LAPTRUST | IMARA I-REIT

TENDER FOR PROPOSED 30KWP SOLAR PLANTS AT FREEDOM HEIGHT MALL.

TENDER NO: CPF/ PROPOSED 30KWP SOLAR PLANTS AT FREEDOM HEIGHT MALL /01/2025

CLOSING DATE 20TH FEBRUARY 2025

TABLE OF CONTENTS

PREFACE vi
APPENDIX TO THE PREFACE viii
GUIDELINES FOR PREPARATION OF TENDER DOCUMENTS viii
1. GENERAL viii
2. PART 1 - TENDERING PROCEDURES ix
3. PART 2 - PROCUREMENT ENTITY'S REQUIREMENTS ix
4. PART 3 - CONDITIONS OF CONTRACT AND CONTRACT FORMS ix
INVITATION TO TENDER xi

SECTION I – INSTRUCTIONS TO TENDERERS 1
A. General 1
1. Scope of Tender 1
2. Definitions 1
3. Fraud and Corruption 1
4. Eligible Tenderers 1
5. Qualification of the Tenderer 3

B. Contents of Tendering Document 3
6. Sections of Tendering Document 3
7. Site Visit 4
8. Pre-Tender Meeting and a pre-arranged pretender visit of the site of the works 4
9. Clarification of Tender Documents 4
10. Amendment of Tendering Document 5

C. Preparation of Tenders 5
11. Cost of Tendering 5
12. Language of Tender 5
13. Documents Comprising the Tender 5
14. Form of Tender and Activity Schedule 6
15. Alternative Tenders 6
16. Tender Prices and Discounts 6
17. Currencies of Tender and Payment 6
18. Documents Establishing Conformity of Services 7
19. Documents Establishing the Eligibility and Qualifications of the Tenderer 7
20. Period of Validity of Tenders 8
21. Tender Security 8
22. Format and Signing of Tender 9

D. Submission and Opening of Tenders 9
23. Sealing and Marking of Tenders 9
24. Deadline for Submission of Tenders 10
25. Late Tenders 10
26. Withdrawal, Substitution and Modification of Tenders 10
27. Tender Opening 10

E. Evaluation and Comparison of Tenders 11
28. Confidentiality 11
29. Clarification of Tenders 11

30. Deviations, Reservations, and Omissions 12
31. Determination of Responsiveness 12
32. Arithmetical Errors 12
33. Conversion to Single Currency 13
34. Margin of Preference 13
35. Evaluation of Tenders 13

36. Comparison of Tenders 13
37. Abnormally Low Tenders and Abnormally High Tenders 14
38. Unbalanced and/or Front-Loaded Tenders 14
39. Qualification of the Tenderer 14
40. Procuring Entity's Right to Accept Any Tender, and to Reject Any or All Tenders 15

F. Award of Contract 15
41. Award Criteria 15
42. Notice of Intention to enter into a Contract 15
43. Standstill Period 15
44. Debriefing by the Procuring Entity 15
45. Letter of Award 15
46. Signing of Contract 16
47. Performance Security 16
48. Publication of Procurement Contract 16
49. Adjudicator 16
50. Procurement Related Complaints 16

SECTION II - TENDER DATASHEET (TDS) 17
SECTION III - EVALUATION AND QUALIFICATION CRITERIA 21
1. General Provision 21
2. Preliminary examination for Determination of Responsiveness 21
3. Tender Evaluation (ITT 34) 21
4. Multiple Contracts 21
5. Alternative Tenders (ITT 14) 22
6. MARGIN OF PREFERENCE 22
7. Post qualification and Contract award (ITT 39), more specifically 22
SECTION IV –TENDERING FORMS 2
1. FORM OF TENDER. 27
   a) TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE 27
   b) CERTIFICATE OF INDEPENDENT TENDER DETERMINATION 30
   c) SELF- DECLARATION FORM 31
   d) APPENDIX 1 - FRAUD AND CORRUPTION 34
2. TENDERER INFORMATION FORM 36
3. TENDERER'S JV MEMBERS INFORMATION FORM 37
OTHER FORMS 38
4. FORM OF TENDER SECURITY – DEMAND BANK GUARANTEE 38
5. FORM OF TENDER SECURITY (INSURANCE GUARANTEE) 39
6. FORM OFTENDER - SECURING DECLARATION 40
QUALIFICATION FORMS 41
7. FOREIGN TENDERERS 40% RULE 41
8. FORM EQU: EQUIPMENT 43
9. FORM PER -1 43
10. FORM PER-2 45
TENDERERS QUALIFICATION WITHOUT PREQUALIFICATION 47
11. FORM ELI -1.1 47

12. FORM ELI -1.2 48
13. FORM CON- 2 49
14. FORM FIN - 3.1 - Financial Situation and Performance 51
15. FORM FIN - 3.2 - Average Annual Construction Turnover 54
16. FORM FIN - 3.3 - Financial Resources 55
17. FORM FIN - 3.4 - Current Contract Commitments / Works in Progress 55
18. FORM EXP - 4.1- General Relevant Work Experience 56
19. FORM EXP - 4.2(a) - Specific Work and Management Experience 57
20. FORM EXP - 4.2(b) - Work Experience in Key Activities 58
SCHEDULEFORMS 59

1. The Specifications and Priced Activity Schedules 61
2. Method Statement 62
4. Others –Time Schedule 63
5. NOTIFICATION OF INTENTION TO AWARD 64

6. REQUEST FOR REVIEW....67
7. LETTER OF AWARD....67
8. FORM OF CONTRACT....68
9. FORM OF TENDER SECURITY (Bank Guarantee)....70
10. FORM OF TENDER SECURITY (INSURANCE GUARANTEE)....71
11. FORM OF TENDER- SECURING DECLARATION....72

PARTII – PROCURING ENTITY'S REQUIREMENTS....73
Section VII -Activity Schedule....74

1. Objectives....74
2. Day work Schedule....74
3. Provisional Sums....74

PERFORMANCE SPECIFICATIONS AND DRAWINGS....75
PARTIII – CONDITIONS OF CONTRACT ANDCONTRACTFORM....75
Section VIII - General Conditions of Contract....76
General Provisions....76
1. Definitions....76
Applicable Law....77
Language 77
Notices 77
Location 77
Authorized Representatives....77
Inspection and Audit by the PPRA....77
Taxes and Duties....77
2. Commencement, Completion, Modification, and Termination of Contract....77
Effectiveness of Contract....77
Commencement of Services....78
Program....78
Starting Date....78
Intended Completion Date....78

Modification....78
Value Engineering....78
Force Majeure....78
Definition 78
No Breach of Contract....78
Extension of Time....79
Payments 79

Termination 79
By the Procuring Entity....79
By the Service Provider....79
Payment upon Termination....79
3. Obligations of the Service Provider....80
General 80
Conflict of Interests....80
Service Provider Not to Benefit from Commissions and Discounts....80
Service Provider and Affiliates Not to be Otherwise Interested in Project....80
Prohibition of Conflicting Activities....80
Confidentiality....80
The Service 80
Service Provider's Actions Requiring Procuring Entity's Prior Approval....80
Reporting Obligations....81
Documents Prepared by the Service Provider to Be the Property of the Procuring Entity....81
Liquidated Damages....81
Payments of Liquidated Damages....81
Correction for Over-payment....81
Lack of performance penalty....81

Performance Security....81
Fraud and Corruption....81
Sustainable Procurement....82

Service Provider's Personnel....82
Description of Personnel....82
Removal and/or Replacement of Personnel....82
4. Obligations of the Procuring Entity....82
Assistance and Exemptions....82
Change in the Applicable Law....82
Services and Facilities....82
5. Payments to the Service Provider....82
Lump-Sum Remuneration....82
Contract Price....83

Payment for Additional Services, and Performance Incentive Compensation 83
Terms and Conditions of Payment 83
Interest on Delayed Payments....83
Price Adjustment....83
Day works 84

6. Quality Control....84
Identifying Defects....84
Correction of Defects, and Lack of Performance Penalty 84
7. Settlement of Disputes....84
Contractor's Claims....84
Matters that may be referred to arbitration. 85
Amicable Settlement 85
Arbitration86
Arbitration with proceedings 86
Failure to Comply with Arbitrator's Decision....87
8. The Adjudicator....87
SECTION IX - SPECIAL CONDITIONS OF CONTRACT....88
Appendices 91
Appendix A - Description of the Services 91
Appendix B - Schedule of Payments and Reporting Requirements 91
Appendix C - Subcontractors....91
Appendix D - Breakdown of Contract Price....91
Appendix E - Services and Facilities Provided by the Procuring Entity....91
SECTION X –CONTRACT FORMS 92

1. FORM NO. 1 - PERFORMANCE SECURITY – (Unconditional Demand Bank Guarantee)....93

2. FORM No. 2 - PERFORMANCE SECURITY OPTION 2– (Performance Bond)....94

3. FORM NO. 3 - ADVANCE PAYMENT SECURITY [Demand Bank Guarantee]....96

4. FORM No. 4 - BENEFICIAL OWNERSHIP DISCLOSURE FORM 96

INVITATION TO TENDER NOTICE

Contract Type: Service Contract

Tender Number:
Tender Description: Tender for proposed 30kwp solar plants at Freedom Height Mall.

CPF Financial Services invites sealed tenders for the proposed 30kwp solar plants at Freedom Height Mall.in Nairobi.

1. Tendering will be conducted under open national tendering method using a standardized tender document and is open to all qualified and interested tenderers.
2. Tenderers will be allowed to tender for one or more lots and award shall be made per lot.
3. Qualified and interested tenderers may obtain further information and inspect the tender documents during office hours of **0800 to 1600 hours** East African Time at the address given below.
4. **info@cpf.or.ke** to facilitate any further clarification or addendum.
5. The tenderer shall chronologically serialize all pages of the submitted tender documents.
6. Completed tenders must be delivered to the address below on or before **20th February 2025** at **11:00Am** East African Time. Electronic tenders will not be permitted.
7. Tenders will be opened immediately after the deadline date and time specified above or any deadline date and time specified later.
8. Tenders will be publicly opened in the presence of the tenderers' designated representatives who choose to attend at the address below.
9. Late tenders will be rejected.
10. The addresses referred to above are:

The Group Managing Director
CPF Financial Services Ltd
CPF House, Mezzanine Floor.
Attn: Manager Procurement
Haile Selassie Avenue P. O. Box 28938, 00200 Nairobi Tel; 2046901 – 05
Fax; (020) 2251807 Mobile; 0720433354
E-mail; info@cpf.or.ke

SECTION I - INSTRUCTIONS TO TENDERERS

A. General

1. Scope of Tender

1.1 This tendering document is for the delivery of Supply, Delivery and Installation of Solar PV System Services, as specified in Section V, Procuring Entity's Requirements. The name, identification and number of lots (contracts) of this ITT procurement are specified in the **TDS**.

2. Definitions

2.1 Throughout this tendering document:

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

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

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

2.2 The successful Tenderer will be expected to complete the performance of the Services by the Intended Completion Date provided in the contract.

3. Fraud and Corruption

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

3.2 The Procuring Entity requires compliance with the provisions of the Competition Act2 010, regarding collusive practices in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Tenders shall be required to complete and sign the "Certificate of Independent Tender Determination" annexed to the Form of Tender.

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

3.4 Unfair Competitive Advantage – Fairness and transparency in the tender process require that the Firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the contract being tendered for. The Procuring Entity shall indicate in the **TDS** firms (if any) that provided consulting services for the contract being tendered for. The Procuring Entity shall check whether the owners or controllers of the Tenderer are same as those that provided consulting services. The Procuring Entity shall, upon request, make available to any tenderer information that would give such firm unfair competitive advantage over competing firms.

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

to have them audited by auditors appointed by the Procuring Entity.

4. Eligible Tenderers

4.1 A Tenderer may be a firm that is a private entity, a state-owned entity or institution subject to ITT 4.6, or any combination of such entities in the form of an association or subcontracting arrangement or a Joint Venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a Form of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the Tendering process and, in the event the JV is awarded the Contract, during contract execution. The maximum number of JV members shall be specified in the **TDS.**

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

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

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

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

c) Has the same legal representative as another Tenderer; or

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

e) Or any of its affiliates participated as a consultant in the preparation of the Procuring Entity's Requirements (including Activities Schedules, Performance Specifications and Drawings) for the Supply, Delivery and Installation of Solar PV System services that are the subject of the Tender; or

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

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

h) Has a close business or family relationship with a professional staff of the Procuring Entity or of the project implementing agency, who: (i) are directly or indirectly involved in the preparation of the tendering document or specifications of the contract, and/or the Tender evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the procurement process and execution of the Contract.

4.4 A firm that is a Tenderer (either individually or as a JV member) shall not participate in more than one Tender, except for permitted alternative Tenders. This includes participation as a subcontractor. Such participation shall result in the disqualification of all Tenders in which the firm is involved. A firm that is not a Tenderer or a JV member, may participate as a sub-contractor in more than one Tender.

4.5 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT 4.9. A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated, or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or sub-consultants for any part of the Contract including related Services.

4.6 A Tenderer that has been sanctioned by PPRA or are under a temporary suspension or a debarment imposed by any other entity of the Government of Kenya, shall be ineligible to be prequalified for, initially selected for, tender for, propose for, or be awarded a contract during such period of sanctioning. The list of debarred firms and individuals is available at the electronic address info@ppra.go.ke .

4.7 Tenderers that are state-owned enterprises or institutions in Kenya may be eligible to compete and be awarded a Contract(s) only if they can establish that they: (i) are legally and financially autonomous; (ii) operate under commercial law; and (iii) are not under supervision of the Procuring Entity.

4.8 A Tenderer under suspension from tendering as the result of the operation of a Tender-Securing Declaration or Proposal-Securing Declaration shall not be eligible to tender.

