender.

2.14.5 Any tender not secured in accordance with paragraph 2.14.1 and 2.14.3 will be rejected by the Procuring entity as non-responsive, pursuant to paragraph 2.22

2.14.6 Unsuccessful Tenderer's tender security will be discharged or returned as promptly as possible as but not later than thirty (30) days after the expiration of the period of tender validity prescribed by the Procuring entity.

2.14.7 The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 2.27 and furnishing the performance security, pursuant to paragraph 2.28

2.14.8 The tender security may be forfeited:

(a) if a tenderer withdraws its tender during the period of tender validity specified by the procuring entity on the Tender Form; or

(b) in the case of a successful tenderer, if the tenderer fails:

(i) to sign the contract in accordance with paragraph

2.27 or

(ii) to furnish performance security in accordance with paragraph 2.28

2.15 Validity of Tenders

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

2.15.2 In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 2.14 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

2.16 Format and Signing of Tender

2.16.1 The Procuring entity, where hard copies are involved, shall prepare two copies of the tender, clearly marking each "ORIGINAL TENDER" and "COPY OF TENDER," as appropriate. In the event of any discrepancy between them, the original shall govern.

2.16.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. The latter authorization shall be indicated by written power-of-attorney accompanying the tender. All pages of the tender, except for unamended printed literature, shall be initialed by the person or persons signing the tender.

2.16.3 The tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

2.17 Sealing and Marking of Tenders

2.17.1 The Tenderer, where hard copies are involved, shall seal the original and each copy of the tender in separate envelopes, duly marking the envelopes as "ORIGINAL" and "COPY." The envelopes shall then be sealed in an outer envelope.

2.17.2 The inner and outer envelopes shall:

- (a) be addressed to the Procuring entity at the address given in the Invitation to Tender:
- (b) bear, tender number and name in the Invitation for Tenders and the words, "DO NOT OPEN BEFORE" **(as per Tender notice)**

2.17.3 The inner envelopes shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared "late".

2.17.4 If the outer envelope is not sealed and marked as required by paragraph 2.17.2, the Procuring entity will assume no responsibility for the tender's misplacement or premature opening.

2.18 Deadline for Submission of Tenders

2.18.1 Tenders must be received by the Procuring entity at the address specified under paragraph 2.17.2 no later than (as per Tender notice)

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

2.19 Modification and Withdrawal of Tenders

2.19.1 The tenderer may modify or withdraw its tender after the tender's submission, provided that written notice of the modification, including substitution or withdrawal of the tenders, is received by the Procuring Entity prior to the deadline prescribed for submission of tenders.

2.19.2 The Tenderer's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 2.17. A withdrawal notice may also be sent by cable, telex but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.

2.19.3 No tender may be modified after deadline for submission of tenders.

2.19.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the Tenderer's forfeiture of its tender security, pursuant to paragraph 2.14.7

2.19.5 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

2.19.6 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

2.20 Opening of Tenders

2.20.1 The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, as per Tender notice and as specified in the Invitation to Tender. The tenderers' representatives who are present shall sign a register evidencing their attendance.

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

2.20.3 The Procuring entity will prepare minutes of the tender opening.

2.21 Clarification of Tenders

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

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

2.22 Preliminary Examination

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

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

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

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

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

2.23 Conversion to Single Currency

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

2.24 Evaluation and Comparison of Tenders

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

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

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

2.25 Preference

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

2.26 Contacting the Procuring Entity

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

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

2.27 Award of Contract

(a) Post-qualification

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

2.27.2 The determination will take into account the tenderer financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 2.12.3 as well as such other information as the Procuring entity deems necessary and appropriate.

2.27.3 An affirmative determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the Tenderer's tender, in which event the

Procuring entity will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

(b) **Award Criteria**

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

(c) **Procuring Entity's Right to Vary Quantities**

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

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

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

2.28 Notification of Award

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

2.28.2 The notification of award will constitute the formation of the Contract but will have to wait until the contract is finally signed by both parties

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

2.29 Signing of Contract

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

2.29.2 The written contract shall be entered into within the period specified in the notification but not before fourteen days have elapsed following the giving of that notification provided that a contract shall be signed within the tender validity period, unless there is an administrative review request.

