

**NAIROBI CITY COUNTY**



**ENVIRONMENT, WATER & ENERGY SECTOR**

**TENDER DOCUMENT**

**FOR**

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**NCC/EW&E/T/499/2016-2017**

**SUPPLY AND DELIVERY OF BACKHOE**

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**COUNTYSECRETARY  
MANAGEMENT  
P.O.BOX 30075- 00100  
NAIROBI**

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**HEAD OF SUPPLY CHAIN  
NAIROBI CITY COUNTY  
CITY HALL ANNEX  
1<sup>ST</sup> FLOOR**

**APRIL 2017**

**BIDDING DOCUMENTS**

**For**

**Procurement of  
Backhoe**

**No: NCC/EW&E/T/499/2016-2017**

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## **PART 1 – Bidding Procedures**

# Section I. Instructions to Bidders

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# Section I. Instructions to Bidders

## A. General

### 1 Scope of Bid

- 1.1 The Procuring Entity indicated in the Bidding Data Sheet (BDS), issues these Bidding Documents for the supply of Goods and Related Services incidental thereto as specified in Section VI, Schedule of Requirements. The name and identification number of this Open National Bidding (ONB) procurement are specified in the BDS. The name, identification, and number of lots of are provided in the BDS.
- 1.2 Throughout these Bidding Documents:
  - (a) the term “in writing” means communicated in written form (e.g. by mail) with proof of receipt;
  - (b) if the context so requires, “singular” means “plural” and vice versa;
  - (c) “day” means calendar day;
  - (d) the term “Contract Manager” refers to the officer, body or institution appointed under Section 151 of the Public Procurement Act of 2015;
  - (e) “Government” refers to the Government of the Republic of Kenya, any Procuring Entity or the relevant approvals authority as defined in the Public Procurement Act of 2015; and
  - (f) “PPRA” refers to the Kenya Public Procurement Regulatory Authority.

### 2 Source of Funds

- 1.1. The Procuring Entity **specified in the BDS** has funds for capital projects
- 1.2. The Procuring Entity intends to apply a portion of the funds to eligible payments under the contract for which these Bidding Documents are issued.
- 2.1 Payments by Procuring Entity will be made only at the request of the Contract Manager.

### 3 Fraud and Corruption

- 3.1 Nairobi City County Government requires that Procuring Entities (including beneficiaries of the funds), as well as bidders, suppliers, contractors, and consultants under Government-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuit of this policy, Nairobi City County Government:
  - (a) defines, for the purposes of this provision, the terms set forth below as follows:
    - (i) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the procurement process or in contract execution;
    - (ii) “fraudulent practice” means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;
    - (iii) “collusive practice” means a scheme or arrangement between two or more bidders, with or without the knowledge of the Procuring Entity, designed to establish bid prices at artificial, noncompetitive levels; and
    - (iv) “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of a contract;
  - (b) will reject a proposal for award if it determines that the Bidder recommended for award has,



- directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for the Contract in question;
- (c) will sanction a firm or individual, including suspending or barring a bidder or supplier in accordance with Sections *sixty-three* of the Public Procurement Act of 2015

#### **4 Eligible Bidders**

- 4.1 A Bidder is eligible to bid as per section 55(1) of the Public Procurement and disposal Act,2015
- 4.2 Bidders shall provide such evidence of their continued eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.

#### **5 Eligible Goods and Related Services**

- 5.1 All the Goods and Related Services to be supplied under the Contract and financed by County Government may have their origin in any country in accordance with Section V, Eligible Countries.
- 5.2 For purposes of this Clause, the term “goods” includes commodities, raw material, machinery, equipment, and industrial plants; and “related services” includes services such as insurance, installation, training, and initial maintenance.
- 5.3 The term “origin” means the country where the goods have been mined, grown, cultivated, produced, manufactured or processed; or, through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

### **B. Contents of Bidding Documents**

#### **6 Sections of Bidding Documents**

- 6.1 The Bidding Documents consist of Parts 1, 2, and 3, which include all the Sections indicated below, and should be read in conjunction with any Addendum issued in accordance with ITB Clause 8.

##### **PART 1 Bidding Procedures**

- Section I. Instructions to Bidders (ITB)
- Section II. Bidding Data Sheet (BDS)
- Section III. Evaluation and Qualification Criteria
- Section IV. Bidding Forms
- Section V. Eligible Countries

##### **PART 2 Supply Requirements**

- Section VI. Schedule of Requirements

##### **PART 3 Contract**

- Section VII. General Conditions of Contract (GCC)
- Section VIII. Special Conditions of Contract (SCC)
- Section IX. Contract Forms

- 6.2 The Invitation for Bids issued by the Procuring Entity is not part of the Bidding Documents.

- 6.3 The Procuring Entity is not responsible for the completeness of the Bidding Documents and their addendum, if they were not obtained directly from the Procuring Entity.
- 6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents. Failure to furnish all information or documentation required by the Bidding Documents may result in the rejection of the bid.

## **7 Clarification of Bidding Documents**

- 7.1 A prospective Bidder requiring any clarification of the Bidding Documents shall contact the Procuring Entity in writing at the Procuring Entity's address **specified in the BDS**. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received no later than seven (7) days prior to the deadline for submission of bids. The Procuring Entity shall forward copies of its response to all those who have acquired the Bidding Documents directly from it, including a description of the inquiry but without identifying its source. Should the Procuring Entity deem it necessary to amend the Bidding Documents as a result of a clarification, it shall do so following the procedure under ITB Clause 8 and ITB Sub-Clause 22.2.

## **8 Amendment of Bidding Documents**

- 8.1 At any time prior to the deadline for submission of bids, the Procuring Entity may amend the Bidding Documents by issuing addendum.
- 8.2 Any addendum issued shall be part of the Bidding Documents and shall be communicated in writing to all who have obtained the Bidding Documents directly from the Procuring Entity.
- 8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Procuring Entity may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB Sub-Clause 22.2

# **C. Preparation of Bids**

## **9 Cost of Bidding**

- 9.1 The Bidder shall bear all costs associated with the preparation and submission of its bid, and the Procuring Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

## **10 Language of Bid**

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

## **11 Documents Comprising the Bid**

- 11.1 The Bid shall comprise the following:
- (a) Bid Submission Form and the applicable Price Schedules, in accordance with ITB Clauses 12 and 14;
  - (b) Bid Security or Bid-Securing Declaration, in accordance with ITB Clause 19, if required;
  - (c) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB Clause 20;
  - (d) documentary evidence in accordance with ITB Clauses 16 and 27, that the Goods and Related Services conform to the Bidding Documents;

- (e) documentary evidence in accordance with ITB Clause 17 establishing the Bidder's qualifications to perform the contract if its bid is accepted; and
- (f) any other document **specified in the BDS**.

## **12 Bid Submission Form and Price Schedules**

- 12.1 The Bidder shall submit the Bid Submission Form using the form furnished in Section IV, Bidding Forms. This form must be completed without any alterations to its format, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.
- 12.2 The Bidder shall submit the Price Schedules for Goods and Related Services, according to their origin as appropriate, using the forms furnished in Section IV, Bidding Forms

## **13 Alternative Bids**

- 13.1 Unless otherwise **specified in the BDS**, alternative bids shall not be considered.

## **14 Bid Prices and Discounts**

- 14.1 The prices and discounts quoted by the Bidder in the Bid Submission Form and in the Price Schedules shall conform to the requirements specified below.
- 14.2 All lots and items must be listed and priced separately in the Price Schedules. If a Price Schedule shows items listed but not priced, their prices shall be assumed to be included in the prices of other items. Lots or items not listed in the Price Schedule shall be assumed to be not included in the bid, and provided that the bid is substantially responsive, the corresponding adjustment, as appropriate, shall be applied in accordance with ITB Clause 29.
- 14.3 The price to be quoted in the Bid Submission Form shall be the total price of the bid, excluding any discounts offered.
- 14.4 The Bidder shall quote any unconditional discounts and indicate the method for their application in the Bid Submission Form.
- 14.5 Prices shall be quoted in Kenya Shillings, inclusive of all taxes and duties (Delivered Duties Paid).
- 14.6 Prices quoted by the Bidder shall be fixed during the Bidder's performance of the Contract and not subject to variation on any account.
- 14.7 If so indicated in ITB Sub-Clause 1.1, bids are being invited for individual contracts (lots) or for any combination of contracts (packages). Unless otherwise **indicated in the BDS**, 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. Bidders wishing to offer any price reduction (discount) for the award of more than one Contract shall specify the applicable price reduction in accordance with ITB Sub-Clause 14.4 provided the bids for all lots are submitted and opened at the same time.

## **15 Documents Establishing the Eligibility of the Bidder**

- 15.1 To establish their eligibility in accordance with ITB Clause 4, Bidders shall complete the Bid Submission Form, included in Section IV, Bidding Forms.