4.9 Firms and individuals may be ineligible if (a) as a matter of law or official regulations, Kenya prohibits commercial relations with that country, or (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person, or entity in that country.

4.10 Foreign tenderers are required to source at least forty (40%) percent of their contract inputs (in supplies, subcontracts and labor) from national suppliers and contractors. To this end, a foreign tenderer shall provide in its tender documentary evidence that this requirement is met. Foreign tenderers not meeting this criterion will be automatically disqualified. Information required to enable the Procuring Entity to determine if this condition is met shall be provided in for this purpose is be provided in "SECTION III - EVALUATION AND QUALIFICATION CRITERIA, Item 9".

4.11 Pursuant to the eligibility requirements of ITT 4.10, a tender is considered a foreign tenderer, if it is registered in Kenya, has less than 51 percent ownership by nationals of Kenya and if it does not subcontract foreign contractors more than 10 percent of the contract price, excluding provisional sums. JVs are considered as foreign tenderers if the individual member firms are registered in Kenya have less 51 percent ownership by nationals of Kenya. The JV shall not subcontract to foreign firms more than 10 percent of the contract price, excluding provisional sums.

4.12 TheProcuringEntitymayrequiretendererstoberegisteredwithcertainauthoritiesinKenya.Suchregistration shall be defined in the **TDS**, butcaremustbetakentoensuresuchregistrationrequirementdoesnotdiscourage competition, nor exclude competent tenderers. Registration shall not be a condition for tender, but where a selected tenderer is not so registered, the tenderer shall be given opportunity to register before signature of contract.

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

4.14 A Tenderer may be considered ineligible if he/she offers goods, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement.

5. Qualification of the Tenderer

5.1 All Tenderers shall provide in Section IV, Tendering Forms, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.

5.2 In the event that prequalification of Tenderers has been undertaken as stated in ITT 18.4, the provisions on qualifications of the Section III, Evaluation and Qualification Criteria shall not apply.

B. Contents of Tendering Document

6. Sections of Tendering Document

6.1 The tendering document consists of Parts 1, 2, and 3, which include all the sections indicated below and should be read in conjunction with any Addenda issued in accordance with ITT 9.

PART 1: Tendering Procedures

i) Section I-Instructions to Tenderers (ITT)
ii) Section II-Tender Data Sheet (TDS)
iii) Section III-Evaluation and Qualification Criteria

iv) Section IV – Tendering Forms

PART 2: Procuring Entity's Requirements

v) Section V- Procuring Entity's Requirements

PART 3: Contract

vi) Section VI- General Conditions of Contract (GCC)
vii) Section VII- Special Conditions of Contract (SCC)
viii) Section VIII- Contract Forms

6.2 The Invitation to Tender (ITT) or the notice to prequalify Tenderers, as the case may be, issued by the Procuring Entity is not part of this tendering document.

6.3 Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of the document, responses to requests for clarification, the Minutes of the pre-Tender meeting (if any), or Addenda to the tendering document in accordance with ITT 9. In case of any contradiction, documents obtained directly from the Procuring Entity shall prevail.

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

7. Site Visit

7.1 The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine the Site of the Required Services and its surroundings and obtain all information that may be necessary for preparing the Tender and entering into a contract for the Services. The costs of visiting the Site shall be at the Tenderer's own expense.

8. Pre-Tender Meeting and a pre-arranged pretender visit of the site of the works

8.1 The Procuring Entity shall specify in the **TDS** if a pre-tender conference will be held, when and where. The Procuring Entity shall also specify in the **TDS** if a pre-arranged pretender visit of the site of the works will be held and when. The Tenderer's designated representative is invited to attend a pre-arranged pretender visit of the site of the works. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

8.2 The Tenderer is requested to submit any questions in writing, to reach the Procuring Entity not later than the period specified in the **TDS** before the meeting.

8.3 Minutes of the pre-Tender meeting and the pre-arranged pretender visit of the site of the works, if applicable, including the text of the questions asked by Tenderers and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents in accordance with ITT 6.3. Minutes shall not identify the source of the questions asked.

8.4 The Procuring Entity shall also promptly publish anonymized (no names) Minutes of the pre-Tender meeting and the pre-arranged pretender visit of the site of the works at the web page identified in the **TDS**. Any modification to the Tender Documents that may become necessary as a result of the pre-Tender meeting shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT 10 and not through the minutes of the pre-Tender meeting. Nonattendance at the pre-Tender meeting will not be a cause for disqualification of a Tenderer.

9. Clarification of Tender Documents

9.1 A Tenderer requiring any clarification of the Tender Document shall contact the Procuring Entity in writing at the Procuring Entity's address specified in the **TDS** or raise its enquiries during the pre-Tender meeting and the pre-arranged pretender visit of the site of the works if provided for in accordance with ITT 8.4. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the **TDS** prior to the deadline for submission of tenders. The Procuring Entity shall forward copies of its response to all tenderers who have acquired the Tender Documents in accordance with ITT 6.3, including a description of the inquiry but without identifying its source. If so specified in the **TDS**, the Procuring Entity shall also promptly publish its

response at the web page identified in the **TDS**. Should the clarification result in changes to the essential elements of the Tender Documents, the Procuring Entity shall amend the Tender Documents appropriately following the procedure under ITT 10.

10. Amendment of Tendering Document

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

10.2 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tendering document from the Procuring Entity in accordance with ITT 6.3. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's webpage in accordance with ITT 8.1.

10.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity shall extend, as necessary, the deadline for submission of Tenders, in accordance with ITT 24.2 below.

C. Preparation of Tenders

11. Cost of Tendering

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

12. Language of Tender

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

13. Documents Comprising the Tender

13.1 The Tender shall comprise the following:

a) **Form of Tender** prepared in accordance with ITT 14;

b) **Schedules:** Schedules or Requirements and priced Activity Schedule completed in accordance with ITT 14 and ITT 16;

c) **Tender Security or Tender-Securing Declaration** in accordance with ITT 21.1;

d) **Alternative Tender**: if permissible in accordance with ITT 15;

e) **Authorization:** written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 22.3;

f) **Qualifications:** documentary evidence in accordance with ITT 19 establishing the Tenderer's qualifications to perform the Contract if its Tender is accepted;

g) **Tenderer's Eligibility**: documentary evidence in accordance with ITT 19 establishing the Tenderer's eligibility to Tender;

h) **Conformity**: documentary evidence in accordance with ITT 18, that the Services conform to the tendering document; and

i) Any other document required **in the TDS.**

13.2 In addition to the requirements under ITT 12.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a Form of intent to execute a Joint Venture Agreement in the event of a successful Tender shall be signed by all members and submitted with the Tender, together with a copy of the proposed Agreement. The Tenderer shall chronologically serialize pages of all tender documents submitted. The Tenderer shall furnish in the Form of Tender information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Tender.

14. Form of Tender and Activity Schedule

14.1 The Form of Tender and priced Activity Schedule shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITT 21.3. All blank spaces shall be filled in with the information requested.

15. Alternative Tenders

15.1 Unless otherwise indicated in the TDS, alternative Tenders shall not be considered. If alternatives are permitted, only the technical alternatives, if any, of the Most Advantageous Tenderer shall be considered by the Procuring Entity.

15.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the TDS and the method of evaluating different time schedules will be described in Section III, Evaluation and Qualification Criteria.

15.3 When specified in the TDS, Tenderers are permitted to submit alternative technical solutions for specified parts of the Services, and such parts will be identified in the TDS, as will the method for their evaluating, and described in Section VII, Procuring Entity's Requirements.

16. Tender Prices and Discounts

16.1 The prices and discounts (including any price reduction) quoted by the Tenderer in the Form of Tender and in the Activity Schedule(s) shall conform to the requirements specified below.

16.2 All lots (contracts) and items must be listed and priced separately in the Activity Schedule(s).

16.3 The Contract shall be for the Services, as described in Appendix A to the Contract and in the Specifications (or Terms of Reference), based on the priced Activity Schedule, submitted by the Tenderer.

16.4 The Tenderer shall quote any discounts and indicate the methodology for their application in the Form of Tender in accordance with ITT 13.1.

16.5 The Tenderer shall fill in rates and prices for all items of the Services described in the in Specifications (or Terms of Reference), and listed in the Activity Schedule in Section VII, Procuring Entity's Requirements. Items for which no rate or price is entered by the Tenderer will not be paid for by the Procuring Entity when executed and shall be deemed covered by the other rates and prices in the Activity Schedule.

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

16.7 If provided for in the TDS, the rates and prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract in accordance with and the provisions of Clause 6.6 of the General Conditions of Contract and/or Special Conditions of Contract. The Tenderer shall submit with the Tender all the information required under the Special Conditions of Contract and of the General Conditions of Contract.

16.8 For the purpose of determining the remuneration due for additional Services, a breakdown of the lump-sum price shall be provided by the Tenderer in the form of Appendices D and E to the Contract.

17. Currencies of Tender and Payment

17 The currency of the Tender and the currency of payments shall be Kenya Shillings.

18. Documents Establishing Conformity of Services

18.1 To establish the conformity of the Supply, Delivery and Installation of Solar PV System services to the tendering document, the Tenderer shall furnish as part of its Tender the documentary evidence that Services provided conform to the technical specifications and standards specified in Section VII, Procuring Entity's Requirements.

18.2 Standards for provision of the Supply, Delivery and Installation of Solar PV System e services are intended to

be descriptive only and not restrictive. The Tenderer may offer other standards of quality provided that it demonstrates, to the Procuring Entity's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Section VII, Procuring Entity's Requirements.

19. Documents Establishing the Eligibility and Qualifications of the Tenderer

19.1 Tenderers shall complete the Form of Tender and all the Tendering Forms included in Section IV to establish their eligibility in accordance with ITT 4.

19.2 The documentary evidence of the Tenderer's qualifications to perform the Contract if its Tender is accepted shall establish to the Procuring Entity's satisfaction that the Tenderer meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.

19.3 In the event that prequalification of Tenderers has been undertaken as stated in the **TDS**, only Tenders from prequalified Tenderers shall be considered for award of Contract. The prequalified Tenderers should submit with their Tenders any information updating their original prequalification applications or, alternatively, confirm in their Tenders that the originally submitted prequalification information remains essentially correct as of the date of Tender submission.

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

19.5 The purpose of the information described in ITT 18.1 above overrides any claims to confidentiality which a tenderer may have. There can be no circumstances in which it would be justified for a tenderer to keep information relating to its ownership and control confidential where it is tendering to undertake public sector work and receive public sector funds. Thus, confidentiality will not be accepted by the Procuring Entity as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership and control.

19.6 The Tenderer shall provide further documentary proof, information or authorizations that the Procuring Entity may request in relation to ownership and control which information on any changes to the information which was provided by the tenderer under ITT 6.3. The obligations to require this information shall continue for the duration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.

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

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

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

i) If the procurement process is still ongoing, the tenderer will be disqualified from the procurement process,

ii) If the contract has been awarded to that tenderer, the contract award will be set aside,

iii) The tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other person shave committed any criminal offence.

19.10 If a tenderer submits information pursuant to these requirements that is incomplete, inaccurate or out-of-date, or attempts to obstruct the verification process, then the consequences ITT 6.7 will ensue unless the tenderer can show to the reasonable satisfaction of the Procuring Entity that any such act was not material, or was due to genuine error which was not attributable to the intentional act, negligence or recklessness of the tenderer.

19.11 A Kenyan tenderer shall provide evidence of having fulfilled his/her tax obligations by producing a valid tax

compliance certificate or tax exemption certificate issued by the Kenya Revenue Authority.

20. Period of Validity of Tenders

20.1enders shall remain valid for the Tender Validity period specified in the TDS. The Tender Validity period starts from the date fixed for the Tender submission deadline date (as prescribed by the Procuring Entity in accordance with ITT 23.1). A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.

20.2In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 20, it shall also be extended for a corresponding period. A Tenderer may refuse the request without forfeiting its Tender Security. A Tenderer granting the request shall not be required or permitted to modify its Tender, except as provided in ITT 19.3.

21. Tender Security

21.1The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender security, as specified in the TDS, in original form and, in the case of a Tender Security, in the amount and currency specified in the TDS.

21.2A Tender Securing Declaration shall use the form included in Section IV, Tendering Forms.

21.3If a Tender Security is specified pursuant to ITT 20.1, from a reputable source, and an eligible country and shall be in any of the following forms at the Tenderer's option:

i) cash;
ii) a bank guarantee.
iii) a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Authority; or
iv) a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya,

21.4If a Tender Security is specified pursuant to ITT 20.1, any Tender not accompanied by a substantially responsive Tender Security shall be rejected by the Procuring Entity as non-responsive.

21.5If a Tender Security is specified pursuant to ITT 20.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's signing the contract and furnishing the Performance Security pursuant to ITT 46.

21.6The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required Performance Security. The Procurement Entity shall also return tender security to the tenderers where.

a). The procurement proceedings are terminated

b). All tenders were determined non-responsive and

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

21.7The Tender Security may be forfeited or the Tender-Securing Declaration executed:

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

b) if the successful Tenderer fails to:

i) sign the Contract in accordance with ITT 45; or

ii) furnish a performance security in accordance with ITT 46.

21.8 The Tender Security or Tender-Securing Declaration of a JV must be in the name of the JV that submits the Tender. If the JV has not been legally constituted into a legally enforceable JV at the time of Tendering, the Tender security or Tender-Securing Declaration shall be in the names of all future members as named in the Form of intent referred to in ITT 4.1 and ITT 12.2.

21.9If a Tender Security is not required in the **TDS**, pursuant to ITT 20.1, and

a) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer on the Form of Tender; or

b) if the successful Tenderer fails to:

i) sign the Contract in accordance with ITT 45; or

ii) furnish a performance security in accordance with ITT 46;

the Procuring Entity may**,** if provided for **in the TDS**, declare the Tenderer ineligible to be awarded a contract by the Procuring Entity for a period of time as stated **in the TDS**.