2.29.3 Within the period specified in the notification after receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Procuring entity.

2.30 Performance Security

2.30.1 Within Thirty (30) days of the receipt of notification of award from the Procuring entity, the successful tenderer shall furnish the performance security in accordance with the Conditions of Contract, in the Performance Security Form provided in the tender documents, or in another form acceptable to the Procuring entity.

2.30.2 Failure of the successful tenderer to comply with the requirements of paragraph 2.27 or paragraph 2.28 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Procuring entity may make the award to the next lowest evaluated Candidate or call for new tenders.

2.31 Corrupt or Fraudulent Practices

2.31.1 The Procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts when used in the present regulations, the following terms are defined as follows;

(i) “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and

(ii) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring entity, and includes collusive practice among tenderer (prior to or after tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive the Procuring entity of the benefits of free and open competition;

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

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

Appendix to Instructions to Tenderers

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

Table 1: *Particulars of appendix to Instructions to Tenderers*

<i>INSTRUCTIONS TO TENDERERS (ITT) REFERENCE</i>	<i>PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERERS</i>
ITT-2.1.1	<p>I. The name of the client is:- Ministry of Transport, Infrastructure, Housing and Urban Development, State Department of Public Works, Supplies Branch</p> <p>I. The eligible firms are those capable of supplying PETROLEUM PRODUCTS as provided in the Specifications-Section V</p> <p>II. Location/Delivery Point(s):- All Government Ministries/Departments and Institutions.</p> <p>III. Contract period:- One (1) year commencing on the date of signing of the contract</p>
ITT-2.3.2	Where hard copies are involved, the cost of the tender documents is Kshs. 1,000 per set of documents.
ITT-2.10.2	Quantity to determine total tender price:-As and When Required basis
ITT-2.15	Tender validity period:- 120 days from Tender Submission/Opening Date.
ITT-2.11.1	Prices quoted shall be in Kenyan Shillings.
ITT-2.16.	Where hard copies are involved, submit Tender documents in Original and Copy and in the recommended format
ITT-2.18.	Submission deadline:-Not later than 30th September 2016 and be deposited in the Tender Box situated at the ground floor, Supplies Branch, Likoni Road, Industrial Area, Nairobi
ITT-2.20.1	Opening of Tenders:- 4TH OCTOBER 2016
ITT-2.9.2	Quantity of goods:- This is a Term Contract to be used by all Public Procurement entities and orders will be placed as and when required basis (AWR).
ITT-2.31	Performance security:- Will be KShs. 2,000,000 for each contract awarded

SECTION 3. GENERAL CONDITIONS OF CONTRACT

3.1 Definitions

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

(a) “The Contract” means the agreement entered into between the Procuring entity and the tenderer, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

(b) “The Contract Price” means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations

(c) “The Goods” means all of the equipment, machinery, and/or other materials, which the tenderer is required to supply to the Procuring entity under the Contract.

(d) “The Procuring entity” means the organization purchasing the Goods under this Contract.

(e) “The Tenderer” means the individual or firm supplying the Goods under this Contract.

3.2 Application

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

3.3 Country of Origin

3.3.1 For purposes of this clause, “Origin” means the place where the Goods were mined, grown or produced.

3.3.2 The origin of Goods and Services is distinct from the nationality of the tenderer.

3.4 Standards

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

3.5 Use of Contract Documents and Information

3.5.1 The tenderer shall not, without the Procuring entity’s prior written consent, disclose the Contract, or any provision therefore, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring entity in connection therewith, to any person other than a person employed by the tenderer in the performance of the Contract.

3.5.2 The tenderer shall not, without the Procuring entity’s prior written consent, make use of any document or information enumerated in paragraph 3.5.1 above

3.5.3 Any document, other than the Contract itself, enumerated in paragraph 3.5.1 shall remain the property of the Procuring entity and shall be returned (all copies) to the Procuring entity on completion of the Tenderer’s performance under the Contract if so required by the Procuring entity

3.6 Patent Rights

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

3.7 Performance Security

3.7.1 Within thirty (30) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the performance security in the amount specified in Special Conditions of Contract.

3.7.2 The proceeds of the performance security shall be payable to the Procuring entity as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.