## **16 Documents Establishing the Conformity of the Goods and Related Services**

- 16.1 To establish the conformity of the Goods and Related Services to the Bidding Documents, the Bidder shall furnish as part of its Bid the documentary evidence that the Goods conform to the technical specifications and standards specified in Section VI, Schedule of Requirements.
- 16.2 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 Goods and Related Services, demonstrating substantial responsiveness of the Goods and Related

Services to the technical specification, and if applicable, a statement of deviations and exceptions to the provisions of the Schedule of Requirements.

- 16.3 The Bidder 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 Goods during the period **specified in the BDS** following commencement of the use of the goods by the Procuring Entity.
- 16.4 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 Bidder 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 Schedule of Requirements.

## 17 Documents Establishing the Qualifications of the Bidder

- 17.1 The documentary evidence of the Bidder's qualifications to perform the contract if its bid is accepted shall establish to the Procuring Entity's satisfaction:
- (a) that, if required in the BDS, in case of a Bidder not doing business within the Kenya, the Bidder is or will be (if awarded the contract) represented by an Agent in Kenya equipped and able to carry out the Supplier's maintenance, repair and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications; and
  - (b) that the Bidder meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.

## 18 Period of Validity of Bids

- 18.1 Bids shall remain valid for the period **specified in the BDS** after the bid submission deadline date prescribed by the Procuring Entity. A bid valid for a shorter period shall be rejected by the Procuring Entity as non responsive.
- 18.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Procuring Entity may request bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a Bid Security is requested in accordance with ITB Clause 19, it shall also be extended for a corresponding period. A Bidder may refuse the request without forfeiting its Bid Security.

## 19 Bid Security

- 19.1 The Bidder shall furnish as part of its bid, a Bid Security or a Bid-Securing Declaration, if required, as **specified in the BDS**.
- 19.2 The Bid Security shall be in the amount **specified in the BDS** and denominated in Kenya Shillings, and shall:
- (a) at the bidder's option, be in the form of either a letter of credit, or a bank guarantee from a banking institution;
  - (b) be substantially in accordance with one of the forms of Bid Security included in Section IV, Bidding Forms, or other form approved by the Procuring Entity prior to bid submission;
  - (c) be payable promptly upon written demand by the Procuring Entity in case the conditions listed in ITB Clause 19.5 are invoked;
  - (d) be submitted in its original form; copies will not be accepted;
- 19.3 If a Bid Security or a Bid- Securing Declaration is required in accordance with ITB Sub-Clause 19.1, any bid not accompanied by a substantially responsive Bid Security or Bid Securing

Declaration in accordance with ITB Sub-Clause 19.1, shall be rejected by the Procuring Entity as non-responsive.

- 19.4 The Bid Security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's furnishing of the Performance Security pursuant to ITB Clause 40.
- 19.5 The Bid Security may be forfeited or the Bid Securing Declaration executed:
- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Bid Submission Form, except as provided in ITB Sub-Clause 18.2; or
  - (b) if the successful Bidder fails to:
    - (i) sign the Contract in accordance with ITB Clause 39;
    - (ii) furnish a Performance Security in accordance with ITB Clause 40.
- 19.6 The Bid Security or Bid- Securing Declaration of a JV must be in the name of the JV that submits the bid. If the JV has not been legally constituted at the time of bidding, the Bid Security or Bid-Securing Declaration shall be in the names of all future partners as named in the letter of intent mentioned.

## **20 Format and Signing of Bid**

- 20.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB Clause 11 and clearly mark it "ORIGINAL." In addition, the Bidder shall submit copies of the bid, in the number **specified in the BDS** and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.
- 20.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder.
- 20.3 Any interlineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.

## **D. Submission and Opening of Bids**

### **21 Submission, Sealing and Marking of Bids**

- 21.1 Bidders may always submit their bids by hand. When so specified in the BDS, bidders shall not have the option of submitting their bids electronically.
- (a) Bidders submitting bids by hand, shall enclose the original and each copy of the Bid, including alternative bids, if permitted in accordance with ITB Clause 13, in separate sealed envelopes, duly marking the envelopes as "ORIGINAL" and "COPY." These envelopes containing the original and the copies shall then be enclosed in one single envelope. The rest of the procedure shall be in accordance with ITB sub-Clauses 20.2 and 20.3.
- 21.2 The inner and outer envelopes shall:
- (a) Bear the name and address of the Bidder;
  - (b) be addressed to the Procuring Entity in accordance with ITB Sub-Clause 22.1;
  - (c) bear the specific identification of this bidding process indicated in ITB Sub-Clause 1.1 and any additional identification marks as specified in the BDS; and
  - (d) bear a warning not to open before the time and date for bid opening, in accordance with ITB Sub-Clause 25.1.
- 21.3 If all envelopes are not sealed and marked as required, the Procuring Entity will assume no responsibility for the misplacement or premature opening of the bid.

### **22 Deadline for Submission of Bids**

- 22.1 Bids must be received by the Procuring Entity at the address and no later than the date and time

specified in the BDS.

- 22.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Documents in accordance with ITB Clause 8, in which case all rights and obligations of the Procuring Entity and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

### **23 Late Bids**

- 23.1 The Procuring Entity shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB Clause 22. Any bid received by the Procuring Entity after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.

### **24 Withdrawal, Substitution, and Modification of Bids**

- 24.1 A Bidder may withdraw, substitute, or modify its Bid after it has been submitted by sending a written notice in accordance with ITB Clause 10, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB Sub-Clause 20.2, (except that no copies of the withdrawal notice are required). The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:
- (a) submitted in accordance with ITB Clauses 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 bids, in accordance with ITB Clause 22.
- 24.2 Bids requested to be withdrawn in accordance with ITB Sub-Clause 24.1 shall be returned unopened to the Bidders.
- 24.3 No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Bid Submission Form or any extension thereof.

### **25 Bid Opening**

- 25.1 The Procuring Entity shall conduct the bid opening in public at the address, date and time **specified in the BDS**.

First, envelopes marked “WITHDRAWAL” shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked “SUBSTITUTION” shall be opened and read out and exchanged with the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. No Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at bid opening. Envelopes marked “MODIFICATION” shall be opened and read out with the corresponding Bid. No Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Bid opening. Only envelopes that are opened and read out at Bid opening shall be considered further.

- 25.2 All other envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the Bid Prices, including any discounts and alternative offers; the presence of a Bid Security or Bid-Securing Declaration, if required; and any other details as the Procuring Entity may consider appropriate. Only discounts and alternative offers read out at Bid opening

shall be considered for evaluation. No Bid shall be rejected at Bid opening except for late bids, in accordance with ITB Sub-Clause 23.1.

- 25.3 The Procuring Entity shall prepare a record of the Bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per lot if applicable, including any discounts, and alternative offers if they were permitted; and the presence or absence of a Bid Security or Bid-Securing Declaration, if one was required. The Bidders' representatives who are present shall be requested to sign the attendance sheet.

## **E. Evaluation and Comparison of Bids**

### **26 Confidentiality**

- 26.1 Information relating to the examination, evaluation, comparison, and post-qualification of bids, and recommendation of contract award, shall not be disclosed to bidders or any other persons not officially concerned with such process until publication of the Contract Award.
- 26.2 Any effort by a Bidder to influence the Procuring Entity in the examination, evaluation, comparison, and post-qualification of the bids or contract award decisions may result in the rejection of its Bid.
- 26.3 Notwithstanding ITB Sub-Clause 26.2, from the time of bid opening to the time of Contract Award, if any Bidder wishes to contact the Procuring Entity on any matter related to the bidding process, it should do so in writing.

### **27 Clarification of Bids**

- 27.1 To assist in the examination, evaluation, comparison and post-qualification of the bids, the Procuring Entity may, at its discretion, ask any Bidder for a clarification of its Bid. Any clarification submitted by a Bidder in respect to its Bid 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 in the prices or substance of the Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the Evaluation of the bids, in accordance with ITB Clause 29.

### **28 Responsiveness of Bids**

- 28.1 The Procuring Entity's determination of a bid's responsiveness is to be based on the contents of the bid itself.
- 28.2 A substantially responsive Bid is one that conforms to all the terms, conditions, and specifications of the Bidding Documents without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:
- (a) affects in any substantial way the scope, quality, or performance of the Goods and Related Services specified in the Contract; or
  - (b) limits in any substantial way, inconsistent with the Bidding Documents, the Procuring Entity's rights or the Bidder's obligations under the Contract; or
  - (c) if rectified would unfairly affect the competitive position of other bidders presenting substantially responsive bids.
- 28.3 If a bid is not substantially responsive to the Bidding Documents, it shall be rejected by the Procuring Entity and may not subsequently be made responsive by the Bidder by correction of the material deviation, reservation, or omission.