22. Format and Signing of Tender

22.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 12, bound with the volume containing the Form of Tender, and clearly marked "Original." In addition, the Tenderer shall submit copies of the Tender, in the number specified in the **TDS**, and clearly marked as "Copies." In the event of discrepancy between them, the original shall prevail.

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

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

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

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

D. Submission and Opening of Tenders

23. Sealing and Marking of Tenders

23.1 Depending on the sizes or quantities or weight of the tender documents, a tenderer may use an envelope, package or container. The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to the Procuring Entity and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, the Tenderer shall place the following separate, sealed envelopes:

- in an envelope or package or container marked "ORIGINAL", all documents comprising the Tender, as described in ITT 11; and
- in an envelope or package or container marked "COPIES", all required copies of the Tender; and
- if alternative Tenders are permitted in accordance with ITT 13, and if relevant:

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

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

23.2 The inner envelopes or packages or containers shall:

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

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

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

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

24. Deadline for Submission of Tenders

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

25 The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the tendering document in accordance with ITT 9, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

25. Late Tenders

25.1 The Procuring Entity shall not consider any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT 23. Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

26. Withdrawal, Substitution and Modification of Tenders

26.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization (the power of attorney) in accordance with ITT 21.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:

26.2 prepared and submitted in accordance with ITT 21 and ITT 22 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," or "MODIFICATION;" and

26.3 received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT 23.

26.4 Tenders requested to be withdrawn in accordance with ITT 25.1 shall be returned unopened to the Tenderers.

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

27. Tender Opening

27.1 Except as in the cases specified in ITT 23 and ITT 25.2, the Procuring Entity shall, at the Tender opening, publicly open and read out all Tenders received by the deadline at the date, time and place specified **in the TDS** in the presence of Tenderers' designated representatives and anyone who choose to attend. Any specific electronic Tender opening procedures required if electronic tendering is permitted in accordance with ITT 23.1, shall be as specified **in the TDS.**

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

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

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

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

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

27.7 The Procuring Entity shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT 24.1).

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

a) The name of the Tenderer and whether there is a withdrawal, substitution, or modification.
b) The Tender Price, per lot (contract) if applicable, including any discounts; and
c) Any alternative Tenders.
d) The presence or absence of a Tender Security or Tender-Securing Declaration, if one was required.

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

E. Evaluation and Comparison of Tenders

28. Confidentiality

28.1 Information relating to the evaluation of Tenders and recommendation of contract award, shall not be disclosed to Tenderers or any other persons not officially concerned with the Tendering process until information on the Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 41.

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

28.3 Notwithstanding ITT 27.2, from the time of Tender opening to the time of Contract Award, if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tendering process, it should do so in writing.

29 Clarification of Tenders

29.1 To assist in the examination, evaluation, and comparison of Tenders, and qualification of the Tenderers, the Procuring Entity may, at the Procuring Entity's discretion, ask any Tenderer for clarification of its Tender including breakdowns of the prices in the Activity Schedule, and other information that the Procuring Entity may require. Any clarification submitted by a Tenderer in respect to its Tender and that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the Tenders, in accordance with ITT 32.

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

30 Deviations, Reservations, and Omissions

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

a) “Deviation” is a departure from the requirements specified in the tendering document.

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

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

31. Determination of Responsiveness

31.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT 12.

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

a) If accepted, would:
   i) Affect in any substantial way the scope, quality, or performance of the Maintenance services

specified in the Contract; or

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

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

31.2 The Procuring Entity shall examine the technical aspects of the Tender submitted in accordance with ITT 17 and ITT18, in particular, to confirm that all requirements of Section VII, Procuring Entity's Requirements have been met without any material deviation or reservation, or omission.

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

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

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

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

32. Arithmetical Errors

32.1 Corrected tender prices shall not be used in the evaluation of tenders, comparison of tender prices.

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

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

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

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

c) If there is a discrepancy between words and figures, the amount in words shall prevail,

33. Conversion to Single Currency

33.1 For evaluation and comparison purposes, conversion of the currency (ies) of to a single currency preference shall not apply.

34. Margin of Preference

34.1 Margin of preference on local service providers may be allowed if it is deemed that the services require participation of foreign tenderers. If so allowed, it will be indicated in the **TDS.**

34.2 Where it is intended to reserve the contract to specific groups under Small and Medium Enterprises, or enterprise of women, youth and/or persons living with disability, who are appropriately registered as such by the authority to be specified in the **TDS**, a procuring entity shall ensure that the invitation to tender specifically indicates that only businesses/firms belonging to the specified group are eligible to tender as specified in the **TDS**. Otherwise, if not so stated, the invitation will be open to all tenderers.

35. Evaluation of Tenders

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

a) Substantially responsive to the tendering document; and

b) The lowest evaluated cost.

35.2 In evaluating the Tenders, the Procuring Entity will determine for each Tender the evaluated Tender cost by adjusting the Tender price as follows:

a) Price adjustment due to discounts offered in accordance with ITT 15.4;

b) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT 33;

c) price adjustment due to quantifiable nonmaterial non-conformities in accordance with ITT 31.3;

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

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

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

36. Comparison of Tenders

36.1 The Procuring Entity shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 35.2 to determine the Tender that has the lowest evaluated cost.

37. Abnormally Low Tenders and Abnormally High

Tenders Abnormally Low Tenders

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

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

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

Abnormally High Tenders

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

37.5 In case of an abnormally high tenders, the Procurement Entity should (a) review the specifications, and conditions of tender, or correctness of the estimate or (b) possibility of a collusion, formation of cartels, or other form of fraudulent and corrupt activity in the tendering processor (c) perception of the firms on the credibility of the Procuring Entity. The Procuring Entity shall treat abnormally low and high tenders in accordance with procedures provided for in this tender document

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

38. Unbalanced and/or Front-Loaded Tenders

38.1 If in the Procuring Entity's opinion, the Tender that is evaluated as the lowest evaluated price is seriously unbalanced and/or front loaded, the Procuring Entity may require the Tenderer to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the tender prices with the scope of works, proposed methodology, schedule and any other requirements of the Tender document.

38.2 After the evaluation of the information and detailed price analyses presented by the Tenderer, the Procuring Entity may as appropriate:

a) Accept the Tender; or
b) Require that the total amount of the Performance Security be increased at the expense of the Tenderer to a level not exceeding a 30% of the Contract Price; or
c) agree on a payment mode that eliminates the inherent risk of the Procuring Entity paying too much for undelivered works; or
d) reject the Tender.

39. Qualification of the Tenderer

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

39.1 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT18. The determination shall not take into consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates, subcontractors or any other firm(s) different from the Tenderer that submitted the Tender.

39.2 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event the Procuring Entity shall proceed to theTendererwhooffersasubstantiallyresponsiveTenderwiththenextlowestevaluatedcosttomakeasimilar determination of that Tenderer's qualifications to perform satisfactorily.

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

40.1 The Procuring Entity reserves the right to accept or reject any Tender, and to annul the Tendering process and reject all Tenders at any time prior to Contract Award, without thereby incurring any liability to Tenderers. In case of annulment, all Tenders submitted and specifically, Tender securities, shall be promptly returned to the Tenderers.

F. Award of Contract

41 Award Criteria

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

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

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

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

b) The Contract price of the successful tender;

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

d) the expiry date of the Stand still Period; and

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

43. Standstill Period

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

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

44. Debriefing by the Procuring Entity

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

45. Letter of Award

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

46. Signing of Contract

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

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

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

47. Performance Security

47.1 Within twenty-one (21) days of the receipt of the Form of Acceptance from the Procuring Entity, the successful Tenderer, if required, shall furnish the Performance Security in accordance with the GCC 3.9, using for that purpose the Performance Security Form included in Section X, Contract Forms, or another Form acceptable to the Procuring Entity. If the Performance Security furnished by the successful Tenderer is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Tenderer to be acceptable to the Procuring Entity. A foreign institution providing a bond shall have a correspondent financial institution located in Kenya, unless the Procuring Entity has agreed in writing that a correspondent financial institution is not required.

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

48. Publication of Procurement Contract

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

a) Name and address of the Procuring Entity.

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

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

d) Dates of signature, commencement and completion of contract.

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

49. Adjudicator

49.1 The Procuring Entity proposes the person named **in the TDS** to be appointed as Adjudicator under the Contract, at an hourly fee specified **in the TDS**, plus reimbursable expenses. If the Tenderer disagrees with the proposed Adjudicator, the Tenderer should so state in the Tender. If, in the Form of Acceptance, the Procuring Entity has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Special Conditions of Contract at the request of either party.

50. Procurement Related Complaints and Administrative Review

50.1 The procedures for making a Procurement-related Complaint areas specified in the **TDS.**

50.2 A request for administrative review shall be made in the form provided under contract forms.

SECTION II - TENDER DATA SHEET (TDS)

Where an e-procurement system is used, modify the relevant parts of the TDS accordingly to reflect the e-procurement process. Instructions for completing the Tender Data Sheet are provided, as needed, in the notes in italics mentioned for the relevant ITT. Delete this box from final tender document

The following specific data for the Supply, Delivery and Installation of Solar PV System Services to be procured shall complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT). Whenever there is a conflict, the provisions herein shall prevail over those in ITT.

ITT Reference	**A. General**
ITT 1.1	The reference number of the Invitation to Tender (ITT) is: The Procuring Entity is: The name of the Project is: **Not Applicable** The name of the ITT is: **Tender for proposed 30kwp solar plants at Freedom Height Mall.** The number and identification of lots (contracts) comprising this ITT is: **Not Applicable**
ITT 2.1 (a)	**Electronic –Procurement System** The Procuring Entity shall use the following electronic-procurement system to manage this Tendering process: **www.cpf.or.ke** The electronic-procurement system shall be used to manage the following aspects of the Tendering process: **(a) invitation to tender notice, (b) issuance of tender documents to tenderers; (c) issuance of addenda and clarifications to tenderers, (c) issuance of pre-bid minutes, if any, (d) issuance of the contract of award notice.**
3.4	The firms (if any) that provided consulting services for the contract being tendered for are: **Not Applicable**
ITT 4.1	Maximum number of members in the Joint Venture (JV) shall be: ***0***
ITT 4.12	The Procuring Entity may require tenderers to be registered with:
	B. Contents of Tendering Document
ITT 8.1	A Pre-Tender meeting ***shall*** take place. If a Pre-Bid meeting will take place, it will be at the following date, time and place: **N/A** A site visit conducted by the Employer shall not be organized
ITT 8.2	For **Clarification of Tender purposes** only, the Procuring agent address is: **Group Managing Director** **P. O. Box 28938, 00200 Nairobi** **CPF House, Mezzanine Floor. Haile Selassie Avenue** Telephone: **+254 11 111 4000 | C: +254 72 980 8143** Electronic mail address: **info@cpf.or.ke** Requests for clarification should be received by the Procuring Entity no later than: **5 days before the bid submission deadline.** Web page :www.cpf.or.ke

ITT 8.4	The Procuring agent shall publish minutes of the pre-Tender meeting and the pre-arranged pretender visit of the site of the works at the website
ITT 9.1	The Procuring agent will respond to request for clarification five days prior to opening and shall publish its response at the website www.cpf.or.ke
	C. Preparation of Tenders
ITT 13.1 (i)	The Tenderer shall submit the following additional documents in its Tender: **All support documents are specified in Section IV Tendering Forms.**
ITT 15.1	Alternative Tenders ***shall not be*** considered.
ITT 15.2	Alternative times for completion ***shall not be*** permitted. If permitted, the range of acceptable completion time is: **Not Applicable** If alternative times for completion are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria.
ITT 15.3	Alternative technical solutions shall be permitted for the following parts of the Services: **Not Applicable**
ITT 16.7	The prices quoted by the Tenderer ***shall not*** be subject to adjustment during the performance of the Contract. The rates are: For local currency: **Not Applicable** For Foreign currency: **Not Applicable**
ITT 19.3	Prequalification ***has not been*** *undertaken;* ***the tender is subject to post qualification evaluation.***
ITT 20.1	The Tender validity period shall be **120 days.**
ITT 21.1	A Tender Security *shall be* required. A Tender-Securing Declaration ***shall not be*** **r**equired. If a Tender Security shall be required, the amount and currency of the Tender Security shall be **KES 50,000** *[Note: Tender Security is required for each lot as per amounts indicated against each lot. Tenderers have the option of submitting one Tender Security for all lots (for the combined total amount of all lots) for which Tenders have been submitted, however if the amount of Tender Security is less than the total required amount, the Procuring Entity will determine for which lot or lots the Tender Security amount shall be applied.]*
ITT 22.1	In addition to the original of the Tender, the number of copies is**: 2 (two) original and copy.** *[Note to Tenderers: Prospective tenders have been allowed to download the MS Word version of the tender documents to enable them to prepare the bids using the Documents Comprising the Tender as specified in ITT 13. Tenderers who submit the issued tender document as the bid shall be rejected.*
ITT 22.3	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of**: Power of Attorney**
	D. Submission and Opening of Tenders
ITT 23.1	For **Tender submission purposes** only, the Procuring agent address is: Attention: **Group Managing Director**

	Postal Address: **P. O. Box 28938, 00200 Nairobi** Physical Address: **CPF House, 7th Floor. Haile Selassie Avenue**
ITT 24.1	**The deadline for Tender *submission is:*** **Date: 20/2/2025** **Time: 11:00AM** Tenderers ***shall not*** have the option of submitting their Tenders electronically. The electronic Tender submission procedures shall be: **Not Applicable**
ITT 27.1	The Tender opening shall take place at: **Boardroom on Mezzanine floor** Physical Address: **CPF House, Haile Selassie Avenue** **Date: 6/2/2025** **Time: 11:00AM** The electronic Tender opening procedures shall be: **Not Applicable**
ITT 27.6	The Form of Tender and Priced Activity Schedule shall be initialed **by 3 (three) members of the tender opening committee and secretary**. ***Each Tender shall be initialed by members and shall be numbered, any modification to the unit or total price shall be initialed by the tender opening committee]***
ITT 31.6	The Procuring Entity shall adjust the Tender Price for comparison purposes only in the following manner: The adjustment shall be based on the **highest price** of the item or component as quoted in other substantially responsive Tenders. If the price of the item or component cannot be derived from the price of other substantially responsive Tenders, the Procuring Entity shall use market price.
E. Evaluation and Comparison of Tenders	
ITT 34.1	Margin of preference **shall be allowed.**
ITT 34.2	The invitation to tender is extended to the following group that qualify for Reservations: **Not Applicable**
F. Award of Contract	
ITT 49.1	The Adjudicator proposed by the Procuring Entity is nominated by **Chartered Institute of Arbitrators Kenya.** The hourly fee for this proposed Adjudicator shall be decided between the parties. The biographical data of the proposed Adjudicator is as follows: to be determined between the parties.
ITT 50.1	The procedures for making a Procurement-related Complaint are available from the PPRA website www.ppra.go.ke. If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to: For the attention: Title/position: **The Group Managing Director** Procuring Agent : **CPF Financial Services Ltd** Email address*:* **info@cpf.or.ke**

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

A: GENERAL PROVISION

Wherever a Tenderer is required to state a monetary amount, Tenderers should indicate the Kenya Shillings equivalent using the rate of exchange determined as follows: (a) for service turnover or financial data required for each year, use the exchange rate prevailing on the last day of the respective calendar year to convert the amounts for that year; (b) the Value of single contract, use the selling exchange rate prevailing on the date of the contract signature; (c) exchange rates shall be taken from the publicly available source identified in the ITT, mostly the Central Bank of Kenya; (d) any error in determining the exchange rates in the Tender may be corrected by the Procuring Entity.