3.7.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Procuring entity and shall be in the form of a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in Kenya or abroad, acceptable to the Procuring entity, in the form provided in the tender documents.

3.7.4 The performance security will be discharged by the Procuring entity and returned to the Candidate not later than thirty (30) days following the date of completion of the Tenderer's performance obligations under the Contract, including any warranty obligations, under the Contract

3.8 Inspection and Tests

3.8.1 The Procuring entity or its representative shall have the right to inspect and/or to test the goods to confirm their conformity to the Contract specifications. The Procuring entity shall notify the tenderer in writing in a timely manner, of the identity of any representatives retained for these purposes.

3.8.2 The inspections and tests may be conducted in the premises of the tenderer or its subcontractor(s), at point of delivery, and/or at the Goods' final destination. If conducted on the premises of the tenderer or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring entity.

3.8.3 Should any inspected or tested goods fail to conform to the Specifications, the Procuring entity may reject the equipment, and the tenderer shall either replace the rejected equipment or make alterations necessary to make specification requirements free of costs to the Procuring entity.

3.8.4 The Procuring entity's right to inspect, test and where necessary, reject the goods after the Goods' arrival shall in no way be limited or waived by reason of the equipment having previously been inspected, tested and passed by the Procuring entity or its representative prior to the equipment delivery.

3.8.5 Nothing in paragraph 3.8 shall in any way release the tenderer from any warranty or other obligations under this Contract.

3.9 Packing

3.9.1 The tenderer shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract.

3.9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract

3.10 Delivery and Documents

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

3.11 Payment

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

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

3.12 Prices

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

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

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

3.12.6 Price variation request shall be processed by the procuring entity within 30 days of receiving the request

3.13 Assignment

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

3.14 Subcontracts.

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

3.15 Termination for default

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

(a) if the tenderer fails to deliver any or all of the goods within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring entity

(b) if the tenderer fails to perform any other obligation(s) under the Contract

(c) if the tenderer, in the judgment of the Procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the Contract

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

3.16 Insurance

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

3.17 Liquidated Damages

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

3.18 Resolution of Disputes

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

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

3.19 Language and Law

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

3.20 Force Majeure

3.20.1 The tenderer shall not be liable for forfeiture of its performance security or termination for default if and to the extent that it's delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure

SECTION 4. SPECIAL CONDITIONS OF CONTRACT

Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, between the GCC and the SCC, the provisions of the SCC herein shall prevail over those in the GCC.

4.0 The participating tenderer is expected to furnish the Procuring Entity with the following documents / information **pursuant to clause 2.12 of the Instructions to Tenderers**: -

- (a.) Valid single Business permit, copy to be attached
- (b.) Reliable communication services e.g. fixed line(s) telephone, fax, Postal address, e-mail, website and mobile phone(s).
- (c.) Physical address.
- (d.) Evidence of past performance – copies of local purchase orders (LPOs) from established organizations to be attached, if any.
- (e.) The Tenderer **MUST** possess a Certificate of Incorporation or Certificate of Registration of Business Name, Copy **MUST** be attached.
- (f.) The Tenderer **MUST** provide proof of registration with KRA and up to date tax compliance. Copies **MUST** be attached.
- (g.) Copy of evidence of approval by Public Procurement Regulatory Authority- PPRA for candidates using insurance guarantee as tender security.
- (h.) Evidence of registration under the disadvantaged groups with Ministry of National Treasury. A copy of registration certificate **MUST** be attached.

4.1 **Form of Tender and confidential business questionnaire MUST** be dully filled by the applicant / an authorized representative and signed& stamped or embossed with company seal.

4.2 Tenderers shall be required to furnish a Tender / Bid Security of **Kshs 2,000,000 (Two Million only)** payable in bankers' cheque or cash to the Principal Secretary, State Department of Public Works or a bid bond from **a Commercial Bank / Eligible Insurance Company** in the format provided in the Tender Documents to remain in force for a period of **120 days** from the date of tender closing.

4.3 Prices should be net inclusive of all taxes, delivery cost and discount percentage based on ERC pricing index in Kenya Shillings.

4.4 **Tenderers shall be required to provide evidence of financial stability. These should be in form of Audited Financial Statements and/or Bank Statements.** Failure to submit the evidence may render the tender non-responsive.