## **29 Non-conformities, Errors, and Omissions**

- 29.1 Provided that a Bid is substantially responsive, the Procuring Entity may waive any non-conformities or omissions in the Bid that do not constitute a material deviation.
- 29.2 Provided that the Bid is substantially responsive, the Procuring Entity shall not correct arithmetical errors on the following basis:

## **30 Preliminary Examination of Bids**

- 30.1 The Procuring Entity shall examine the bids to confirm that all documents and technical documentation requested in ITB Clause 11 have been provided, and to determine the completeness of each document submitted.
- 30.2 The Procuring Entity shall confirm that the following documents and information have been provided in the Bid. If any of these documents or information is missing, the offer shall be rejected.
- (a) Bid Submission Form, in accordance with ITB Sub-Clause 12.1;
  - (b) Price Schedules, in accordance with ITB Sub-Clause 12.2;
  - (c) Bid Security or Bid Securing Declaration, in accordance with ITB Clause 19 if applicable.

## **31 Examination of Terms and Conditions; Technical Evaluation**

- 31.1 The Procuring Entity shall examine the Bid to confirm that all terms and conditions specified in the GCC and the SCC have been accepted by the Bidder without any material deviation or reservation.
- 31.2 The Procuring Entity shall evaluate the technical aspects of the Bid submitted in accordance with ITB Clause 16, to confirm that all requirements specified in Section VI, Schedule of Requirements of the Bidding Documents have been met without any material deviation or reservation.
- 31.3 If, after the examination of the terms and conditions and the technical evaluation, the Procuring Entity determines that the Bid is not substantially responsive in accordance with ITB Clause 28, it shall reject the Bid.

## **32 Evaluation of Bids**

- 32.1 The Procuring Entity shall evaluate each bid that has been determined, up to this stage of the evaluation, to be substantially responsive.
- 32.2 To evaluate a Bid, the Procuring Entity shall only use all the factors, methodologies and criteria defined in ITB Clause 32. No other criteria or methodology shall be permitted.
- 32.3 To evaluate a Bid, the Procuring Entity shall consider the following:
- (a) the Bid Price as quoted in accordance with clause 14;
  - (b) price adjustment due to discounts offered in accordance with ITB Sub-Clause 14.4;
  - (c) adjustments due to the application of the evaluation criteria **specified in the BDS** from amongst those set out in Section III, Evaluation and Qualification Criteria;
- 32.4 The Procuring Entity's evaluation of a bid may require the consideration of other factors, in addition to the Bid Price quoted in accordance with ITB Clause 14. These factors may be related to the characteristics, performance, and terms and conditions of purchase of the Goods and Related Services. The effect of the factors selected, if any, shall be expressed in monetary terms to facilitate comparison of bids, unless otherwise specified in Section III, Evaluation and Qualification Criteria. The factors, methodologies and criteria to be used shall be as specified in ITB Sub-Clause 32.3 (d).



- 32.5 If so **specified in the BDS**, these Bidding Documents shall allow Bidders to quote separate prices for one or more lots, and shall allow the Procuring Entity to award one or multiple lots to more than one Bidder. The methodology of evaluation to determine the best-evaluated lot combinations is specified in Section III, Evaluation and Qualification Criteria.

### **33 Comparison of Bids**

- 33.1 The Procuring Entity shall compare all substantially responsive bids to determine the best-evaluated bid, in accordance with ITB Clause 32 and by application of preference treatment in accordance with the Citizens Economic Empowerment Act, 2006 to citizen influenced, citizen empowered and citizen owned companies as well as domestically manufactured goods by citizen influenced, citizen empowered or citizen owned companies.

### **34 Post-qualification of the Bidder**

- 34.1 The Procuring Entity shall determine to its satisfaction whether the Bidder that is selected as having submitted the best-evaluated and substantially responsive bid is qualified to perform the Contract satisfactorily.
- 34.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB Clause 17.
- 34.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Procuring Entity shall proceed to the next best-evaluated bid to make a similar determination of that Bidder's capabilities to perform satisfactorily.

### **35 Procuring Entity's Right to Accept Any Bid, and to Reject Any or All Bids**

- 35.1 The Procuring Entity reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders.

## **F. Award of Contract**

### **36 Award Criteria**

- 36.1 The Procuring Entity shall award the Contract to the Bidder whose offer has been determined to be the lowest-evaluated bid price and is substantially responsive to the Bidding Documents, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

### **37 Procuring Entity's Right to Vary Quantities at Time of Award**

- 37.1 At the time the Contract is awarded, the Procuring Entity reserves the right to increase or decrease the quantity of Goods and Related Services originally specified in Section VI, Schedule of Requirements, provided this does not exceed the percentages specified in the BDS, and without any change in the unit prices or other terms and conditions of the bid and the Bidding Documents.

### **38 Notification of Award**

- 38.1 Prior to the expiration of the period of bid validity, the Procuring Entity shall notify the successful Bidder, in writing, that its Bid has been accepted.
- 38.2 Until a formal Contract is prepared and executed, the notification of award shall constitute a binding Contract.
- 38.3 Upon the successful Bidder's furnishing of the signed Contract Form and performance security pursuant to ITB Clause 40, the Procuring Entity will promptly notify each unsuccessful Bidder and

will discharge its bid security, pursuant to ITB Clause 19.4.

### **39 Signing of Contract**

- 39.1 Promptly after notification, the Procuring Entity shall prepare the Agreement and the Special Conditions of Contract.
- 39.2 Within fourteen (14) days the successful Bidder shall sign, date, and stamp/ceil it in the Procuring Entity legal department offices..

### **40 Performance Security**

- 40.1 Within fourteen (14) days of the receipt of notification of award from the Procuring Entity, the successful Bidder, if required, shall furnish the Performance Security in accordance with the GCC, using for that purpose the Performance Security Form included in Section IX Contract forms, or another Form acceptable to the Procuring Entity. The Procuring Entity shall promptly notify the name of the winning Bidder to each unsuccessful Bidder and discharge the Bid Securities of the unsuccessful bidders pursuant to ITB Sub-Clause 19.4.
- 40.2 Failure of the successful Bidder 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 Bid Security or execution of the Bid-Securing Declaration. In that event the Procuring Entity may award the Contract to the next best-evaluated Bidder, whose offer is substantially responsive and is determined by the Procuring Entity to be qualified to perform the Contract satisfactorily.

## Section II. Bidding Data Sheet (BDS)

The following specific data for the goods to be procured shall complement, supplement, or amend the provisions in the Instructions to Bidders (ITB). Whenever there is a conflict, the provisions herein shall prevail over those in ITB.

<b>ITB Clause Reference</b>	<b>A. General</b>
<b>ITB 1.1</b>	The Procuring Entity is: <b>NAIROBI CITY COUNTY</b>
<b>ITB 1.1</b>	The name and identification number are: Supply and delivery of One (1) no. Backhoe Tender No: NCC/EW&E/T/499/2016-2017
<b>ITB 2.1</b>	The Procuring Entity is: <b>NAIROBI CITY COUNTY</b>
<b>ITB 2.1</b>	The name of the Project/Programme is: Supply of One (1) no.Backhoe
<b>ITB 4.3</b>	A list of firms debarred from participating in Government-financed projects is available at Public Procurement Regulatory Authority
	<b>B. Contents of Bidding Documents</b>
<b>ITB 7.1</b>	For <b><u>Clarification of bid purposes</u></b> only, the Purchaser's address is:  Attention: Head of Supply Chain, Nairobi City County, 1 <sup>ST</sup> Floor City Hall Annex  P.O Box 30075-00100,  Nairobi-Kenya  <a href="tel:+254721622790">Tel:+254 721 622 790</a>
	<b>C. Preparation of Bids</b>
<b>ITB 11.1 (f)</b>	The Bidder shall submit the following additional documents in its bid:  <b>Technical Brochures of all equipment quoted for and Manufacturer's Authorization(s). Bidders that fail to submit technical brochures and manufacturer's authorization shall be considered non responsive.</b>

<b>ITB 13.1</b>	Alternative Bids <i>shall not be</i> considered.
<b>ITB 14.7</b>	Prices quoted for each item shall correspond at least to <i>100 %</i> of the items specified for each line item.  Prices quoted for each item shall correspond at least to hundred percent of the quantities specified for this item.
<b>ITB 16.3</b>	Period of time the Goods are expected to be functioning (for the purpose of spare parts): <i>5 Years</i>
<b>ITB 17.1 (a)</b>	After sales service is: <i>Required</i>
<b>ITB 18.1</b>	The bid validity period shall be <i>120</i> days.
<b>ITB 19.1</b>	(a) Bid shall include a Bid Security (issued by bank or surety) using the form included in Section IV Bidding Forms;
<b>ITB 19.2</b>	The amount of the Bid Security shall be: <i>Not less than 2% of the bid price in the form of either a letter of credit, a Bank Guarantee from a Banking Institution</i>
<b>ITB 20.1</b>	In addition to the original of the bid, the number of copies is: <i>2 Copy</i>
<b>D. Submission and Opening of Bids</b>	
<b>ITB 21.1</b>	Bidders <i>shall not</i> have the option of submitting their bids electronically.
<b>ITB 21.1 (b)</b>	If bidders shall have the option of submitting their bids electronically, the electronic bidding submission procedures shall be: <i>N/A</i>
<b>ITB 21.2 (c)</b>	The inner and outer envelopes shall bear the following additional identification marks: <i>Closing date of tender and Tender Number and description.</i>
<b>ITB 22.1</b>	For bid submission purposes, the Procuring Entity's address is: <i>Procurement Office 1<sup>st</sup> Floor, City Hall Annex.</i>  The deadline for the submission of bids is:  <b>Date: 26<sup>th</sup> April , 2017</b>  <b>Time: 12:00 noon Local Time</b>  <i>NOTE: BIDS MUST BE DEPOSITED IN THE TENDER BOX SITUATED AT THE ENTRANCE AREA, OF PROCUREMENT HEAD OFFICE AT THE ABOVE ADDRESS OR AS ADVISED BY THE HEAD OF SUPPLY CHAIN MANAGEMENT.</i>