B: MANDATORY ELIGIBILITY CRITERIA

At the preliminary examination of bids, the Procuring Entity will examine all tenders to ensure they meet in all respects the mandatory eligibility criteria and other requirements in the Invitation to Tender. The Tenderer must meet the mandatory eligibility criteria.

No.	Eligibility Criteria	Required Documentary Evidence
1	Completeness of Bid: The Bidder shall submit a complete bid using **only** the Tendering Forms.	All relevant Tendering Forms including Support Documents have been submitted as part of the bid.
2	The Bidder shall be a recognized legal entity in Kenya	(a) Certificate of Incorporation or Registration (b) Confidential Business Questionnaire
3	The Bidder has fulfilled its tax obligations.	(a) Valid Tax Compliance Certificate from the Kenya Revenue Authority (b) County Business Permit or Trade License
4	The Bidder meets the eligibility requirements required in ITT 4, including the requirements for conflict of interest, solvency, corrupt and fraudulent practices, exclusion from entering contract, debarment, violation of employment practices, etc.	(a) Form of Tender (b) Tendering Forms (c) Support Documents
5	**Tender Reservation**: Only the Kenyan Citizen Contractors are eligible to bid for this contract.	CR 12 dated within the last 6**0 days.**
6	Submit a self-declaration form that the person/tenderer will not engage in any corrupt or any fraudulent practice	As the provided format.
7	Submit a self-declaration and commitment to the code of ethics.	As provided format
8	Submit a self-declaration form that the person/tenderer is not debarred in the matter of the Public Procurement and Asset Disposal Act, 2015	As per the provided format.
9	Valid Energy & Petroleum Regulatory Authority (EPRA) Certificates (Class V2: Solar Photovoltaic Systems Manufacturer/Importer and Class C1 and V1: Solar Photovoltaic Systems Contractor/Vendor)	EPRA Licenses
10	Registration with National Construction Authority Class 4 (NCA 4) or above for Electrical works registration (Provide copies of valid and verifiable Current registration and practicing licenses)	NCA Licenses
11	Provide a valid Manufacturers Authorization Form for solar products – Solar panels and Inverters. (Applicable where the bidder is an agent of a	Manufacturer's Authorization Forms

	manufacturer of the system to be supplied)	

c: TECHNICAL EVALUATION CRITERIA

(1) To establish the conformity of the Supply, Delivery and Installation of Solar PV System services to the tendering document, the Tenderer shall furnish as part of its tender the documentary evidence that Services provided conform to the technical specifications and standards specified in Part II Procuring Entity's Requirements.

(2) The Procuring Entity shall examine the technical aspects of the Tender submitted in accordance with ITT 17 and ITT18 to confirm that all requirements of Section VII, Procuring Entity's Requirements have been met without any material deviation or reservation, or omission

TECHNICAL EVALUATION CRITERIA

No.	Evaluation	Evaluation Requirement	Scores	Total Score	Bidders Attained Score
1	Experience of the firm in supply, delivery, installation, and operation and maintenance of the Similar Solar Power Plants	Bidder Must have undertaken at least 5 similar Supply, Delivery and Installation of Solar PV System projects in the past 7 years Evidenced by Award Letter/LPOs/Reference Letters or Work orders	5 similar solar plants (20 marks)	20	
		At least two of such projects should have a single capacity of at least 100kWp.	Two projects of at least 100kWp (8 marks)	8	
2	Proposed project personnel (Must attach CV, academic certificates)	Project Manager	Masters in any engineering or any ICT related course (5 Marks) Bachelor's degree in electrical engineering, ICT, Project Management or related course (3 Marks) Certified Project Management Professional (PMP) (3 Marks) Member of Project Management Institute (2 Marks) At least 10 years' experience with more than 5 years as a Project Manager (3 Marks)	15	
		Project Engineer	Bachelor's degree in electrical engineering or related course (3 Marks) Registered member with Institute of Engineers of Kenya (IEK) and Registered with Engineers Board of Kenya (EBK) (3 Marks) Solar PV training certificate from an accredited training institution (3 marks) EPRA T3 Solar License and EPRA Class B Electrical works License	12	

			with least 5 years' experience (3 Marks)		
		Site Engineer	Bachelor's degree in electrical engineering or related course (3 Marks) Registered with Engineers Board of Kenya (EBK) (2 Marks) Solar PV training certificate from an accredited training Institution (3) At least 5 years' experience (2 marks)	10	
		Electrical Engineer	Bachelor's degree in electrical engineering (3 Marks) Registered with Engineers Board of Kenya (EBK) (3 Marks) At least 3 years' experience (2 marks)	8	
3	Project Methodology	Proposed Project methodology	Comprehensive project work plan with Gantt Chart (5 marks) Mobilization Schedule (3 marks) Engineering, Procurement & Construction Schedule and Site Organization) (8 marks) Health and Safety Plan (2 marks) Operation and Maintenance Plan (2 marks)	20	
4	Evidence of Firm's Administrative Capacity	Local office and Infrastructure to implement the project to the required standards.	Provide a valid lease offer for the current office (5 marks) Specification of project equipment - Installation Equipment & Assets (vehicles and computer equipment) (2 marks)	7	
			Total marks Scored	100	

Only bidders who score 70 marks and above will be considered further and subjected to financial evaluation.

(3) Evaluation of the Tenderer's Technical Proposal will include an assessment of the Tenderer's technical capacity to mobilize key equipment and personnel for the contract consistent with its proposal regarding work methods, scheduling, and material sourcing in sufficient detail and fully in accordance with the requirements stipulated in Section VII, Procuring Entity's Requirements.

(4) Where alternative tenders are permitted under ITT 15.1, the methodology for technical evaluation shall be as follows: *{describe in detail the methodology to be used in the evaluation of alternative tenders; otherwise write Not* Applicable*).* The Procuring Entity shall consider Tenders offered for alternatives as specified in Part 2- Procuring

Entity's requirements. Only the technical alternatives, if any, of the Tenderer with the Best Evaluated Tender conforming to the basic technical requirements shall be considered by the Procuring Entity. **Not Applicable.**

(5) If alternative times for completion are permitted under ITT 15.2, the evaluation method will be as follows: *{describe in detail the methodology to be used in the evaluation of alternative times for completion; otherwise write Not Applicable).* ***Not Applicable***

(6) If alternative technical solutions are permitted for specified part of the services are permitted under ITT 15.4, the evaluation method will be as follows: *{describe in detail the methodology to be used in the evaluation of alternative technical solutions; otherwise write Not Applicable).* ***Not Applicable***

(7) If a Bid is not substantially responsive to the technical requirements of tender document, it shall be rejected by the Procuring Entity and shall not be considered further in evaluation.

D: POST-QUALICATION EVALUATION

The Tenderers that pass the technical evaluation stage shall be subjected to post-qualification evaluation. In case the tender was subject to pre-qualification, the tenders shall be evaluated to check if the Tenderer still met the qualification evaluation criteria set below. Where the tender was not subject to pre-qualification procedure, the tenders shall be evaluated to check if they met the following post qualification evaluation criteria. Any Tenderer that does not meet the criteria shall be disqualified and shall not be considered further in evaluation.

(1) The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the following cash flow requirement **Kenya Shillings 200,000** equivalent. (Yes/No)

(2) Minimum average annual services turnover of **Kenya Shillings 500,000.00** equivalent calculated as total certified payments received for service contracts in progress and/or completed within the **3 years.**

(3) At least **3 contracts** of a similar nature that have been satisfactorily and substantially completed as a prime service provider, or joint venture member or sub-contractor each of minimum value of **Kenya shillings 200,000** equivalent.

(4) History of non-performing Contracts

Tenderer and each member of JV in case the Tenderer is a JV, shall demonstrate using the relevant forms in Section IV Tendering Forms that Non-performance of a contract did not occur because of the default of the Tenderer, or the member of a JV in the last **five years.**

(5) Litigation History

There shall be no consistent history of court/arbitral award decisions against the Tenderer since ***1st January 2016***. All parties to the contract shall furnish the information in the appropriate form about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the years specified. A consistent history of awards against the Tenderer or any member of a JV may result in rejection of the tender.

E: FINANCIAL EVALUATION

The Tenderers that meet the technical evaluation criteria and the qualification criteria shall be subjected to the financial evaluation criteria set out in this section.

(1) The bid price shall be adjusted for arithmetic errors in accordance with ITT32. Any major error adjustment shall result in the bid being rejected as nonresponsive pursuant to Section 80 and Regulation 74(2).

(2) In accordance with ITT 33, the bid prices in foreign currency shall be converted into Kenya shillings for evaluation and comparison purposes only, using the exchange rate specified in the Tender Data Sheet.

(3) Price adjustment of the bid prices due to quantifiable non-material non-conformities pursuant to ITT 35.2(d) and as provided in Section 79 of the PPADA.

(4) Where allowed in the Tender Data Sheet ITT 34, the margins of preference on the evaluated prices shall be applied on the bid prices to obtain the evaluated prices using the following applicable margins of preference.

Description of Criteria	*Margin of Preference*

A foreign firm in joint venture with a technically qualified and competent citizen contractor or supplier.	10%
Bidders offering goods manufactured, mined, extracted, grown, assembled, or semi-processed in Kenya AND shareholding of Kenyan citizens is above 50%.	20%
Bidders offering goods manufactured, mined, extracted, assembled or semi processed in Kenya.	15%
Bidders where the percentage of shareholding of Kenyan citizens is more than 50%.	10%
Bidders where the percentage of Kenyan shareholding is less than 50% but above 20%.	8%
Bidders where the percentage of Kenyan shareholding is above 5% and less than 20%.	6%

(5) The Tenderers shall be ranked based on the *evaluated price*; the first ranked Tenderer being the lowest evaluated price.

F: AWARD OF CONTRACT

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

(2) ***Multiple Contracts***: **Not Applicable**

Lots*:* Tenderers have the option to tender for any one or more lots. Tenders will be evaluated lot-wise, taking into account discounts offered, if any, after considering all possible combination of lots. The contract(s) will be awarded to the Tenderer(s) offering the lowest evaluated cost to the Procuring Entity for combined lots, subject to the selected Tenderer(s) meeting the required qualification criteria for lot or combination of lots as the case may be.

OR

Packages: Tenderers have the option to bid for any one or more packages and for any one or more lots within a package. Bids will be evaluated package-wise, considering discounts offered, if any, for combined packages and/or lots within a package. The contract(s) will be awarded to the Tenderer(s) offering the lowest evaluated cost to the Procuring Entity for combined packages, subject to the selected Tenderer(s) meeting the required qualification criteria for combination of packages and or lots as the case may be.