4.5 Where hard copies are involved, Tenderers shall be required to submit their offers in a set of two copies each one marked "ORIGINAL OFFER" and the other "COPY OF OFFER". The original and copy shall be sealed in separate envelopes duly marked as "ORIGINAL" and "COPY". In those Offers, the tenderer will also be required to park the **TECHNICAL DATA** and the **FINANCIAL DATA** separately from one another, so as to enable **Technical and Financial Evaluations** to be conducted independently. The envelopes shall then be sealed in one plain unmarked outer envelope bearing only the tender number **pursuant to clause 2.16 of the Instructions to Tenderers.**

4.6 **Delivery**

Delivery shall be on “as and when required” basis to Ministries / Departments & Agencies. (See clause **3.10. of the General Conditions of Contract**)

4.7 **Payment**

This being a tender for the supply of Petroleum Products to the Government/Departments&Agencies for **a period of Two (2) Years commencing from the date of Contract Signing**, respective Ministries / Departments & Agencies shall pay directly to the contractor on receipt of goods ordered, which in any case shall be within 45 days of receipt. (See clause **3.12 of the General Conditions of Contract**)

4.8 Goods supplied against the contract proceeding from this procurement shall be fully insured against loss, damage incidental to manufacture or acquisition, transportation, storage and delivery to the tune of 110% of the contract value and the procuring entity will not be liable for any damage or loss prior to delivery (See clause **3.11 of the General Conditions of Contract**).

4.9 Successful tenderers shall be required to submit a performance security of **Kshs 2,000,000 (Two Million Only)** on receipt of a letter of notification of award in accordance with **clause 3.7 of the General Conditions of Contract**.

4.10 Prices quoted **SHALL BE IN KENYA SHILLINGS** and should include all costs of shipment and handling until the goods are actually receipted at the respective Procuring Entity’s premises.

4.11 A market Survey will be undertaken by the procuring entity to ascertain the veracity of prices quoted for items recommended for award against the prevailing competitive market prices.

4.12 **WHERE HARD COPIES ARE INVOLVED, TENDERERS ARE REQUIRED TO ENSURE THAT ALL PAGES OF THEIR TENDER DOCUMENTS ARE PROPERLY SERIALIZED AND STAMPED / SIGNED AND THE DOCUMENT SHOULD BE PROPERLY BOUND. LOOSE TENDER DOCUMENTS WILL BE DECLARED NON RESPONSIVE.**

4.13 Blacklisted, debarred and suspended firms are not eligible for this procurement.

4.14 **WHERE HARD COPIES ARE INVOLVED, TENDERERS ARE ADVISED TO QUOTE THEIR BID PRICES IN THE ORIGINAL PRICE SCHEDULE PROVIDED IN THIS TENDER DOCUMENT. INTRODUCTION OF A PRICE SCHEDULE DIFFERENT FROM THE ONE PROVIDED IN THIS DOCUMENT IN SECTION (VI) WILL LEAD TO DISQUALIFICATION.**

4.15 Where explicitly specified, all items to be supplied must be properly marked, or imprinted **GOK**.

4.16 Tenderers, who do not qualify for contract award and may wish to collect their samples, shall do so within a period of thirty (30) days of Tender Notification.

4.17 Tenderers **must** possess **current and valid** Public Health Certificates for all the staff handling Petroleum Products and copies of the same must be attached to the document.

4.18 Tenderers **MUST** provide proof of high standards of hygiene by furnishing the Procuring Entity with certificate of hygiene from the Ministry of Health.

4.19 Line of business to stock/supply – Existence of business premises.

4.20 Evidence of capacity to supply. The evidence to be in form of contracts with established institutions, LPOs and daily sales records.

4.21 Availability of transport assets – Evidence in form of copies of appropriate vehicle log books in the names of the tenderer to be provided.

4.22 The tenderers (applicants) **MUST** furnish the Procuring Entity with the following information which will serve as a pre-condition for being awarded the contract arising from this tender: -

Energy Regulatory Commission (ERC) License (provide a copy); and
Distributors License (provide a copy).