<b>ITB 25.1</b>	<p>The bid opening shall take place at:</p> <p>Street Address: <i>Procurement Office 1<sup>st</sup> Floor, City Hall Annex.</i></p> <p><i>Reform secretariat Boardroom,</i></p> <p><b>Date: Date: .... March , 2017</b></p> <p><b>Time: 12:00 noon Local Time</b></p>
<b>ITB 25.1</b>	<p>If electronic bid submission is permitted in accordance with ITB sub-clause 23.1, the specific bid opening procedures shall be: <i>N/A</i></p>
	<p><b>E. Evaluation and Comparison of Bids</b></p>
<b>ITB 32.3(d)</b>	<p>The adjustments shall be determined using the following criteria, from amongst those set out in Section III, Evaluation and Qualification Criteria:</p> <p>(a) Deviation in Delivery schedule: <i>No</i></p> <p>(b) the cost of major replacement components, mandatory spare parts, and service: <i>No</i>.</p> <p>(c) the performance and productivity of the equipment offered; <i>No</i></p>
<b>ITB 32.5</b>	<p>The evaluation and award tender shall be done on item by item basis.</p>
<b>ITB 33.1</b>	<p>The following margin of preference shall be applicable at the Financial or Commercial Evaluation stage, by way of a discount, :</p> <p>(a) <i>N/A</i></p>
	<p><b>F. Award of Contract</b></p>
<b>ITB 37.1</b>	<p>The maximum percentage by which quantities may be increased is: <i>N/A</i></p> <p>The maximum percentage by which quantities may be decreased is: <i>N/A</i></p>

## **Section III. Evaluation and Qualification Criteria**

### **Contents**

1. Evaluation Criteria
2. Multiple Contracts
3. Post-qualification Requirements

## 1. Evaluation Criteria (ITB 32.3 (d))

The Procuring Entity's evaluation of a bid may take into account, in addition to the Bid Price quoted in accordance with ITB Clause 14.6, one or more of the following factors as specified in ITB Sub-Clause 32.3(d) and in BDS referring to ITB 32.3(d), using the following criteria and methodologies.

- (a) Delivery schedule.

*The Goods specified in the List of Goods are required to be delivered within the acceptable time range (after the earliest and before the final date, both dates inclusive) specified in Section VI, Delivery Schedule. No credit will be given to deliveries before the earliest date, and bids offering delivery after the final date shall be treated as non-responsive. Within this acceptable period, an adjustment, as specified in BDS Sub-Clause 32.3(d), will be added, for evaluation purposes only, to the bid price of bids offering deliveries later than the "Earliest Delivery Date" specified in Section VI, Delivery Schedule.*

- (b) Cost of major replacement components, mandatory spare parts, and service.

*The list of items and quantities of major assemblies, components, and selected spare parts, likely to be required during the initial period of operation specified in the BDS Sub-Clause 16.3, is in the List of Goods. An adjustment equal to the total cost of these items, at the unit prices quoted in each bid, shall be added to the bid price, for evaluation purposes only.*

- (c) Performance and productivity of the equipment.

- (i) Performance and productivity of the equipment. An adjustment representing the capitalized cost of additional operating costs over the life of the plant will be added to the bid price, for evaluation purposes if specified in the BDS Sub-Clause 32.3(d). The adjustment will be evaluated based on the drop in the guaranteed performance or efficiency offered in the bid below the norm of 100, using the methodology specified in BDS Sub-Clause 32.3(d).

- (g) Specific additional criteria

*Other specific additional criteria to be considered in the evaluation, and the evaluation method shall be detailed in BDS Sub-Clause 32.3(d)*

## 2. Multiple Contracts (ITB 32.5)

The Procuring Entity shall award multiple contracts to the Bidder that offers the best-evaluated combination of bids (one contract per bid) and meets the post-qualification criteria (this Section III, Sub-Section ITB 34.2 Post-Qualification Requirements)

The Procuring Entity shall:

- (a) Evaluate only lots or contracts that include at least the percentages of items per lot and quantity per item as specified in ITB Sub Clause 14.7
- (b) Take into account:
  - (i) the lowest-evaluated bid and
  - (ii) the price reduction per lot and the methodology for its application as offered by the Bidder in its bid.

### **3. Comparison of Bids (ITB 33.1)**

The best-evaluated bid shall be determined after application of the following preference treatment at the Financial or Commercial Evaluation stage, by way of a discount, as follows:

- (b) N/A

### **4. Post-qualification Requirements (ITB 34.2)**

After determining the best-evaluated bid in accordance with ITB Sub-Clause 33.1, the Procuring Entity shall carry out the post-qualification of the Bidder in accordance with ITB Clause 34, using only the requirements specified. Requirements not included in the text below shall not be used in the evaluation of the Bidder's qualifications.

- (a) Financial Capability

The Bidder shall furnish documentary evidence that it meets the following financial requirement(s):

- Should have delivered at least ten contracts of at least the same value in the last three years. Evidence may be in the form of a statement from the purchaser/customer or a copy of a signed delivery note;
- Copies of audited account for the past three (3) financial years **must** be provided;
- The bidders **must** provide evidence that they have necessary liquidity to undertake the supply and delivery of the required equipment
- Authority to seek references from the bidder's bankers.

- (b) Experience and Technical Capacity

The Bidder shall furnish documentary evidence to demonstrate that it meets the following experience requirement(s):

- Evidence of existence of after sales service in Purchaser's country for the type of equipment supposed to be supplied;
- Technical catalogue outlining specifications and demonstrating compliance of required minimum technical specifications of the said equipment;



- Manufacturer's authorization of bidder if bidder is not the manufacturer of the goods supposed to be supplied.(Certified by commissioner of oath)

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## Section IV. Bidding Forms

### Table of Forms

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Bid-Securing Declaration.....	<b>Error! Bookmark not defined.</b>

## Bidder Information Form

*[The Bidder 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 Bid Submission]*  
 ONB No.: *[insert number of bidding process]*

Page \_\_\_\_\_ of \_\_\_\_\_ pages

1. Bidder's Legal Name <i>[insert Bidder's legal name]</i>
2. In case of JV, legal name of each party: <i>[insert legal name of each party in JV]</i>
3. Bidder's actual or intended Country of Registration: <i>[insert actual or intended Country of Registration]</i>
4. Bidder's Year of Registration: <i>[insert Bidder's year of registration]</i>
5. Bidder's Legal Address in Country of Registration: <i>[insert Bidder's legal address in country of registration]</i>
6. Bidder's Authorized Representative Information Name: <i>[insert Authorized Representative's name]</i> Address: <i>[insert Authorized Representative's Address]</i> Telephone/Fax numbers: <i>[insert Authorized Representative's telephone/fax numbers]</i> Email Address: <i>[insert Authorized Representative's email address]</i>
7. Attached are copies of original documents of: <i>[check the box(es) of the attached original documents]</i> Certified by <i>.(Certified by commissioner of oath)</i>  <input type="checkbox"/> Articles of Incorporation or Registration of firm named in 1, above, in accordance with ITB Sub-Clauses 4.1 and 4.2.  <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB Sub-Clause 4.1.  <input type="checkbox"/> In case of government owned entity -, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB Sub-Clause 4.5.