SECTION IV - TENDERING FORMS

The following list of Tendering Forms shall be used to prepare and submit the Tender. The Procuring Entity will provide a soft copy of the tender document in MS Word solely to assist the tenderer in preparing a suitable bid in accordance with ITT 13. A Tenderer's failure to use the correct Tendering Documents may lead to disqualification

Form 1: Form of Tender
Form 2: Priced Activity Schedule
Form 3: Statement of Work Methods
Form 4: Tenderer's Eligibility Confidential Business Questionnaire
Form 5: Certificate of Independent Tender Determination
Form 6: Self Declaration Form Debarment SD1
Form 7: Self Declaration Corrupt Practice SD2
Form 8: Declaration and Commitment to the Code of Ethics
Form 9: Appendix 1 Fraud and Corruption
Form 10: Tenderer Information Form
Form 11: Tenderer's JV Members Information Form
Form 12: Form of Tender Security (Demand Bank Guarantee)
Form 13: Form of Tender Security [Option 2-Insurance Guarantee)
Form 14: Form of Tender Securing Declaration
Form 15: Foreign Tenderer's 40% Rule
Form 16: Key Equipment-EQUI
Form 17: Key Personne-Per-1
Form 18: Resume for Key Personnel-Per-2
Form 19: Historical Contract Non-Performance and Litigation
Form 20: Financial Situation and Performance
Form 21: Average Annual Services Turnover
Form 22: Current Contract Commitments/Work in Progress
Form 23: Specific Service Experience

SUPPORT DOCUMENTS

The Bidder shall provide certified copies of documents and information as annex to the bid:

Annex 1: Power of Attorney

Annex 2: Certificate of Incorporation or Certificate of Registration

Annex 2: CR 12 dated within the last 60 days from date of submission of bids

Annex 3: Registration with professional or regulatory body

Annex 4: Valid Tax Compliance Certificate

Annex 5: Valid Business Permit or Trade License

Annex 6: Beneficial Ownership Certificate

Annex 7: Corporate Organization Chart including list of Directors

Annex 8: Copies of audited financial statements for FY 2021, 2022, and 2023

Annex 9: Letter from a financial institution as evidence of financial resources

Annex 10: Service Completion Certificates or purchase orders for similar services

Annex 11: Academic certificates for each proposed key personnel

Annex 12: Professional certificates for proposed key personnel

Annex 13: Evidence of ownership OR lease for each of the proposed equipment

Annex 14: Joint Venture Letter of Intent or Agreement

Annex n: *Any other required documents, add annexes as necessary*

FORM 1: FORM OF TENDER

Instructions to Tenderers

The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address. All italicized text is to help Tenderer in preparing this form. Tenderer must complete and sign and tenderer's eligibility- confidential business questionnaire, certificate of independent tender determination and the self-declaration of the tenderer, all attached to this form of tender. ***Tenderers should delete this guidance box in the submitted tender.***

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

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

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

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

a) **No reservations:** We have examined and have no reservations to the tendering document, including Addenda issued in accordance with ITT 9;

b) **Eligibility**: We meet the eligibility requirements and have no conflict of interest in accordance with ITT 4;

c) **Tender-Securing Declaration:** We have not been suspended nor declared ineligible by the Procuring Entity based on execution of a Tender-Securing Declaration or Proposal-Securing Declaration in Kenya in accordance with ITT 4.

d) **Conformity:** We offer to provide the Supply, Delivery and Installation of Solar PV System services in conformity with the tendering document of the following: *[insert a brief description of the Supply, Delivery and Installation of Solar PV System services];*

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

#	**Service Description**	**Total Price (KES)**
1		
2		
3		
4		
Total Tender Price		

Total price of all service items [*insert the total price of all lots in words and figures, indicating the various amounts and the respective currencies*];

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

i) The discounts offered are: 0% (any discount is included in the Tender Price

ii) The exact method of calculations to determine the net price after application of discounts is shown below: **Not Applicable**

g) **Tender Validity Period:** Our Tender shall be valid for the period specified in TDS 20.1 (as amended if applicable) from the date fixed for the Tender submission deadline (specified in TDS 24.1 (as amended if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

h) **Performance Security:** If our Tender is accepted, we commit to obtain a Performance Security in accordance with the tendering document.

i) **One Tender Per Tenderer:** We are not submitting any other Tender (s) as an individual Tenderer, and we are not participating in any other Tender (s) as a Joint Venture member or as a subcontractor, and meet the requirements of ITT 4.3, other than alternative Tenders submitted in accordance with ITT 13;

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

k) **State-owned enterprise or institution**: *[select the appropriate option and delete the other] [We are not a state- owned enterprise or institution]/[We are a state-owned enterprise or institution but meet the requirements of ITT 4.7];*

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

Name of Recipient	Address	Reason	Amount

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

m) *[Delete if not appropriate or amend to suit]* We confirm that we understand the provisions relating to Standstill Period as described in this tendering document and the Procurement Regulations.

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

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

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

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

r) **Code of Ethical Conduct:** We undertake to adhere by the Code of Ethical Conduct for Suppliers, Contractors and Service Providers, copy available from www.ppra.go.ke during the procurement process and the execution of any resulting contract.

s) We, the Tenderer, have completed fully and signed the following Forms as part of our Tender:

(i) Tenderer's Eligibility: Confidential Business Questionnaire – to establish we are not in any conflict to interest.

(ii) Certificate of Independent Tender Determination - to declare that we completed the tender without colluding with other tenderers.

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

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

Name of the Tenderer: *.....*[insert complete name of person signing the Tender]*

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

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

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

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

FORM 2: PRICED ACTIVITY SCHEDULE

[The Tenderer shall fill in Columns 3 to 6

Date: _____
ITT No: _____

Description	Amount in KES
Tender for proposed 30kwp solar plants at Freedom Height Mall	

FORM 3: STATEMENT OF WORK METHODS

(a) Methods Statement

The service provider should present at least one page statement of work methods for carrying out the services to ensure that each of the required activities have been met, indicate the deployment of personnel and equipment inputs to achieve the required objectives as set out in Part II Procuring Entity Requirements.

(b) Work Schedule

The Tenderer shall prepare the proposed work program for carrying out the services

FORM 4: TENDERER'S ELIGIBILITY CONFIDENTIAL BUSINESS QUESTIONNAIRE

Instruction to Tenderer

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

	ITEM	DESCRIPTION		
A: Tenderer's Details				
1	Name of the Procuring Entity			
2	Reference Number of the Tender			
3	Date and Time of Tender Opening			
4	Name of the Tenderer			
5	Full Address and Contact Details of the Tenderer.	1. Country 2. City 3. Location 4. Building 5. Floor 6. Postal Address 7. Name and email of contact person.		
6	Current Trade License Registration Number and Expiring date			
7	Name, country, and full address of Registering Body/Agency	*Postal and physical addresses* *Email* Telephone Number		
8	Description of Nature of Business			
9	Maximum value of business which the Tenderer handles.			
10	State if Tenderer Company is listed in stock exchange, give name and full of state which stock exchange	*Postal and physical addresses,* *Email* *Telephone number*		
B: General and Specific Details				
Sole Proprietor, provide the following details				
i	Name in full			
ii	Age			
iii	Nationality			
iv	Country of Origin			
iv	Citizenship			
Partnership, provide the following details				
Names of Partners		**Nationality**	**Citizenship**	**% Shares owned**
1				
2				
3				
Registered Company, provide the following details				
i	Private or public Company			
ii	State the nominal and issued capital of the Company			
	Nominal Kenya Shillings Equivalent			
	Issued Kenya Shillings Equivalent			
iii	**Give details of Directors as follows**			
Names of Director		**Nationality**	**Citizenship**	**% Shares owned**
1				
2				
3				
C: DISCLOSURE OF INTEREST-Interest of the Firm in the Procuring Entity.				
Are there any person/persons in.....(Name of Procuring Entity) who has/have an interest or relationship in this firm? Yes/No.....				

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

D: **Certification**		
On behalf of the Tenderer, I certify that the information given above is complete, current and accurate as at the date of submission		
i	**Full name**	
ii	**Title/Designation**	
iii	**Signature**	
iv	**Date**	

FORM 5: CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

I, the undersigned, in submitting the accompanying Form of Tender to the *[Name of Procuring Entity]* for *[Name and number of tender]* in response to the request for tenders made by *[Name of Tenderer]* do hereby make the following statements that I certify to be true and complete in every respect:

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

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

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

(Signature) *(Date)*

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

4. For the purposes of this Certificate and the Tender, I understand that the word "competitor" shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:

   a) Has been requested to submit a Tender in response to this request for tenders;

   b) could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience.

5. The Tenderer discloses that [check one of the following, as applicable]:

   a) The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor.

   b) The Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements.

6. In particular, without limiting the generality of paragraphs (5) (a) or (5) (b) above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:

   a) prices;

   b) methods, factors or formulas used to calculate prices;

   c) the intention or decision to submit, or not to submit, a tender; or
   d) the submission of a tender which does not meet the specifications of the request for Tenders; except as specifically disclosed pursuant to paragraph (5) (b) above;

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

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

Name

_____

Title

_____

Date _____

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

FORM 6: SELF-DECLARATION FORM SD1

FORM SD 1

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

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

1. THAT I am the Company Secretary/Chief Executive/Managing Director/Principal Officer/Director of ……...…….. *(insert name of the Company)* who is a Bidder in respect of **Tender No. ……...** for.....*(insert tender title/description)* for..... *(insert name of the Procuring entity)* and duly authorized and competent to make this statement.

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

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

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

Bidder Official Stamp

FORM 7: SELF-DECLARATION CORRUPT PRACTICE SD2

SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE FORM SD2

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

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of..... ..... *(insert name of the Company)* who is a Bidder in respect of **Tender No**..... for …….... *(insert tender title/description)* for …… *(insert name of the Procuring entity)* and duly authorized and competent to make this statement.

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

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

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

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

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

Bidder's Official Stamp

FORM 8: DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

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

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

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

Sign…….....

Position…….....……

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

E-mail…….....……

Name of the Firm/Company…….....…. ……

Date…….....……

(Company Seal/ Rubber Stamp where applicable)

Witness

Name…….....……..

Sign…….....……

Date…….....……

FORM 9: APPENDIX 1-FRAUD AND CORRUPTION

(This Appendix 1 shall not be modified)

1. Purpose

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

2. Requirements

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

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

1) A person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;

2) A person referred to under subsection (1) who contravenes the provisions of that sub-section commits an offence;

3) Without limiting the generality of the subsection (1) and (2), the person shall be: -

   a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or

   b) if a contract has already been entered into with the person, the contract shall be voidable;

4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;

5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement: -

   a) Shall not take part in the procurement proceedings.

   b) Shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and

   c) shall not be a subcontractor for the tenderer to whom was awarded contract, or a member of the group of tenderers to whom the contract was awarded, but the subcontract or appointed shall meet all the requirements of this Act.

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

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

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

a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:

   i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

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

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

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

v) "obstructive practice" is:

- deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
- acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3 e. below.

(b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:
"Fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.

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

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

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

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

---

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

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

FORM 10: TENDERER INFORMATION FORM

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

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

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

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

1. Tenderer's Name *[insert Tenderer's legal name]*
2. In case of JV, legal name of each member: *[insert legal name of each member in JV]*
3. Tenderer's actual or intended country of registration: *[insert actual or intended country of registration]*
4. Tenderer's year of registration: *[insert Tenderer's year of registration]*
5. Tenderer's Address in country of registration: *[insert Tenderer's legal address in country of registration]*
6. Tenderer's Authorized Representative Information Name: *[insert Authorized Representative's name]* Address: *[insert Authorized Representative's Address]* Telephone: *[insert Authorized Representative's telephone/fax numbers]* Email Address: *[insert Authorized Representative's email address]*
7. Attached are copies of original documents of *[check the box(es) of the attached original documents]:* (a) Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 4.4. (b) In case of JV, Form of intent to form JV or JV agreement, in accordance with ITT 4.1. (c) Acurrent tax clearance certificate or tax exemption certificate in case of Kenyan tenderers issued by the the Kenya Revenue Authority in accordance with ITT 4.14. (d) In case of state-owned enterprise or institution, in accordance with ITT 4.6 documents establishing: (i) Legal and financial autonomy; (ii) Operation under commercial law; (iii) Establishing that the Tenderer is not under the supervision of the agency of the Procuring Entity (e) Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

FORM 11: TENDERER'S JV MEMBERS INFORMATION FORM

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

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

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

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

1. Tenderer's Name: *[insert Tenderer's legal name]*
2. Tenderer's JV Member's name: *[insert JV's Member legal name]*
3. Tenderer's JV Member's country of registration: *[insert JV's Member country of registration]*
4. Tenderer's JV Member's year of registration: *[insert JV's Member year of registration]*
5. Tenderer's JV Member's legal address in country of registration: *[insert JV's Member legal address in country of registration]*
6. Tenderer's JV Member's authorized representative information Name: *[insert name of JV's Member authorized representative]* Address: *[insert address of JV's Member authorized representative]* Telephone/Fax numbers: *[insert telephone/fax numbers of JV's Member authorized representative]* Email Address: *[insert email address of JV's Member authorized representative]*
7. Attached are copies of original documents of *[check the box(es) of the attached original documents]* ☐ Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITT 4.4. ☐ In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not under the supervision of the Procuring Entity, in accordance with ITT 4.6.
8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

FORM 12: FORMAT OF TENDER SECURITY-[Option 1–Demand Bank Guarantee]

Beneficiary:_____

_____

Request for Tenders No:

_____

Date:_____

_____

TENDER GUARANTEE No.:_____

Guarantor: _____

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

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

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

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

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

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

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

_____

[signature(s)]

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

FORM 13: FORMAT OF TENDER SECURITY [Option 2–Insurance Guarantee]

TENDER GUARANTEE No.: _____

1. Whereas …… [*Name of the tenderer]* (hereinafter called "the tenderer") has submitted its tender dated …… [*Date of submission of tender]* for the …… *[Name and/or description of the tender]* (hereinafter called "the Tender") for the execution of__under Request for Tenders No._____ ("the ITT").

2. KNOW ALL PEOPLE by these presents that WE …… of …… [**Name of Insurance Company**] having our registered office at …… (hereinafter called "the Guarantor"), are bound unto …….. [*Name of Procuring Entity*] (hereinafter called "the Procuring Entity") in the sum of …… (Currency and guarantee amount) for which payment well and truly to be made to the said Procuring Entity, the Guarantor binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with the Common Seal of the said Guarantor this ___day of _____ 20 __.

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

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

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

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

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

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

_____

[Date] *[Signature of the Guarantor]*

_____

[Witness] *[Seal]*

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

FORM 14: FORM OF TENDER-SECURING DECLARATION

[The Tenderer shall fill in this Form in accordance with the instructions indicated.]

Date:.....*[date (as day, month and year)]*

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

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

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

We, the undersigned, declare that:

We understand that, according to your conditions, Tenders must be supported by a Tender-Securing

Declaration.