4.23 **Special conditions of contract as relates to the GCC**

REFERENCE OF GCC	SPECIAL CONDITIONS OF CONTRACT
3.7.1 Performance security	<i>This shall be Kshs. 3,000,000 (Three Million only)</i>
3.10.1 Delivery of goods	<i>The delivery period for the goods shall be within a period of 7 days and not exceeding 14 days on placing an LPO unless specifically indicated by the respective procuring entity..</i>
3.12.1 Terms of payment	<i>Payment shall be made within a period of 45 days after full delivery of goods as prescribed in the LPO.</i>
3.13.1 Prices	<i>The prices offered shall be fixed for the period stated in the Tender Invitation.</i>
3.13.1 Market Survey	<i>Award of contract will be subject to a market survey to ascertain the veracity of bid prices.</i>
2.25.1 Preference	<i>Preference-: 30% preference will be given to tenders submitted by Business Enterprises owned by Youth, Women and Persons with Disabilities.</i>

SECTION 5. PRICE SCHEDULE FOR GOODS

Name of tenderer _____ Tender Number _____ Page _____ of _____

Table 2: Prices of common Petroleum Products

CODE NO.	DESCRIPTION	UNIT OF ISSUE	QTY	UNIT PRICE IN Kshs.							Remarks
				Nairobi and environ	Kisumu and environ	Mombasa and environ	Nakuru and environ	Garissa and environ	Nyeri and environ	Other Places	
9101001	Unleaded Gasoline: Premium or Super petrol	LTR	AWR								
9101002	Unleaded Gasoline: Regular petrol	LTR	AWR								
9101004	Industrial Diesel oil	LTR	AWR								
9101005	Fuel oil	LTR	AWR								
9101006	Kerosene	LTR	AWR								
9101003	Diesel Auto	LTR	AWR								

Tenderers are advised that quantities indicated are an estimate and the government can vary them upwards or downwards without notice within the contract period.

Signature of tenderer _____

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

SECTION 6. EVALUATION CRITERIA

6.1 Evaluation & Award Criteria

Since this is a term contract, the Procuring entity will evaluate and award the contract to the successful tenderer(s) whose tender has been determined to be substantially responsive as detailed herein, provided further that the tenderer is determined to be technically qualified to perform the contract satisfactorily.

6.1. Preliminary evaluation of tenders shall be done on the basis of the following criteria.

Whether or not: -

- a) The tender has been submitted in the required format.
- b) The tender security submitted is in the required form, amount and validity period. c) The tender form has been signed by the person lawfully authorized to do so.
- d) Where hard copies are involved, the required numbers of copies of the tender have been submitted.
- e) The tender is valid for the period required
- f) All required documents and information (Brochures) have been submitted. g)

Samples have been submitted accordingly.

- h) Duly signed Statement/Certificate of Compliance (relevant)

6.2. Upon completion of Preliminary Evaluation, Technical Evaluation shall then be done by subjecting the samples to tests using approved standards for each item offered.

6.3. Non-conforming tenders will be rejected at this stage and only technically compliant tenders will be subjected to financial evaluation.

6.2 Stage 1: Preliminary (mandatory) Evaluation

Table 3: Tender Evaluation Sheet – Preliminary (Mandatory requirements)

Tenderer: XYZ Ltd.		Assessor:	
Quality Criteria (Example only)		Availability (Yes/No)	Remarks
The tender has been submitted in the required format			
The tender security submitted is in the required form, amount and validity period			
The tender form has been signed by the person lawfully authorized to do so			
The tender is valid for the period required			
All required documents and information (Brochures) have been submitted			
a.	KRA registration PIN with Tax Compliance certificate		
b.	Single business permit		
c.	Filled confidential business questionnaire		
d.	Certificate from National Treasury		
e.	Physical address and reliable communication services		
f.	Copy of the Certificate of Incorporation or Certificate of Registration of Business Name		
g.	Duly signed Statement/Certificate of Compliance (relevant)		
h.	Brochure or sample as expressly specified		
j.	Manufacturer’s authorization (where applicable)		

ASSESSOR:.....

DATE:SIGNATURE:.....

- a. The Procuring Entity may seek further clarification/confirmation if necessary to confirm authenticity / compliance of any condition of tender.
- b. A successful bidder must fulfil all the mandatory requirements in order to qualify for further evaluation. Failure in one mandatory requirement is tantamount to failure in all, and the tenderer will be declared Non-responsive!