## Joint Venture Partner Information Form

*[The Bidder shall fill in this Form in accordance with the instructions indicated below].*

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

ONB No: *[insert number of bidding process]*

Page \_\_\_\_\_ of \_\_\_\_\_ pages

1. Bidder's Legal Name: <i>[insert Bidder's legal name]</i>
2. JV's Party legal name: <i>[insert JV's Party legal name]</i>
3. JV's Party Country of Registration: <i>[insert JV's Party country of registration]</i>
4. JV's Party Year of Registration: <i>[insert JV's Party year of registration]</i>
5. JV's Party Legal Address in Country of Registration: <i>[insert JV's Party legal address in country of registration]</i>
<p>6. JV's Party Authorized Representative Information</p> <p>Name: <i>[insert name of JV's Party authorized representative]</i></p> <p>Address: <i>[insert address of JV's Party authorized representative]</i></p> <p>Telephone/Fax numbers: <i>[insert telephone/fax numbers of JV's Party authorized representative]</i></p> <p>Email Address: <i>[insert email address of JV's Party authorized representative]</i></p>
<p>7. Attached are copies of original documents of: <i>[check the box(es) of the attached original documents]</i> .(Certified by commissioner of oath)</p> <p><input type="checkbox"/> Articles of Incorporation or Registration of firm named in 2, above, in accordance with ITB Sub-Clauses 4.1 and 4.2.</p> <p><input type="checkbox"/> In case of government owned entity, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB Sub-Clause 4.5.</p>

## Bid Submission Form

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

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

ONB No.: *[insert number of bidding process]*

Invitation for Bid No.: *[insert No of IFB]*

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

To: *[insert complete name of Procuring Entity]*

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda No.: *[insert the number and issuing date of each Addenda]*;
- (b) We offer to supply in conformity with the Bidding Documents and in accordance with the Delivery Schedules specified in the Schedule of Requirements the following Goods and Related Services *[insert a brief description of the Goods and Related Services]*;
- (c) The total price of our Bid, excluding any discounts offered in item (d) below, is: *[insert the total bid price in words and figures]*;
- (d) The discounts offered and the methodology for their application are:

**Discounts.** If our bid is accepted, the following discounts shall apply. *[Specify in detail each discount offered and the specific item of the Schedule of Requirements to which it applies.]*

**Methodology of Application of the Discounts.** The discounts shall be applied using the following method: *[Specify in detail the method that shall be used to apply the discounts]*;

- (e) Our bid shall be valid for the period of time specified in ITB Sub-Clause 18.1, from the date fixed for the bid submission deadline in accordance with ITB Sub-Clause 22.1, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (f) If our bid is accepted, we commit to obtain a performance security in accordance with ITB Clause 40 and GCC Clause 16 for the due performance of the Contract;
- (g) We have no conflict of interest in accordance with ITB Sub-Clause 4.2;
- (h) Our firm, its affiliates or subsidiaries—including any subcontractors or suppliers for any part of the contract—has not been declared ineligible by ZPPA, , in accordance with ITB Sub-Clause 4.3;

- (i) The following commissions, gratuities, or fees have been paid or are to be paid with respect to the bidding 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.”)

- (j) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed.
- (k) We understand that you are not bound to accept the best-evaluated bid or any other bid that you may receive.

Signed: *[insert signature of person whose name and capacity are shown]*

In the capacity of *[insert legal capacity of person signing the Bid Submission Form]*

Name: *[insert complete name of person signing the Bid Submission Form]*

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

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing]*

## Price Schedule Forms

*[The Bidder shall fill in these Price Schedule Forms in accordance with the instructions indicated. The list of line items in column 1 of the **Price Schedules** shall coincide with the List of Goods and Related Services specified by the Procuring Entity in the Schedule of Requirements.]*

### Price Schedule: Goods

				Date: _____ ONB No: _____ Alternative No: _____ Page N° _____ of _____		
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>
Line Item N°	Description of Goods	Delivery Date	Quantity and physical unit	Unit price DDP	Total price per line item (Col. 4 x 5)	Country of Origin
<i>[insert number of the item]</i>	<i>[insert name of Good]</i>	<i>[insert quoted Delivery Date]</i>	<i>[insert number of units to be supplied and name of the physical unit]</i>	<i>[insert unit price]</i>	<i>[insert total price per line item]</i>	
<b>Total Price: Goods</b>						



## Price and Completion Schedule - Related Services

Date: _____ ONB No: _____ Alternative No: _____ Page N° _____ of _____						
1	2	3	4	5	6	7
Service N°	Description of Services	Country of Origin	Delivery Date at place of Final destination	Quantity and physical unit	Unit price	Total Price per Service (Col. 5 x 6 or estimate)
<i>[insert number of the Service ]</i>	<i>[insert name of Services]</i>	<i>[insert country of origin of the Services]</i>	<i>[insert delivery date at place of final destination per Service]</i>	<i>[insert number of units to be supplied and name of the physical unit]</i>	<i>[insert unit price per item]</i>	<i>[insert total price per item]</i>
<b>Total Price: Related Services</b>						

**Name of Bidder:** *[insert complete name of Bidder].*

**Signature of Bidder:** *[signature of person signing the Bid]*

**Date:** *[insert date]*

## **Bid Security (Bank Guarantee)**

*[The Bank shall fill in this Bank Guarantee Form in accordance with the instructions indicated.]*

*[insert Bank's Name, and Address of Issuing Branch or Office]*

**Beneficiary:** *[insert name and address of Procuring Entity]*

**Date:** *[insert date]*

**BID GUARANTEE No.:** *[insert bid Guarantee number]*

We have been informed that *[insert name of the Bidder]* (hereinafter called "the Bidder") has submitted to you its bid dated *[insert date]* (hereinafter called "the Bid") for the execution of *[insert name of Contract]*.

Furthermore, we understand that, according to your conditions, bids must be supported by a Bid Guarantee.

At the request of the Bidder, we *[insert name of Bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in figures expressed in Zambian Kwacha]*, *[insert amount in words]* upon receipt by us of your first demand in writing accompanied by a written statement stating that the Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder:

- (a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Bid Submission Form; or
- (b) having been notified of the acceptance of its Bid by the Procuring Entity during the period of bid validity as stated in the Bid Submission Form or extended by the Employer at any time prior to expiration of this period, (i) fails or refuses to execute the Contract, if required, or (ii) fails or refuses to furnish the Performance Security, in accordance with the ITB.

This Guarantee will expire: (a) if the Bidder is the successful Bidder, upon our receipt of copies of the Contract signed by the Bidder and the Performance Security issued to you upon the instruction of the Bidder; or (b) if the Bidder is not the successful Bidder, upon the earlier of (i) our receipt of a copy of your notification to the Bidder that the Bidder was unsuccessful; or (ii) twenty-eight days after the expiration of the Bidder's Bid.

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

This Guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

*[Signature(s) of authorized bank's representative(s)]*

## Bid Security (Bid Bond)

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

BOND NO. *[insert bond number]*

BY THIS BOND *[insert name of Bidder]* as Principal (hereinafter called “the Principal”), and *[insert name, legal title, and address of surety]*, **authorized to transact business in** *[insert name of country of Procuring Entity]*, as Surety (hereinafter called “the Surety”), are held and firmly bound unto *[insert name of Procuring Entity]* as Obligee (hereinafter called “the Procuring Entity”) in the sum of *[insert amount of Bond expressed in Zambian Kwacha]* *[insert 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.

WHEREAS the Principal has submitted a written Bid to the Procuring Entity dated the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, for the supply of *[insert name and/or description of goods]* (hereinafter called the “Bid”).

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

- (1) withdraws its Bid during the period of bid validity specified by the Bidder on the Bid Form; or
- (2) having been notified of the acceptance of its Bid by the Procuring Entity during the period of Bid validity;
  - (a) fails or refuses to execute the Contract Form in accordance with the Instructions to Bidders, if required; or
  - (b) fails or refuses to furnish the Performance Security in accordance with the Instructions to Bidders;

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.

The Surety hereby agrees that its obligation will remain in full force and affect up to and including the date 30 days after the date of expiration of the Bid validity as stated in the Invitation to Bid. Any demand in respect of this Bond should reach the Surety not later than the above date.

IN TESTIMONY WHEREOF, the Principal and the Surety have caused these presents to be executed in their respective names this \_\_\_ day of \_\_\_\_\_ 20\_\_.