We accept that we will automatically be suspended from being eligible for Tendering or submitting proposals in any contract with the Procuring Entity for the period of time of *[number of months or years]* starting on *[date],* if we are in breach of our obligation(s) under the Tender conditions, because we:

a) Have withdrawn our Tender during the period of Tender validity specified in the Form of Tender; or

b) Having been notified of the acceptance of our Tender by the Procuring Entity during the period of Tender validity, (i) fail to sign the Contract agreement; or (ii) fail or refuse to furnish the Performance Security, if required, in accordance with the ITT.

We understand this Tender Securing Declaration shall expire if we are not the successful Tenderer, upon the earlier of (i) our receipt of your notification to us of the name of the successful Tenderer; or (ii) twenty-eight days after the expiration of our Tender.

Name of the Tenderer***** _____

_____ Name of the person duly authorized to sign the Tender on behalf

of the Tenderer****** _____

_____ Title of the person signing the Tender _____

_____ Signature of the person named above _____

_____ Date signed _____ day of _____,

*****: In the case of the Tender submitted by joint venture specify the name of the Joint Venture as Tenderer

**: Person signing the Tender shall have the power of attorney given by the Tenderer attached to the Tender

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

FORM 15: FOREIGN TENDERERS 40% RULE not applicable.

Pursuant to ITT 3.9, a foreign tenderer must complete this form to demonstrate that the tender fulfils this condition.

ITEM	Description of Work Item	Describe location of Source	COST in K. shillings	Comments, if any
A	Local Labor			
1				
2				
3				
4				
5				
B	Sub contracts from Local sources			
1				
2				
3				
4				
5				
C	Local materials			
1				
2				
3				
4				
5				
D	Use of Local Plant and Equipment			
1				
2				
3				
4				
5				
E	Add any other items			
1				
2				
3				
4				
5				
6				
	TOTAL COST LOCAL CONTENT		XXXXX	
	PERCENTAGE OF CONTRACT PRICE			

FORM 16: KEY EQUIPMENT-EQUI

The Tenderer shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III, Evaluation and Qualification Criteria. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Tenderer.

Item of equipment		
Equipment information	Name of manufacturer	Model and power rating
	Capacity	Year of manufacture
Current status	Current location	
	Details of current commitments	
Source	Indicate source of the equipment o Owned o Rented o Leased o Specially manufactured	

Omit the following information for equipment owned by the Tenderer.

Owner	Name of owner	
	Address of owner	
	Telephone	Contact name and title
	Fax	Email
Agreements	Details of rental / lease / manufacture agreements specific to the project	

FORM 17: KEY PERSONNEL- PER-1

Tenderers shall provide the names and details of the suitably qualified Key Personnel to perform the Contract. The data on their experience should be supplied using the Form PER-2 below for each candidate.

Tenderer's/Contractor' Representative and Key Personnel.

1.	**Title of position:** Contractor's Representative	
	Name of candidate:	
	Duration of appointment:	[*insert the whole period (start and end dates) for which this position will be engaged*]
	Time commitment: for this position:	[*insert the number of days/week/months/ that has been scheduled for this position*]
	Expected time schedule for this position:	[*insert the expected time schedule for this position (e.g. attach high level Gantt chart*]
2.	**Title of position:** *[_____]*	
	Name of candidate:	
	Duration of appointment:	[*insert the whole period (start and end dates) for which this position will be engaged*]
	Time commitment: for this position:	[*insert the number of days/week/months/ that has been scheduled for this position*]
	Expected time schedule for this position:	[*insert the expected time schedule for this position (e.g. attach high level Gantt chart*]
3.	**Title of position:** *[_____]*	
	Name of candidate:	
	Duration of appointment:	[*insert the whole period (start and end dates) for which this position will be engaged*]
	Time commitment: for this position:	[*insert the number of days/week/months/ that has been scheduled for this position*]
	Expected time schedule for this position:	[*insert the expected time schedule for this position (e.g. attach high level Gantt chart*]
4.	**Title of position:** *[_____]*	
	Name of candidate:	
	Duration of appointment:	[*insert the whole period (start and end dates) for which this position will be engaged*]
	Time commitment: for this position:	[*insert the number of days/week/months/ that has been scheduled for this position*]
	Expected time schedule for this position:	[*insert the expected time schedule for this position (e.g. attach high level Gantt chart*]
5.	**Title of position:** *[insert title]*	
	Name of candidate	
	Duration of appointment:	[*insert the whole period (start and end dates) for which this position will be engaged*]
	Time commitment: for this position:	[*insert the number of days/week/months/ that has been scheduled for this position*]
	Expected time schedule for this position:	[*insert the expected time schedule for this position (e.g. attach high level Gantt chart*]

FORM 18: RESUME FOR KEY PERSONNEL-PER-2

Name of Bidder

Position [*#1*]: [*title of position from Form 15*]		
Personnel information	Name:	Date of birth:
	Address:	E-mail:
	Professional qualifications:	
	Academic qualifications:	
	Language proficiency: *[language and levels of speaking, reading and writing skills]*	
Details		
	Address of employer:	
	Telephone:	Contact (manager / personnel officer):
	Fax:	
	Job title:	Years with present employer:

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

Project	Role	Duration of involvement	Relevant experience
[main project details]	*[role and responsibilities on the project]*	*[time in role]*	*[describe the experience relevant to this position]*

Declaration: I, the undersigned Key Personnel, certify that to the best of my knowledge and belief, the information contained herein correctly describes myself, my qualifications and my experience.

I confirm that I am available as certified in the following table and throughout the expected time schedule for this position as provided in the Bid:

Commitment	Details

Commitment to duration of contract:	*[insert period (start and end dates) for which this Key Personnel is available to work on this contract]*
Time commitment:	*[insert the number of days/week/months/ that this Key Personnel will be engaged]*

I understand that any misrepresentation or omission in this Form may:

(a) be taken into consideration during Bid evaluation;

(b) my disqualification from participating in the Bid;

(c) my dismissal from the contract.

Name of Key Personnel: [*insert name*]

Signature: _____

Date: (day month year): _____

Countersignature of authorized representative of the Bidder:

Signature: _____

Date: (day month year): _____

FORM 19: HISTORICAL CONTRACT NON-PERFORMANCE AND LITIGATION FORM CON-2-

Historical Contract Non-Performance, Pending Litigation and Litigation

History. Tenderer's Name:_____

Date:

_____

JV Member's Name

_____

ITT No. and title:_____

Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria			
☐ Contract non-performance did not occur since 1st January *[insert year]* specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.1. ☐ Contract(s) not performed since 1st January *[insert year]* specified in Section III, Evaluation and Qualification Criteria, requirement 2.1			
Year	**Non- performed portion of contract**	**Contract Identification**	**Total Contract Amount (current value, currency, exchange rate and Kenya Shilling equivalent)**
[insert year]	*[insert amount and percentage]*	Contract Identification: *[indicate complete contract name/ number, and any other identification]* Name of Procuring Entity: *[insert full name]* Address of Procuring Entity: *[insert street/city/country]* Reason(s) for nonperformance: *[indicate main reason(s)]*	*[insert amount]*
Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria			
☐ No pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3. ☐ Pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3 as indicated below.			

Year of dispute	**Amount in dispute (currency)**	**Contract Identification**	**Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)**
		Contract Identification: _____ Name of Procuring Entity: _____ Address of Procuring Entity: _____ Matter in dispute: _____ Party who initiated the dispute: ____ Status of dispute: _____	
		Contract Identification: Name of Procuring Entity: Address of Procuring Entity: Matter in dispute: Party who initiated the dispute: Status of dispute:	
Litigation History in accordance with Section III, Evaluation and Qualification Criteria			
☐ No Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4. ☐ Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4 as indicated below.			
Year of award	**Outcome as percentage**	**Contract Identification**	**Total Contract Amount (currency), Kenya Shilling Equivalent (exchange**

Year of dispute	**Amount in dispute (currency)**	**Contract Identification**	**Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)**
	of Net Worth		**rate)**
[insert year]	*[insert percentage]*	Contract Identification: [indicate complete contract name, number, and any other identification] Name of Procuring Entity: *[insert full name]* Address of Procuring Entity: *[insert street/city/country]* Matter in dispute: *[indicate main issues in dispute]* Party who initiated the dispute: *[indicate "Procuring Entity" or "Contractor"]* Reason(s) for Litigation and award decision *[indicate main reason(s)]*	*[insert amount]*

FORM 20: Financial Situation and Performance- FIN –3.1

Tenderer's Name:

Date:

JV Member's Name

ITT No. and title:

(a) Financial Data

Type of Financial information in Kenya Shillings Equivalent	**Historic information for previous** _____*years,* _____ (Amount in Kenya Shillings Equivalent)				
	Year 1	Year 2	Year 3	Year 4	Year 5
Statement of Financial Position (Information from Balance Sheet)					
Total Assets (TA)					
Total Liabilities (TL)					
Total Equity/Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
Working Capital (WC)					
Information from Income Statement					
Total Revenue (TR)					
Profits Before Taxes (PBT)					
Cash Flow Information					
Cash Flow from Operating Activities					

*Refer to ITT 15 for the exchange rate

(b) Sources of Finance

The Tenderer shall specify the proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total cash flow requirements on services currently in progress and future contract commitments as specified in Section III, Evaluation and Qualification Criteria.

No.	Source of finance	Amount (Kenya Shilling equivalent)
1		
2		
3		

The Tenderer and its parties shall provide copies of financial statements for_____years pursuant Section III, Evaluation and Qualifications Criteria, which shall:

a) reflect the financial situation of the Tenderer, or in case of JV member, and not an affiliated entity (such as parent company or group member).

b) Be independently audited or certified in accordance with local legislation.

c) Be complete, including all notes to the financial statements.

d) Correspond to accounting periods already completed and audited.

FORM 21: AVERAGE ANNUAL SERVICES TURNOVER-FIN 3.2

The Tenderer shall provide the information contained in this form to meet the qualification requirements on annual services turnover as specified in Section III Evaluation and Qualification Criteria

Tenderer's Name:

Date:

JV Member's Name

ITT No. and title:

Annual services turnover data			
Year	**Amount Currency**	**Exchange rate**	**Kenya Shilling**
[indicate year]	*[insert amount and indicate currency]*		
Average Annual Construction Turnover			

FORM 22: Current Contract Commitments/Works in Progress-FIN3.4

Tenderers and each member to a JV should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

No.	Name of Contract	Employer Contact Address, Tel,	Value of Outstanding Work [Current Kenya Shilling /month Equivalent]	Estimated Completion Date	Average Monthly Invoicing Over Last Six Months [Kenya Shilling /month)]
1					
2					
3					
4					
5					

FORM 21: SPECIFIC SERVICE EXPERIENCE

Tenderer's Name:

_____

Date:_____

_____

JV Member's Name_____

_____

ITT No. and title:_____

Similar Contract No.	**Information**			
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor ☐	Member in JV ☐	Management Contractor ☐	Sub-contractor ☐
Total Contract Amount			**Kenya Shilling**	
If member in a JV or sub-contractor, specify participation in total Contract amount				
Procuring Entity's Name:				
Address: Telephone/fax number E-mail:				
Description of the similarity in accordance with Section III Evaluation and Qualification Criteria				
1. Amount				
2. Physical size of required works items				
3. Complexity				
4. Methods/Technology				
5. Construction rate for key activities				
6. Other Characteristics				

SUPPORT DOCUMENTS

The Tenderer shall provide certified copies of the following documents and information as annex to the bid:

Annex 1: Power of Attorney

Annex 2: Certificate of Incorporation or Certificate of Registration

Annex 2: CR 12 dated within the last 60 days from date of submission of bids

Annex 3: Registration with professional or regulatory body

Annex 4: Valid Tax Compliance Certificate

Annex 5: Valid Business Permit or Trade License

Annex 6: Beneficial Ownership Certificate

Annex 7: Corporate Organization Chart including list of Directors

Annex 8: Copies of audited financial statements for FY 2021, 2022, and 2023

Annex 9: Letter from a financial institution as evidence of financial resources

Annex 10: Service Completion Certificates or purchase orders for similar services

Annex 11: Academic certificates for each proposed key personnel

Annex 12: Professional certificates for proposed key personnel

Annex 13: Evidence of ownership OR lease for each of the proposed equipment

Annex 14: Joint Venture Letter of Intent or Agreement

Annex n: *Any other required documents, add annexes as necessary*

PART II – PROCURING ENTITY'S REQUIREMENTS

SECTION VII - ACTIVITY SCHEDULE

TERMS OF REFERENCES

Terms of Reference for 30kWp Freedom Heights Solar Plant						
#	Description	Qty	Unit	Unit Price (Kes)	16% VAT (Kes)	Total Price (Kes)
	Solar Panels					
A	580W Monocrystalline Mono - Facial Module, 12 Year Product Warranty, 30 years Linear Product warranty, 1000VDC Maximum System Voltage. Jinko Solar or equivalent	52	Pieces			
	Solar Inverter and Accessories					
B	25kW/45kWp Maximum input Grid tied Solar Inverter - 230V/400V, 50Hz, 1000V Maximum Input Voltage, 98.1% efficiency at 400V, Two MPPT trackers and two inputs per tracker, Type II DC & AC Internal Surge Protection Device, with AC Overcurrent protection, Anti-islanding protection, DC Reverse - polarity protection and PV Array string fault monitoring: SMA or equivalent	1	Piece			
C	SMA Data Manager / Sunny Portal powered by ennexOS 1200 or 19200 Baud Rate, 4 to 20 mA, 0 to 10 V Input and Output Signals	1	Piece			
D	Export Control Meter - 230V/400V AC, 0-400 A Current Input, 3P3W power compatible, Modbus RTU communication protocol, Din-rail mountable; Huawei Smart Power Sensor or equivalent	1	Piece			
	Electrical Power Board					
E	400mm*600mm*300mm Powder coated AC Power board with two 16A 3P 415V MCBs, one 125A 4P 415V MCCB, 40kA 415V 4P AC Surge Protection Device, 125 TPN Busbars, Two Double Pole Socket and all accessories	1	Piece			
F	Split-core Current Transformer 1000A/50mA Huawei or equivalent	3	Pieces			
	Mounting Structure					
G	30 kWp Complete Concrete Roof Mounted Solar Panel Mounting Structure and supports	1	Lot			
	AC & DC Cables Accessories					