6.3 Stage 2: Technical Evaluation

Table 4: Tender Evaluation Sheet – Technical

	Assessor:			
Tenderer: XYZ Ltd. Assessor: Quality Criteria (Example Only)	Aspect Weighting (A)	Marks Awarded (B)	Weighted Marks (C) (AxB=C)	Remarks
Understanding of Requirements/ specifications (quality of Service and service characteristic)	20%			
Timetable (period taken to deliver supplies as per the requirements)	20%			
Relevant Experience (experience of providing similar good/service)	25%			
Technical Capability (key personnel)	20%			
After sales service and user-Interface	15%			
	100%		Total Score (possible 500%)	

TOTAL SCORE:ASSESSOR:.....

DATE:SIGNATURE:.....

The Total Score is divided by 5 to provide the Quality Assessment Mark.

Table 5: Tender Score Criteria

	CRITERIA	MARKS
A	Very high standard with no reservations at all about acceptability.	5
B	High standard but falls just short of A.	4
C	Good standard.	3
D	Generally of a good standard with some reservations.	2
E	Basic compliance only	1
F	Fails to meet the minimum requirements. (Bid rejected)	0

Score all tenders as above in accordance with select criteria and sub-criteria using the marking system set out below. Completion of the commentary sheet is also required.

Table 6: Quality Assessment (Technical) Commentary Sheet

Tenderer: XYZ Ltd.		
Assessor: Quality Criteria (Example Only)	Comments	Score (0 – 5)
Understanding of Requirements/ specifications (quality of Service and service characteristic)		
Timetable (period taken to deliver supplies as per the requirements)		
Relevant Experience (experience of providing similar good/service)		
Technical Capability (key personnel)		
After sales service and user-Interface		

a. Discount any bids that do not meet your predetermined quality threshold. As an example you may have a cut off that tenders that do not score [50] out of 100 will be rejected and/or on those that score 0 in any Quality will be rejected.

6.4 Stage 3: Financial Evaluation

a. Calculate the tender price taking into account whole life costs (The key is to assemble all the aspects of the tender that have a direct and indirect financial impact on the Procuring Entity. These should be the financial costs that the Procuring Entity will be subjected to throughout the life of the contract e.g. installation & maintenance costs, licences, (where applicable) etc. These costs may also include the consequences of selecting the supplier e.g. upgrade to IT systems, products warranty period and after sale service.)

b. To what extent Tender rates compares with the prevailing market rates. c.

Rank each tender in price order, highest first

d. Audited Financial Report for the last three (3) years (where applicable)

e. Evidence of Financial resources

f. Name, Address (post, fax and email) and Telephone of Banks g.

Litigation history

Table 7: Tender Evaluation Sheet – Financial

RANK (by price)	Tenderer	PRICE (Tender rate)	Price (Market rate)	Quality (Technical evaluation score)
1				
2				
3				
4				

- a. Reject tenders which are unaffordable.
- b. Reject those tenders whose price is higher than tenders with a higher quality.
- c. Evaluate the remaining tenders to determine which tender gives the most economically advantageous solution. The lowest priced acceptable tender is recommended
- d. In the event that the lowest priced acceptable tender is not being recommended then the report recommending acceptance would need to fully justify the recommendations by demonstrating that the additional quality being procured is good value as against the lower priced acceptable tender.
- e. Full written details of the evaluation process must be retained in order to provide an audit trail. A spreadsheet should be completed in the following format. -

NB:

To evaluate quality of service under user Interface criteria, the following are checked:-

- a. Method of developing relationships with good/service users
- b. What input will be available to the community c.

How will service improvements be managed

- d. What customer care policies are in place
- e. How will complaints and service failures be managed

SECTION 7. **STANDARD FORMS**

Notes on the sample Forms

1. Form of Tender:-

The form of tender must be completed by the tenderer and submitted with the tender documents. It must also be duly signed by duly authorized representatives of the tenderer.

2. Confidential Business Questionnaire Form:-

This form must be completed by the tenderer and submitted with the tender documents.