Principal (s): *[name(s) of authorized representative(s) of the Surety]*      Surety: *[Name of Surety]*

Corporate Seal (where appropriate)

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Printed name and title)*

## **Section V. Eligible Countries**

As per section 55 of Public Procurement and asset Disposal Act,2015

## **PART 2 – Supply Requirements**

# Section VI. Schedule of Requirements

## Contents

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## **2. List of Related Services and Completion Schedule**

*N/A*

### 3. Technical Specifications

*The Goods and Related Services shall comply with following Technical Specifications and Standards:*

#### **SUPPLY AND DELIVERY OF A 90-100 HORSEPOWER BACKHOE (EQUIPPED WITH A ‘4 IN 1’ GRAPPLER MULTI-PURPOSE BUCKET)**

	<b>County Requirements</b>	<b>Tenderer’s Offer</b>
<b>MAKE:</b>	-	
<b>MODEL:</b>	-	
<b>COUNTRY OF ORIGIN:</b>	-	
<b>1. GENERAL:</b>		
a) Manufacturer's Authorization Supplied	Mandatory	Yes/No
b) Manufacturer's Literature & Brochures Supplied.	Mandatory	Yes/No
c) Technical Specification Sheet fully completed and Submitted.	Mandatory	Yes/No
d) A standard production, 90-100Hp Backhoe Loader of latest design in robust construction in current production and marketed in Kenya.	Mandatory	Yes/No
e) Supplied new and unused.	Mandatory	Yes/No
f) Designed to heavy duty export specs, capable of operating in tropical conditions over paved and unpaved roads, tropical conditions in extremes of mud, dust, highly corrosive materials and waste as well as harsh environment.	Yes to all	Yes/No
g) Most suitable for garbage collection work.	Mandatory	Yes/No
h) Attach evidence that the Supplier is licensed to supply similar equipment for at least 3 years.	Yes	Yes/No

<b>2.DIMENSIONS AND WEIGHTS</b>		
a) Overall length (Loader on Ground) min.	7,300 mm	.....mm
b) Overall length (Loader on roading position) min.	5,700 mm	.....mm
c) Overall width (Not including Bucket) min.	2,300 mm	.....mm
d) Overall machine Height, min.	3,700 mm	.....mm
	5,600mm	.....mm
<b>(90-100HP) BACKHOE LOADER</b>	2,200 mm- Mandatory	.....mm
	300mm- Mandatory	.....mm
e) Lifting capacity at maximum height	3,800kg	.....kg
f) Loading Height, min	3,400mm- Mandatory	.....mm
g) Operating Weight min.	8,000kg	.....kg
h) With a 4 in 1 Grappler Multipurpose Bucket, 1.0m <sup>3</sup> - min	Mandatory	
i) Digging depth, min	4,000mm	.....mm
<b>3. ENGINE</b>	-	-----
g) Make	-	-----
i) Model	-	-----
• Country of origin	Yes	Yes/No
j) Engine performance curves supplied	Yes	Yes/No
j) 4 stroke water cooled diesel engine	Turbo Charged	-----
e) Mode of aspiration (Natural/Turbo)	4,000 – 4,500 cc Mandatory	Yes/No
f) Piston displacement within range.	6	.-----
g) Number of cylinders- min.	Specify	-----
Air cleaner type, disposable/oil bath	Yes	Yes/No
Double element dry air cleaner with dust evacuator and clogging indicator	Yes	
Oil and fuel filter type	Disposable	.....lts

Fuel tank capacity, approx.	150Lts	-----lts
Hydraulic tank capacity, approx	40Lts	-----lts
<b>4. TRANSMISSION, AXLES AND STEERING</b>		
a) 3-element, 1-stage, 1-phase torque converter	Yes to all	Yes/No
b) Hydrostatic transmission system	Yes	Yes/No
c) 4F – 4R speeds synchromesh, min	Yes	Yes/No
d) Spiral Bevel Planetary gear, single reduction final drive	Yes	Yes/No
e) Torque proportioning differential gear	Yes	Yes/No
f) 4-Wheel Drive	Yes	Yes/No
g) Semi-floating front axle and a Center-pin support, semi-floating, total oscillation rear axle.	Yes	Yes/No
h) Full hydraulic power steering system with a roll system	Yes	Yes/No
i) Loader and Steering relieve valves' settings, min	210kg/ cm <sup>2</sup>	kg/ cm <sup>2</sup>
j) Left and right steering angle, min	40°	...
k) Turning radius at center of outside tyre, min	5160mm	.....mm
<b>5. CLUTCH SYSTEM</b>		
a) Clutch: dry single plate	Yes	Yes/No
b) Clutch system actuation: Hydraulic	Yes	Yes/No
c) Gearbox: synchromesh	Yes	Yes/No
d) Number of speeds, min	5F, 1R (mandatory)	Yes/No
e) Drive configuration 4x2 with an option of changing to 4x4.	Yes	Yes/No
		Yes/No
<b>6.MAIN HYDRAULICS, BRAKES AND TYRES</b>		Yes/No
a) Brakes: Completely enclosed and sealed inboard oil-immersed, hydraulically actuated, Self-adjusting with Dual foot-operated boosted pedals	Yes to all	Yes/No
b) Variable flow, axial piston, hydraulic Pump type	Yes	.....
c) Hydraulic Pump capacity – 120 Lit/min @ 2,200rpm, min.	Yes	Yes/No

d) Hydraulic tank capacity –40Lit, min	Specify	
e) Hydraulic system capacity –90Lit, min	Yes	Yes/No
f) System pressure – Backhoe and Loader, min	240Bar	Yes/No
g) Parking brake independent of service brake system. Mechanically applied through a hand lever	Yes	Yes/No
h) Optimum tyre size	Specify	
<b>7. OPERATOR CAB</b>		
a) Completely enclosed ROPS (Roll-Over Protective Structure) cab with heater, defroster, pressurize and recirculation fan.	Yes	Yes/No
b) Complete instrumentation including engine and hydraulic pressure gauges	Mandatory	Yes/No
c) All glasses and lamps appropriately protected with rodded mesh	Mandatory	Yes/No
d) All steel, spacious front cab with adjustable driver's seat equipped with a seat belt.	Yes	Yes/No
e) Any other appropriate vandalism protection	Yes	. Yes/No
<b>8. BODY CONSTRUCTION AND FITTINGS</b>		
a) Body construction and all fitments to conform Cap 403 Kenya Traffic Act and fitted with the new-look County plates.	Yes (Mandatory)	Yes/No
b) Properly safeguarded and exposed number plate	Yes (Mandatory)	Yes/No
<b>9. WARRANTY &amp; FREE SERVICE</b>		
a) Specimen of Equipment warranty to be submitted when tendering	Yes	Yes/No
b) Each equipment supplied to carry a statement of warranty	Yes	Yes/No
c) Equipment Warranty duration min., 12 months or 2,000hrs.	Specify (months)	Yes/No

d) Equipment Free Service on Labour & Parts	Parts (Kms)	Yes/No
<b>10. MANUALS</b>		
a) Equipment supplied to carry a statement of warranty	Labour (Kms)	Yes/No
b) All literature in the English language	Mandatory	Yes/No
c) Repair manuals, supplied	Mandatory	Yes/No
d) Parts catalogue/microfiche/CD, supplied	Mandatory	Yes/No
e) Operator's handbook supplied	Mandatory	Yes/No
f) Service schedule supplied	Yes	Yes/No
<b>11. OTHER REQUIREMENTS</b>		
a) Manufacturer's authorization supplied when tendering.	Mandatory	Yes/No
b) Evidence (in form of purchase documents) of minimum 5 units sold and serviced in Kenya.	Mandatory	Yes/No
c) Equipment to be inspected by the Chief Mechanical Engineer prior to/on delivery	Yes	Yes/No
d) Franchise Holders and dealers who own fully fledged workshops with adequate equipment and facilities.	Mandatory	Yes/No
e) Body construction and all fitments to conform to Kenya Traffic Act CAP 403.	Mandatory	Yes/No
f) Chevrons and reflectors fitted on rear to conform to Kenya traffic act		Yes/No
g) Equipment identity on all Glasses and Lights	Yes	Yes/No
h) Equipment to be registered with the registrar of Motor vehicles.	Yes	Yes/No
i) Indicate name and physical addresses of all Dealers / Agents where Genuine Spares and back-up service can be obtained	Attach list Yes	Yes/No





## 4. Drawings

These Bidding Documents includes *no* drawings.

## **5. Inspections and Tests**

The following inspections and tests shall be performed:

- Physical inspection, verification and testing working conditions to confirm adherence to specification when operated

## **PART 3 - Contract**

## Section VII. General Conditions of Contract

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## Section VII. General Conditions of Contract

### 1 Definitions

1.1 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 Supplier, 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 Supplier as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
- (d) “Day” means calendar day.
- (e) “Completion” means the fulfillment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.
- (f) “GCC” means the General Conditions of Contract.
- (g) “Goods” means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Procuring Entity under the Contract.
- (h) “Government” means the Government of the Nairobi City County or any other Government agency duly mandated to carry out specialized functions of Government.
- (i) “Procuring Entity” means the entity purchasing the Goods and Related Services, as specified in the SCC.
- (j) “Related Services” means the services incidental to the supply of the goods, such as insurance, installation, training and initial maintenance and other such obligations of the Supplier under the Contract.
- (k) “SCC” means the Special Conditions of Contract.
- (l) “Subcontractor” means any natural person, private or government entity, or a combination of the above, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier.
- (m) “Supplier” means the natural person, private or government entity, or a combination of the above, whose bid to perform the Contract has been accepted by the Procuring Entity and is named as such in the Contract Agreement.
- (n) “The Project Site,” where applicable, means the place named in the SCC.

### 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 Government requires that Procuring Entities (including beneficiaries of funds), as well as Bidders, Suppliers, Contractors, and Consultants under Government-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts.

## **4 Interpretation**

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

4.2 Entire Agreement:

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

4.3 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.

4.4 No waiver:

- (a) Subject to GCC Sub-Clause 4.4(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.