H	2.5 sq.mm Single Core Copper, PVC Insulated, PVC Sheathed Non-armoured Cable	60	Meters			
J	25 sq.mm Four Core Copper, PVC Insulated, PVC Non-Armoured cable	60	Meters			
K	4 sqmm UV Rated Solar Cable, Electrolytic Tinned Copper, Low Smoke Zero Halogen, Crosslinked Polyethylene Insulated, 1500V DC- Black	300	Meters			
L	4 sqmm UV Rated Solar Cable, Electrolytic Tinned Copper, Low Smoke Zero Halogen, Crosslinked Polyethylene Insulated, 1500V DC- Red	300	Meters			
M	Copper Cable Lugs 25 sqmm	25	Pieces			
N	Copper Cable Lugs 4 sqmm	50	Pieces			
O	Earth cable 4 sqmm Single core	100	Meters			
P	Single Core 25 sqmm Copper, PVC Insulated, Earth Cable	60	Meters			
Q	Solar MC4 Connectors 1000VDC, 30A rated current, Copper, tin plated contact material	30	Pairs			
	Installation Accessories					
R	Cable Ties 300mm (packets), Rawl bolts, Conduit Clips, PVC Conduits, Bends, Couplers, Terminal block connectors, Din Rails, Cat 6 Cable, RJ 45 Lugs, Bolts, Heat Shrinks, Wall plugs & Screws, Plastic Glands, Miniature Circuit Breakers, Sikaflex, Galvanised & Powder coated Cable Trays 150mm * 50mm * 2400 mm C/W cover, bolts, nuts & Connectors etc.	1	Lot			
S	Allow for preliminaries for transport to site, hoisting & special handling where required, storage, and county permits where required	1	Lot			
T	**TESTING, COMMISSIONING & TRAINING** Sum for Testing and commissioning of the installations including sum for training of client personnel/end users Preparation of Completion documents comprising; Workshop drawings, manufacturer's technical product catalogues, users manuals, maintenance manuals.	1	Lot			

U	Allow for contingency sum of Kenya shillings Three Hundred Thousand (Kshs.300,000) which shall be expended subject to the express written approval from the maintenance manager					
	Total					

SECTION VIII - GENERAL CONDITIONS OF CONTRACT

1. General Provisions

1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

a) The Adjudicator is the person appointed jointly by the Procuring Entity and the Service Provider to resolve disputes in the first instance, as provided for in Sub-Clause 8.2 hereunder.

b) "Activity Schedule" is the priced and completed list of items of Services to be performed by the Service Provider forming part of his Tender.

d) "Completion Date" means the date of completion of the Services by the Service Provider as certified by the Procuring Entity

e) "Contract" means the Contract signed by the Parties, to which these General Conditions of Contract (GCC) are attached, together with all the documents listed in Clause1of such signed Contract;

f) "Contract Price" means the price to be paid for the performance of the Services, in accordance with Clause 6;

g) "Day works" means varied work inputs subject to payment on a time basis for the Service Provider's employees and equipment, in addition to payments for associated materials and administration.

h) "Procuring Entity" means the Procuring Entity or party who employs the Service Provider

i) "Foreign Currency" means any currency other than the currency of Kenya;

j) "GCC" means these General Conditions of Contract;

k) "Government" means the Government of Kenya;

l) "Local Currency" means Kenya shilling;

m) "Member," in case the Service Provider consist of a joint venture of more than one entity, means any of these entities; "Members" means all these entities, and "Member in Charge" means the entity specified in the SC to act on their behalf in exercising all the Service Provider' rights and obligations towards the Procuring Entity under this Contract.

n) "Party" means the Procuring Entity or the Service Provider, as the case may be, and "Parties" means both of them.

o) "Personnel" means persons hired by the Service Provider or by any Subcontractor as employees and assigned to the performance of the Services or any part thereof.

p) "Service Provider" is a person or corporate body whose Tender to provide the Services has been accepted by the Procuring Entity.

q) "Service Provider's Tender" means the completed Tendering Document submitted by the Service Provider to the Procuring Entity

r) "SCC" means the Special Conditions of Contract by which the GCC may be amended or supplemented.

s) "Specifications" means the specifications of the service included in the Tendering Document submitted by the Service Provider to the Procuring Entity

t) "Services" means the work to be performed by the Service Provider pursuant to this Contract, as described in Appendix A; and in the Specifications and Schedule of Activities included in the Service Provider's Tender.

u) "Subcontractor" means any entity to which the Service Provider subcontracts any part of the Services in accordance with the provisions of Sub-Clauses 3.5 and 4;

v) "Public Procurement Regulatory Authority (PPRA)" shall mean the Government Agency responsible for oversight of public procurement.

w) "Project Manager" shall the person appointed by the Procuring Entity to act as the Project Manager for the purposes of the Contract and named in the Particular Conditions of Contract, or other person appointed from time to time by the Procuring Entity and notified to the Contractor.

x) "Notice of Dissatisfaction" means the notice given by either Party to the other indicating its dissatisfaction and intention to commence arbitration.

1.2 Applicable Law

The Contract shall be interpreted in accordance with the laws of Kenya**.**

1.3 Language

This Contract has been executed in the English language**,** which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

1.4 Notices

Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, hand delivery, or email to such Party at the address **specified in the SCC.**

1.5 Location

The Services shall be performed at such locations as are specified in Appendix A, in the specifications and, where the location of a particular task is not so specified, at such locations, whether in Kenya or elsewhere, as the Procuring Entity may approve.

1.6 Authorized Representatives

Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Procuring Entity or the Service Provider may be taken or executed by the officials **specified in the SCC.**

1.7 Inspection and Audit by the CPF Financial services,

Pursuant to paragraph 2.2 e. of Attachment 1 to the General Conditions, the Service Provider shall permit and shall cause its subcontractors and sub-consultants to permit, CPF Financial services and/or persons appointed by CPF Financial services to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by CPF financial services. The Service Provider's and its Subcontractors' and sub-consultants' attention is drawn to Sub-Clause 3.10 which provides, *inter alia*, that acts intended to materially impede the exercise of CPF financial services to inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to CPF financial services prevailing sanctions procedures).

1.8 Taxes and Duties

The Service Provider, Subcontractors, and their Personnel shall pay such taxes, duties, fees, and other impositions as may be levied under the Applicable Law, the amount of which is deemed to have been included in the Contract Price.

2. Commencement, Completion, Modification, and Termination of Contract

2.1 Effectiveness of Contract

This Contract shall come into effect on the date the Contract is signed by both parties or such other later date as may be **stated in the SCC.**

2.2 Commencement of Services

The Service Provider shall start carrying out the Services thirty (30) days after the date the Contract becomes effective, or at such other date as may be **specified in the SCC.**

2.3 Intended Completion Date

Unless terminated earlier pursuant to Sub-Clause 2.6, the Service Provider shall complete the activities by the Intended Completion Date, as is **specified in the SCC.** If the Service Provider does not complete the activities by the Intended Completion Date, it shall be liable to pay liquidated damage as per Sub-Clause 3.8. In this case, the Completion Date will be the date of completion of all activities.

2.4 Modification

Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written agreement between the Parties.

2.5 Value Engineering

2.5.1 The Service Provider may prepare, at its own cost, a value engineering proposal at any time during the performance of the contract. The value engineering proposal shall, at a minimum, include the following.

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

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

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

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

a) accelerates the delivery period; or
b) reduces the Contract Price or the lifecycle costs to the Procuring Entity; or
c) improves the quality, efficiency, safety or sustainability of the services; or
d) yields any other benefits to the Procuring Entity, without compromising the necessary functions of the Facilities.

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

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

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

2.6 Force Majeure

2.6.1 Definition

For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

2.6.2 No Breach of Contract

The failure of a Party to fulfill any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative Measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

2.6.3 Extension of Time

Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

2.6.5 Payments

During the period of their inability to perform the Services as a result of an event of Force Majeure, the Service Provider shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Service after the end of such period.

2.7 Termination

2.7.1 By the Procuring Entity

The Procuring Entity may terminate this Contract, by not less than thirty (30) days' written notice of termination to the Service Provider, to be given after the occurrence of any of the events specified in paragraphs (a) through
(d) of this Sub-Clause 2.6.1:

a) If the Service Provider does not remedy a failure in the performance of its obligations under the Contract, within thirty (30) days after being notified or within any further period as the Procuring Entity may have subsequently approved in writing;

b) If the Service Provider become insolvent or bankrupt;

c) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or

d) if the Service Provider, in the judgment of the Procuring Entity has engaged in Fraud and Corruption, as defined in paragraph 2.2 a. of Attachment 1 to the GCC, in competing for or in executing the Contract

2.7.2 By the Service Provider

The Service Provider may terminate this Contract, by not less than thirty (30) days' written notice to the Procuring Entity, such notice to be given after the occurrence of any of the events specified in paragraphs (a) and
(b) of this Sub-Clause 2.6.2:

a) If the Procuring Entity fails to pay any monies due to the Service Provider pursuant to this Contract and not subject to dispute pursuant to Clause 7 within forty-five (45) days after receiving written notice from the Service Provider that such payment is overdue; or

b) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

2.7.3 Payment upon Termination

Upon termination of this Contract pursuant to Sub-Clauses 2.6.1 or 2.6.2, the Procuring Entity shall make the following payments to the Service Provider:

a) remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination.

b) except in the case of termination pursuant to paragraphs (a), (b), (d) of Sub-Clause 2.6.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel.

3. Obligations of the Service Provider

3.1 General

The Service Provider shall perform the Services in accordance with the Specifications and the Activity Schedule, and carry out its obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Service Provider shall always act, in respect of any matter relating to this Contractor to the Services, as faithful adviser to the Procuring Entity, and shall at all times support and safeguard the Procuring Entity's legitimate interests in any dealings with Subcontractors or third parties.

3.2 Conflict of Interests

3.2.1 Service Provider Not to Benefit from Commissions and Discounts.

The remuneration of the Service Provider pursuant to Clause 6 shall constitute the Service Provider's sole remuneration in connection with this Contract or the Services, and the Service Provider shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Service Provider shall use their best efforts to ensure that the Personnel, any Subcontractors, and agents of either of them similarly shall not receive any such additional remuneration.

3.2.2 Service Provider and Affiliates Not to be Otherwise Interested in Project

The Service Provider agree that, during the term of this Contract and after its termination, the Service Provider and its affiliates, as well as any Subcontractor and any of its affiliates, shall be disqualified from providing goods, works, or Services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.

3.2.3 Prohibition of Conflicting Activities

Neither the Service Provider nor its Subcontractors nor the Personnel shall engage, either directly or indirectly, in any of the following activities:

a) During the term of this Contract, any business or professional activities in Kenya which would conflict with the activities assigned to them under this Contract.

b) during the term of this Contract, neither the Service Provider nor their Subcontractors shall hire public employees in active duty or on any type of leave, to perform any activity under this Contract;

c) after the termination of this Contract, such other activities as may be **specified in the SCC.**

3.3 Confidentiality

The Service Provider, its Subcontractors, and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the Procuring Entity's business or operations without the prior written consent of the Procuring Entity.

3.4 The Service Provider (a) shall take out and maintain, and shall cause any Subcontractors to take out and maintain, at its (or the Subcontractors', as the case may be) own cost but on terms and conditions approved by the Procuring Entity, insurance against the risks, and for the coverage, as shall be **specified in the SCC;** and (b) at the Procuring Entity's request, shall provide evidence to the Procuring Entity showing that such insurance has been taken out and maintained and that the current premiums have been paid.

3.5 Service Provider's Actions Requiring Procuring Entity's Prior Approval

The Service Provider shall obtain the Procuring Entity's prior approval in writing before taking any of the following actions:

a) Entering into a subcontract for the performance of any part of the Services,

b) appointing such members of the Personnel not listed by name in Appendix C ("Key Personnel and Subcontractors"),

c) changing the Program of activities; and

d) any other action that may be **specified in the SCC.**

3.6 Reporting Obligations

The Service Provider shall submit to the Procuring Entity the reports and documents specified in Appendix Bin the form, in the numbers, and within the periods set forth in the said Appendix.

3.7 Documents Prepared by the Service Provider to Be the Property of the Procuring Entity

All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Service Provider in accordance with Sub-Clause 3.6 shall become and remain the property of the Procuring Entity, and the Service Provider shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Procuring Entity, together with a detailed inventory thereof. The Service Provider may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be **specified in the SCC.**

3.8 Liquidated Damages

3.8.1 Payments of Liquidated Damages

The Service Provider shall pay liquidated damages to the Procuring Entity at the rate per day **stated in the SCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the SCC.** The Procuring Entity may deduct liquidated damages from payments due to the Service Provider. Payment of liquidated damages shall not affect the Service Provider's liabilities.

3.8.2 Correction for Over-payment

If the Intended Completion Date is extended after liquidated damages have been paid, the Procuring Entity shall correct any overpayment of liquidated damages by the Service Provider by adjusting the next payment certificate. The Service Provider shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 6.5.

3.8.3 Lack of performance penalty

If the Service Provider has not corrected a Defect within the time specified in the Procuring Entity's notice, a penalty for Lack of performance will be paid by the Service Provider. The amount to be paid will be calculated as a percentage of the cost of having the Defect corrected, assessed as described in Sub-Clause 7.2 and **specified in the SCC.**

3.9 Performance Security

The Service Provider shall provide the Performance Security to the Procuring Entity no later than the date specified in the Form of acceptance. The Performance Security shall be issued in an amount and form and by a bank or surety acceptable to the Procuring Entity and denominated in the types and proportions of the currencies in which the Contract Price is payable. The performance Security shall be valid until a date 28 day from the Completion Date of the Contract in case of a bank guarantee, and until one year from the Completion Date of the Contract in the case of a Performance Bond.