3. Tender Security Form:-

When required by the tender documents the tender shall provide the tender security either in the form included herein or in another format acceptable to the procuring entity.

4. Contract Form:-

The Contract Form shall not be completed by the tenderer at the time of submitting the tender. The Contract Form shall be completed after contract award and should incorporate the accepted contract price.

5. Performance Security Form:-

The performance security form should not be completed by the tenderers at the time of tender preparation. Only the successful tenderer will be required to provide performance security in the form provided herein or in another form acceptable to the procuring entity.

6. Manufacturers Authorization Form:-

When required by the tender documents this form must be completed and submitted with the tender documents. This form will be completed by the manufacturer of the goods where the tenderer is an agent.

7.1 FORM OF TENDER

Date _____

Tender No. _____

To: _____

[Name and address of procuring entity]

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda

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

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

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

4. We agree to abide by this Tender for a period of [*150*] days from the date fixed for tender opening of the Instructions to tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

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

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

Dated this _____ day of _____ 20 _____

[signature]

[in the capacity of]

Duly authorized to sign tender for an on behalf of _____

7.2 CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

You are requested to give the particulars indicated in Part 1 and either Part 2(a), 2(b) or 2 (c) whichever applied to your type of business

You are advised that it is a serious offence to give false information on this form

Part 1 – General:

Business Name Location of business premises. Plot No..... Street/Road Postal Address Tel No. Fax E mail Nature of Business Registration Certificate No. Maximum value of business which you can handle at any one time – Kshs. Name of your bankers Branch

Part 2 (a) – Sole Proprietor

Your name in full Age Nationality Country of origin Citizenship details

Part 2 (b) Partnership

Given details of partners as follows:

Name Nationality Citizenship Details Shares

	<p>1.</p> <p>2.</p> <p>3.</p> <p>4.</p>																												
	<p>Part 2 (c) – Registered Company</p> <p>Private or Public</p> <p>.....</p> <p>State the nominal and issued capital of company- Nominal</p> <p>Kshs. Issued Kshs.</p> <p>.....</p> <p>Given details of all directors as follows</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 35%; text-align: center;">Name</th> <th style="width: 35%; text-align: center;">Nationality</th> <th style="width: 20%; text-align: center;">Citizenship Details</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Shares</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">1.</td> <td>.....</td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">2.</td> <td>.....</td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">3.</td> <td>.....</td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">4.</td> <td>.....</td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">5.</td> <td>.....</td> <td></td> <td></td> </tr> </tbody> </table>		Name	Nationality	Citizenship Details	Shares				1.			2.			3.			4.			5.		
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	<p>Date Signature of Candidate</p>																												

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

7.3 TENDER SECURITY FORM

Whereas [name of the tenderer]

(hereinafter called "the tenderer") has submitted its tender dated [date of submission of tender] for the supply, installation and commissioning of[name and/or description of the equipment] (hereinafter called "the Tender")

KNOW ALL PEOPLE by these presents that WE of having our registered office at (hereinafter called "the Bank"), are bound unto [name of Procuring entity] (hereinafter called "the Procuring entity") in the sum of for which payment well and truly to be made to the said Procuring entity, the Bank binds itself, its successors, and assigns by these presents.

Sealed with the Common Seal of the said Bank this _____ day of _____ 20 _____.

THE CONDITIONS of this obligation are:-

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

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

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

[signature of the bank] _____

(Amend accordingly if provided by Insurance Company)

7.4 CONTRACT FORM

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

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

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

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

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

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

(Amend accordingly if provided by Insurance Company)

7.5 PERFORMANCE SECURITY FORM

To

[name of Procuring entity]

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

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

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

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

This guarantee is valid until the _____ day of _____ 20 _____

Signed and seal of the Guarantors

[name of bank or financial institution]

[address]

[date]

7.6 MANUFACTURER’S AUTHORIZATION FORM

To *[name of the Procuring entity]*

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

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

[Signature for and on behalf of manufacturer]

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

SB/1/2016-2017: supply petroleum product (bulk)

7.7 LETTER OF NOTIFICATION OF AWARD

Address of Procuring Entity

To: _____

RE: Tender No. _____

Tender Name _____

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

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

(FULL PARTICULARS) _____

SIGNED FOR ACCOUNTING OFFICER