4.5 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.

## **5 Language**

5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Supplier and the Procuring Entity, shall be written in English. 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 language specified, in which case, for purposes of interpretation of the Contract, this translation shall govern.

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

## **6 Joint Venture, Consortium or Association**

6.1 If the Supplier 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.

## **7 Notices**

7.1 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.

- 7.2 A notice shall be effective when delivered or on the notice’s effective date, whichever is later.

## **8 Governing Law**

- 8.1 The Contract shall be governed by and interpreted in accordance with the laws of Zambia.

## **9 Settlement of Disputes**

- 9.1 The Procuring Entity and the Supplier 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.

- 9.2 Disputes will be settled in accordance with the Laws of Kenya.

## **10 Scope of Supply**

- 10.1 The Goods and Related Services to be supplied shall be as specified in the Schedule of Requirements.

## **11 Delivery and Documents**

- 11.1 Subject to GCC Sub-Clause 29.1, the Delivery of the Goods 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 shipping and other documents to be furnished by the Supplier are specified in the **SCC**.

## **12 Supplier’s Responsibilities**

- 12.1 The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GCC Clause 10, and the Delivery and Completion Schedule, as per GCC Clause 11.

## **13 Contract Price**

- 13.1 Prices charged by the Supplier for the Goods supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its bid.

## **14 Terms of Payment**

- 14.1 The Contract Price, including any Advance Payments, if applicable, shall be paid as specified in the **SCC**.
- 14.2 The Supplier’s request for payment shall be made to the Procuring Entity in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GCC Clause 11 and upon fulfillment of all other obligations stipulated in the Contract.
- 14.3 Payments shall be made promptly by the Procuring Entity, but in no case later than ninety (90) days after submission of an invoice or request for payment by the Supplier, and after the



Procuring Entity has accepted it.

## **15 Taxes and Duties**

15.1 All price are inclusive of applicable taxes and duties.

## **16 Performance Security**

16.1 If required as specified in the SCC, the Supplier shall, within thirty (30) days of the notification of contract award, provide a performance security for the performance of the Contract in the amount specified in the SCC.

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

16.3 As specified in the SCC, the Performance Security, if required, shall be in one of the format stipulated by the Procuring Entity in the SCC, or in another format acceptable to the Procuring Entity.

16.4 The Performance Security shall be discharged by the Procuring Entity and returned to the Supplier not later than thirty (30) days following the date of Completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the SCC.

## **17 Copyright**

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

## **18 Confidential Information**

18.1 The Procuring Entity and the Supplier 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 Supplier may furnish to its Subcontractor such documents, data, and other information it receives from the Procuring Entity to the extent required for the Subcontractor to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Supplier under GCC Clause 18.

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

18.3 The obligation of a party under GCC Sub-Clauses 18.1 and 18.2 above, however, shall not apply

to information that:

- (a) the Procuring Entity or Supplier need to share with Government or other institutions participating in the financing of the Contract;
- (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.

18.4 The above provisions of GCC Clause 18 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.

18.5 The provisions of GCC Clause 18 shall survive completion or termination, for whatever reason, of the Contract.

## **19 Subcontracting**

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

19.2 Subcontracts shall comply with the provisions of GCC Clause 3.

## **20 Specifications and Standards**

20.1 Technical Specifications and Drawings

- (a) The Goods 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 Goods' country of origin.
- (b) The Supplier 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 29.

## **21 Packing and Documents**

21.1 The Supplier 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. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

21.2 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, including additional requirements, if any, specified in the **SCC**, and in any other instructions ordered by the Procuring Entity.

## **22 Insurance**

22.1 The Goods supplied under the Contract shall be fully insured against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery.

## **23 Inspections and Tests**

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

23.2 The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the Goods' final destination, or in another place in the Zambia as specified in the **SCC**. Subject to GCC Sub-Clause 23.3, if conducted on the premises of the Supplier 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.

23.3 The Procuring Entity or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 23.2, 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.

23.4 Whenever the Supplier 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 Supplier 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.

23.5 The Procuring Entity may require the Supplier 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 Goods comply with the technical specifications codes and standards under the Contract, provided that the Supplier'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 Supplier'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.

23.6 The Supplier shall provide the Procuring Entity with a report of the results of any such test and/or inspection.

23.7 The Procuring Entity may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods 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 23.4.

23.8 The Supplier agrees that neither the execution of a test and/or inspection of the Goods 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 23.6, shall release the Supplier from any warranties or other

obligations under the Contract.

## **24 Liquidated Damages**

24.1 Except as provided under GCC Clause 28, if the Supplier fails to deliver any or all of the Goods 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 Goods 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 31.

## **25 Warranty**

- 25.1 The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.
- 25.2 Subject to GCC Sub-Clause 20.1(b), the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.
- 25.3 Unless otherwise specified in the **SCC**, the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the **SCC**, or for eighteen (18) months after the date of shipment from the port or place of loading in the country of origin, whichever period concludes earlier.
- 25.4 The Procuring Entity shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Procuring Entity shall afford all reasonable opportunity for the Supplier to inspect such defects.
- 25.5 Upon receipt of such notice, the Supplier shall, within the period specified in the **SCC**, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Procuring Entity.
- 25.6 If having been notified, the Supplier fails to remedy the defect within the period specified in the **SCC**, the Procuring Entity may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Procuring Entity may have against the Supplier under the Contract.

## **26 Patent Indemnity**

26.1 The Supplier shall, subject to the Procuring Entity's compliance with GCC Sub-Clause 26.2, 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 Goods by the Supplier or the use of the Goods in the country where

the Site is located; and

(b) the sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods 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 Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Contract.

- 26.2 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 26.1, the Procuring Entity shall promptly give the Supplier a notice thereof, and the Supplier 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.
- 26.3 If the Supplier 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.
- 26.4 The Procuring Entity shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.
- 26.5 The Procuring Entity shall indemnify and hold harmless the Supplier 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 Supplier 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.

## **27 Change in Laws and Regulations**

- 27.1 Unless otherwise specified in the Contract, if after the date of 28 days prior to date of Bid 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 Supplier has thereby been affected in the performance of any of its obligations under the Contract.

## **28 Force Majeure**

- 28.1 The Supplier 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.
- 28.2 For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. 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.

- 28.3 If a Force Majeure situation arises, the Supplier 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 Supplier 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.

## **29 Change Orders and Contract Amendments**

- 29.1 The Procuring Entity may at any time order the Supplier through notice in accordance GCC Clause 7, to make changes within the general scope of the Contract in any one or more of the following:
- (a) drawings, designs, or specifications, where Goods 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 Supplier.
- 29.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier'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 Supplier for adjustment under this Clause must be asserted within thirty (30) days from the date of the Supplier's receipt of the Procuring Entity's change order.
- 29.3 Prices to be charged by the Supplier 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 Supplier for similar services.
- 29.4 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.

## **30 Extensions of Time**

- 30.1 If at any time during performance of the Contract, the Supplier or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 11, the Supplier 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 Supplier's notice, the Procuring Entity shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.
- 30.2 Except in case of Force Majeure, as provided under GCC Clause 28, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 24, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 30.1.

## **31 Termination**

- 31.1 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 Supplier, may terminate the Contract in whole or in part:
  - (i) if the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Procuring Entity pursuant to GCC Clause 30;
  - (ii) if the Supplier fails to perform any other obligation under the Contract; or
  - (iii) if the Supplier, in the judgment of the Procuring Entity has engaged in fraud and corruption, as defined in GCC Clause 3, 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 31.1(a), the Procuring Entity may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Procuring Entity for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

#### 31.2 Termination for Insolvency.

- (a) The Procuring Entity may at any time terminate the Contract by giving notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Supplier, 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

#### 31.3 Termination for Convenience.

- (a) The Procuring Entity, by notice sent to the Supplier, 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 Supplier under the Contract is terminated, and the date upon which such termination becomes effective.
- (b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of notice of termination shall be accepted by the Procuring Entity at the Contract terms and prices. For the remaining Goods, 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 Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

### **32 Assignment**

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

## 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.

<b>GCC 1.1(i)</b>	The Procuring Entity is: <i>NAIROBI CITY COUNTY</i>
<b>GCC 1.1 (n)</b>	The Project Site(s)/Final Destination(s) is/are: NAIROBI CITY COUNTY CENTRAL WORKSHOP- DAR ESSALAM ROAD.
<b>GCC 7.1</b>	For <b><u>notices</u></b> , the Purchaser's address shall be:  Attention: Dr Robert K Ayisi,MBS  AG.COUNTY SECRETARY  NAIROBI CITY COUNTY,  P.O Box 30075-00100,  City Hall building  City: Nairobi  Country: Kenya
<b>GCC 11.1</b>	Details of Shipping and other Documents to be furnished by the Supplier are Details of Shipping and other Documents to be furnished by the Supplier are a) Copies of the Supplier's invoice showing Goods description, quantity, unit price, total amount;  b) Original and (three) copies of the negotiable, clean, on- board Inward Through Bill of Lading marked freight prepaid and (three) copies of non-negotiable Inward Through Bill of Lading.  c) Copies of packing list identifying contents of each package;  d) Insurance certificate;  e) Manufacturer's/supplier's guarantee certificate.



	<p>f) Inspection certificate, issued by the nominated inspection agency and the Supplier's factory inspection report.</p> <p>g) The final destination of the goods</p> <p>The above documents shall be received by the Purchaser before arrival of the Goods and, if not received, the Supplier will be responsible for any consequent expenses.</p>
<b>GCC 14.1</b>	<p><b><i>Sample provision</i></b></p> <p>GCC 14.1—The method and conditions of payment to be made to the Supplier under this Contract shall be as follows:</p> <p>Payment for Goods and Services shall be made as follows:</p> <p>(i) <b>On Acceptance:</b> With in 90 days.</p>
<b>GCC 14.5</b>	The payment-delay period after which the Procuring Entity shall pay interest to the supplier shall be <i>N/A</i> .
<b>GCC 16.1</b>	<p>A Performance Security <i>shall be required</i>.</p> <p><i>The amount of the Performance Security shall be: 10% of Contract Price.</i></p>
<b>GCC 16.3</b>	If required, the Performance Security shall be in the form of : <i>a Bank Guarantee or Performance Bond</i>
<b>GCC 16.4</b>	<p>Discharge of the Performance Security shall take place:</p> <p>Not later than THIRTY (30) days following the date of Completion of the Supplier's performance obligations under the Contract, including any warranty obligations</p>
<b>GCC 21.2</b>	The packing, marking and documentation within and outside the packages shall be: <i>TBA</i>
<b>GCC 23.1</b>	The inspections and tests shall be: <i>TBA</i>
<b>GCC 23.2</b>	The Inspections and tests shall be conducted at: <b>The manufacturer's plant and at delivery point by appointed staff.</b>
<b>GCC 25.1</b>	The liquidated damage shall be: 0.5% per week
<b>GCC 24.1</b>	The maximum amount of liquidated damages shall be: <i>10%</i>

<b>GCC 25.3</b>	The period of validity of the Warranty shall be: <i>365</i> days For purposes of the Warranty, the place(s) of final destination(s) shall be: NAIROBI CITY COUNTY
<b>GCC 25.5</b>	The period for repair or replacement shall be: <i>21</i> days.

## **Section IX. Contract Forms**

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# 1. Contract Agreement

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

THIS CONTRACT AGREEMENT is made

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

BETWEEN

- (1) *[ insert complete name of Procuring Entity ], a [ insert description of type of legal entity, for example, an agency of the Ministry of ... of the Government of { insert name of Country of Procuring Entity }, or corporation incorporated under the laws of { insert name of Country of Procuring Entity } ] and having its principal place of business at [ insert address of Procuring Entity ] (hereinafter called “the Procuring Entity”), and*
- (2) *[ insert name of Supplier ], a corporation incorporated under the laws of [ insert: country of Supplier ] and having its principal place of business at [ insert: address of Supplier ] (hereinafter called “the Supplier”).*

WHEREAS the Procuring Entity invited bids for certain Goods and ancillary services, viz., *[insert brief description of Goods and Services]* and has accepted a Bid by the Supplier for the supply of those Goods and Services in the sum of *[insert 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 constitute the Contract between the Procuring Entity and the Supplier, and each shall be read and construed as an integral part of the Contract:
  - (a) This Contract Agreement
  - (b) Special Conditions of Contract
  - (c) General Conditions of Contract
  - (d) Technical Requirements (including Schedule of Requirements and Technical Specifications)
  - (e) The Supplier’s Bid and original Price Schedules
  - (f) The Procuring Entity’s Notification of Award
  - (g) *[Add here any other document(s)]*
3. This Contract shall prevail over all other Contract documents. In the event of any discrepancy or inconsistency within the Contract documents, then the documents shall prevail in the order listed above.

4. In consideration of the payments to be made by the Procuring Entity to the Supplier as hereinafter mentioned, the Supplier hereby covenants with the Procuring Entity to provide the Goods and Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
5. The Procuring Entity hereby covenants to pay the Supplier in consideration of the provision of the Goods 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.

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

For and on behalf of the Procuring Entity

Signed: *[insert signature]*  
in the capacity of *[ insert title or other appropriate designation ]*  
in the presence of *[insert identification of official witness]*

For and on behalf of the Supplier

Signed: *[insert signature of authorized representative(s) of the Supplier]*  
in the capacity of *[ insert title or other appropriate designation ]*  
in the presence of *[ insert identification of official witness]*

## 2. Performance Security

*[The bank, as requested by the successful Bidder, shall fill in this form in accordance with the instructions indicated]*

Date: *[insert date (as day, month, and year) of Bid Submission]*  
ONB No. and title: *[insert no. and title of bidding process]*

Bank's Branch or Office: *[insert complete name of Guarantor]*

**Beneficiary:** *[insert complete name of Procuring Entity]*

**PERFORMANCE GUARANTEE No.:** *[insert Performance Guarantee number]*

We have been informed that *[insert complete name of Supplier]* (hereinafter called "the Supplier") has entered into Contract No. *[insert number]* dated *[insert day and month]*, *[insert year]* with you, for the supply of *[description of Goods and related Services]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a Performance Guarantee is required.

At the request of the Supplier, we hereby irrevocably undertake to pay you any sum(s) not exceeding *[insert amount(s)<sup>1</sup> in figures and words]* upon receipt by us of your first demand in writing declaring the Supplier to be in default under the Contract, without cavil or argument, or your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This Guarantee shall expire no later than the *[insert number]* day of *[insert month]* *[insert year]*,<sup>2</sup> and any demand for payment under it must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.

*[signatures of authorized representatives of the bank and the Supplier]*

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<sup>1</sup> The Bank shall insert the amount(s) specified in the SCC and denominated, as specified in the SCC.

<sup>2</sup> Dates established in accordance with Clause 17.4 of the General Conditions of Contract ("GCC"), taking into account any warranty obligations of the Supplier under Clause 15.2 of the GCC intended to be secured by a partial Performance Guarantee. The Procuring Entity should note that in the event of an extension of the time to perform the Contract, the Procuring Entity would need to request an extension of this Guarantee from the Bank. Such request must be in writing and must be made prior to the expiration date established in the Guarantee. In preparing this Guarantee, the Procuring Entity might consider adding the following text to the Form, at the end of the penultimate paragraph: " We agree to a one-time extension of this Guarantee for a period not to exceed *[six months]* *[one year]*, in response to the Procuring Entity's written request for such extension, such request to be presented to us before the expiry of the Guarantee."

### 3. Bank Guarantee for Advance Payment

*[The bank, as requested by the successful Bidder, shall fill in this form in accordance with the instructions indicated.]*

Date: *[insert date (as day, month, and year) of Bid Submission]*  
 ONB No. and title: *[insert number and title of bidding process]*

*[bank's letterhead]*

**Beneficiary:** *[insert legal name and address of Procuring Entity]*

**ADVANCE PAYMENT GUARANTEE No.:** *[insert Advance Payment Guarantee no.]*

We, *[insert legal name and address of bank]*, have been informed that *[insert complete name and address of Supplier]* (hereinafter called "the Supplier") has entered into Contract No. *[insert number]* dated *[insert date of Agreement]* with you, for the supply of *[insert types of Goods to be delivered]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance is to be made against an advance payment guarantee.

At the request of the Supplier, we hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount(s)<sup>3</sup> in figures and words]* upon receipt by us of your first demand in writing declaring that the Supplier is in breach of its obligation under the Contract because the Supplier used the advance payment for purposes other than toward delivery of the Goods.

It is a condition for any claim and payment under this Guarantee to be made that the advance payment referred to above must have been received by the Supplier on its account *[insert number and domicile of the account]*

This Guarantee shall remain valid and in full effect from the date of the advance payment received by the Supplier under the Contract until *[insert date<sup>4</sup>]*.

This Guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

\_\_\_\_\_  
*[signature(s) of authorized representative(s) of the bank]*

<sup>3</sup> The bank shall insert the amount(s) specified in the SCC and denominated, as specified in the SCC.

<sup>4</sup> Insert the Delivery date stipulated in the Contract Delivery Schedule. The Procuring Entity should note that in the event of an extension of the time to perform the Contract, the Procuring Entity would need to request an extension of this Guarantee from the bank. Such request must be in writing and must be made prior to the expiration date established in the Guarantee. In preparing this Guarantee, the Procuring Entity might consider adding the following text to the Form, at the end of the penultimate paragraph: "We agree to a one-time extension of this Guarantee for a period not to exceed [six months][one year], in response to the Procuring Entity's written request for such extension, such request to be presented to us before the expiry of the Guarantee."