3.10 Fraud and Corruption

The Procuring Entity requires compliance with the Government's Anti-Corruption laws and its prevailing sanctions. The Procuring Entity requires the Service Provider to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the tendering process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

3.11 Sustainable Procurement

The Service Provider shall conform to the sustainable procurement contractual provisions, if and as specified in the **SCC**.

4. Service Provider's Personnel

4.1 Description of Personnel

The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Service Provider's Key Personnel are described in Appendix C. The Key Personnel and Subcontractors listed by title as well as by name in Appendix C are hereby approved by the Procuring Entity.

4.2 Removal and/or Replacement of Personnel

a) Except as the Procuring Entity may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Service Provider, it becomes necessary to replace any of the Key Personnel, the Service Provider shall provide as a replacement a person of equivalent or better qualifications.

b) If the Procuring Entity finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied

with the performance of any of the Personnel, then the Service Provider shall, at the Procuring Entity's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Procuring Entity.

c) The Service Provider shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

5. Obligations of the Procuring Entity

5.1 Assistance and Exemptions

The Procuring Entity shall use its best efforts to ensure that the Government shall provide the Service Provider such assistance and exemptions as **specified in the SCC.**

5.2 Change in the Applicable Law

If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Service Provider, then the remuneration and reimbursable expenses otherwise payable to the Service Provider under this Contract shall be increased or decreased accordingly by agreement between the Parties, and corresponding adjustments shall be made to the amounts referred to in Sub-Clauses 6.2 (a) or (b), as the case may be.

5.3 Services and Facilities

The Procuring Entity shall make available to the Service Provider the Services and Facilities listed under Appendix F.

6. Payments to the Service Provider

6.1 Lump-Sum Remuneration

6.1.1 The Service Provider's remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all Subcontractors' costs, and all other costs incurred by the Service Provider in carrying out the Services described in Appendix A. Except as provided in Sub-Clause 5.2, the Contract Price may only be increased above the amounts stated in Sub-Clause 6.2 if the Parties have agreed to additional payments in accordance with Sub- Clauses 2.4 and 6.3.

6.1.2 Where the contract price is different from the corrected tender price, in order to ensure the contract or is not paid less or more relative to the contract price (*which would be the tender price*), any part payment valuation and variation orders on omissions and additions valued based on rates in the schedule of rates in the Tender, will be adjusted by a plus or minus percentage. The percentage already worked out during tender evaluation is worked out as follows: *(corrected tender price-tender price)/tenderpriceX100*.

6.2 Contract Price

a) The price payable is **set forth in the SCC.**

b) No price will be payable in foreign currency.

6.3 Payment for Additional Services, and Performance Incentive Compensation

6.3.1 For the purpose of determining the remuneration due for additional Services as may be agreed under Sub-Clause 2.4, a breakdown of the lump-sum price is provided in Appendices D and E.

6.3.2 If the SCC so specify, the service provider shall be paid performance incentive compensation as set out in the Performance Incentive Compensation appendix.

6.4 Terms and Conditions of Payment

Payments will be made to the Service Provider according to the payment schedule **stated in the SCC. Unless otherwise stated in the SCC**, the advance payment (Advance for Mobilization, Materials and Supplies) shall be made against the provision by the Service Provider of a bank guarantee for the same amount and shall be valid for the period **stated in the SCC.** Any other payment shall be made after the conditions **listed in the SCC** for such payment have been met, and the Service Provider have submitted an invoice to the Procuring Entity specifying the amount due.

6.5 Interest on Delayed Payments

If the Procuring Entity has delayed payments beyond thirty (30) days after the due date stated in the **SCC**, interest shall be paid to the Service Provider for each day of delay at the rate stated in **the SCC**.

6.6 Price Adjustment

6.6.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC.** If so provided, the amounts certified in each payment certificate, after deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

$$P_C = A_C + B_C \, Lmc/Loc + C_C \, Imc/Ioc$$

Where:

P_C is the adjustment factor for the portion of the Contract Price payable in a specific currency "c".

A_C, B_C and C_C are coefficients specified in the **SCC**, representing A_C the non-adjustable portion; B_C the adjustable portion relative to labor costs and C_C the adjustable portion for other inputs, of the Contract Price payable in that specific currency "c"; and

Lmc is the index prevailing at the first day of the month of the corresponding invoice date and Loc is the index prevailing 28 days before Tender opening for labor; both in the specific currency "c".

Imc is the index prevailing at the first day of the month of the corresponding invoice date and Ioc is the index prevailing 28 days before Tender opening for other inputs payable; both in the specific currency "c".

If a price adjustment factor is applied to payments made in a currency other than the currency of the source of the index for a particular indexed input, a correction factor Zo/Zn will be applied to the respective component factor of pn for the formula of the relevant currency. Zo is the number of units of Kenya Shillings of the index, equivalent to one unit of the currency payment on the date of the base index, and Zn is the corresponding number of such currency units on the date of the current index.

6.6.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected, and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

6.7 Day works-Not applicable,

6.7.1 If applicable, the Day work rates in the Service Provider's Tender shall be used for small additional amounts of Services only when the Procuring Entity has given written instructions in advance for additional services to be paid in that way.

6.7.2 All work to be paid for as Dayworks shall be recorded by the Service Provider on forms approved by the Procuring Entity. Each completed form shall be verified and signed by the Procuring Entity representative as indicated in Sub-Clause 1.6 within two days of the Services being performed.

6.7.3 The Service Provider shall be paid for Dayworks subject to obtaining signed Dayworks forms as indicated in Sub-Clause 6.7.2

7. Quality Control

7.1 Identifying Defects

The principle and modalities of Inspection of the Services by the Procuring Entity shall be as **indicated in the SCC.** The Procuring Entity shall check the Service Provider's performance and notify him of any Defects that are found. Such checking shall not affect the Service Provider's responsibilities. The Procuring Entity may instruct the Service Provider to search for a Defect and to uncover and test any service that the Procuring Entity considers may have a Defect. Defect Liability Period is as **defined in the SCC**.

7.2 Correction of Defects, and Lack of Performance Penalty

a) The Procuring Entity shall give notice to the Service Provider of any Defects before the end of the Contract. The Defects liability period shall be extended for as long as Defects remain to be corrected.

b) Every time notice a Defect is given; the Service Provider shall correct the notified Defect within the length of time specified by the Procuring Entity's notice.

c) If the Service Provider has not corrected a Defect within the time specified in the Procuring Entity's notice, the Procuring Entity will assess the cost of having the Defect corrected, the Service Provider will pay this amount, and a Penalty for Lack of Performance calculated as described in Sub-Clause 3.8.

8. Settlement of Disputes

8.1 Contractor's Claims

8.1.1 If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

8.1.2 If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Procuring Entity shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

8.1.3 The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

8.1.4 The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting the Procuring Entity's liability, the Project Manager may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contract or to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records and shall (if instructed) submit copies to the Project Manager.

8.1.5 Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full Supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

a) This fully detailed claim shall be considered as interim.

b) The Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Project Manager may reasonably require; and

c) The Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Project Manager.

8.1.6 Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the Project Manager shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars but shall never the less give his response on the principles of the claim with in the above defined time period.

8.1.7 Within the above defined period of 42 days, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

8.1.8 Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

8.1.9 If the Project Manager does not respond within the time frame defined in this Clause, either Party may consider that the claim is rejected by the Project Manager and any of the Parties may refer to Arbitration in

accordance with Sub-Clause 8.2 [Matters that may be referred to arbitration].

8.1.10 The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub- Clause.

8.2 Matters that may be referred to arbitration

8.2.1 Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Services or abandonment of the Services or termination of the Contract by either party:

a) The appointment of a replacement Project Manager upon the said person ceasing to act.

b) Whether or not the issue of an instruction by the Project Manager is empowered by these Conditions.

c) Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.

e) Any dispute arising in respect of war risks or war damage.

f) All other matters shall only be referred to arbitration after the completion or alleged completion of the Services or termination or alleged termination of the Contract, unless the Procuring Entity and the Contractor agree otherwise in writing.

8.3 Amicable Settlement

Where a Notice of Dissatisfaction has been given, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a Notice of Dissatisfaction in accordance with Sub-Clause 8.1 above should move to commence arbitration after the fifty- sixth day from the day on which a Notice of Dissatisfaction was given, even if no attempt at an amicable settlement has been made.

8.4 Arbitration

8.4.1 Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 8.3 shall be finally settled by arbitration. Arbitration shall be conducted in accordance with the Arbitration Laws of Kenya.

8.4.2 The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Project Manager from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

8.4.3 Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction.

8.4.5 Arbitration may be commenced prior to or after completion of the services. The obligations of the Parties, and the Project Manager shall not be altered by reason of any arbitration being conducted during the progress of the services.

8.4.6 The terms of the remuneration of each or all the members of Arbitration shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

8.5 Arbitration with proceedings

8.5.1 In case of any claim or dispute, such claim or dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed, on the request of the applying party, by the Chairman or Vice Chairman of any of the following professional institutions.

i) Law Society of Kenya or
ii) Chartered Institute of Arbitrators (Kenya Branch)

8.5.2 The institution written to first by the aggrieved party shall take precedence overall other institutions.

8.5.3 The arbitration may be on the construction of this Contract or on any matter or thing of whatsoever nature arising there under or in connection there with, including any matter or thing left by this Contract to the discretion of the Project Manager, or the withholding by the Project Manager of any certificate to which the Contractor may claim to be entitled to or the measurement and valuation referred to in clause 23.0 of these conditions, or the rights and liabilities of the parties subsequent to the termination of Contract.

8.5.4 Provided that no arbitration proceedings shall be commenced on any claim or dispute where notice of a claim or dispute has not been given by the applying party within ninety days of the occurrence or discovery of the matter or issue giving rise to the dispute.

8.5.5 Notwithstanding the issue of a notice as stated above, the arbitration of such a claim or dispute shall not commence unless an attempt has in the first instance been made by the parties to settle such claim or dispute amicably with or without the assistance of third parties. Proof of such attempt shall be required.

8.5.6 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.

8.5.7 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision requirement or notice had been given.

8.5.8 The award of such Arbitrator shall be final and binding upon the parties.

8.6 Failure to Comply with Arbitrator's Decision

8.6.1 In the event that a Party fails to comply with a final and binding Arbitrator's decision, then the other Party may, without prejudice to any other rights it may have, refer the matter to a competent court of law.

9. The Adjudicator

9.1. Should the Adjudicator resign or die, or should the Procuring Entity and the Service Provider agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator will be jointly appointed by the Procuring Entity and the Service Provider. In case of disagreement between the Procuring Entity and the Service Provider, within 30 days, the Adjudicator shall be designated by the Appointing Authority **designated in the SCC** at the request of either party, within 14 days of receipt of such request.

9.2 The Adjudicator shall be paid by the hour at the rate **specified in the TDS and SCC,** together with reimbursable expenses of the types **specified in the SCC**, and the cost shall be divided equally between the Procuring Entity and the Service Provider, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.

SECTION IX - SPECIAL CONDITIONS OF CONTRACT

The following Special Conditions of Contract (SCC) shall supplement or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions of the SCC shall prevail over those in the General Conditions of Contract. For the purposes of clarity, any referenced GCC clause numbers are indicated in the left column of the SCC.

GCC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(a)	The Adjudicator is **Chartered Institute of Arbitrators Kenya**
1.1(w)	Project Manager is **…**
1.1(e)	The contract name is **Proposed 30kwp solar plants at Freedom Height Mall.**
1.1(h)	The Procuring Entity is
1.1(m)	The Member in Charge is _____
1.1(p)	The Service Provider is _____
1.4	The addresses are: Procuring Entity: Attention: Service Provider: Attention: Email address
1.6	The Authorized Representatives are: For the Procuring Entity: For the Service Provider:
2.1	The date on which this Contract shall come into effect is the **date of signing the contract.**
2.2.2	The Starting Date for the commencement of Services is the **date of signing the contract.**
2.3	The Intended Completion Date is **One calendar years after signing the contract.**
2.5.3	If the value engineering proposal is approved by the Procuring Entity the amount to be paid to the Service Provider shall be **0%** of the reduction in the Contract Price.
3.2.3	Activities prohibited after termination of this Contract are the **use of corporate secrets and information without express of CPF Financial services.**
3.5(d)	The other actions are**.**
3.7	Restrictions on the use of documents prepared by the Service Provider are: All use of CPF related documents shall be subject to prior approval of the Client.
3.8.1	The liquidated damages rate is **0.5% of the call off contract price** per day The maximum amount of liquidated damages for the whole contract is ***10*** **percent** of the final Contract Price.
3.8.3	The percentage of the cost of replacement parts to be used for the calculation of **Lack of performance Penalties** ***100%***
6.2(a)	The amount in Kenya Shillings _____.
6.3.2	The performance incentive paid to the Service Provider shall be **0%**

GCC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
6.4	Payments shall be made according to the following schedule: (a) Advance for Mobilization, Materials and Supplies: **0 (zero) percent** of the Contract Price shall be paid on the commencement date against the submission of a bank guarantee for the same. (b) Progress payments in accordance with the milestones established as follows, subject to certification by the Procuring Entity, that the Services have been rendered satisfactorily, pursuant to the performance indicators: **100% after proposed 30kwp solar plants at Freedom Height Mall.** Should the certification not be provided or refused in writing by the Procuring Entity within one month of the date of the milestone, or of the date of receipt of the corresponding invoice, the certification will be deemed to have been provided, and the progress payment will be released at such date. (c) The amortization of the Advance mentioned above shall commence when the progress payments have reached **25% of the contract price** and be completed when the progress payments have reached 75%. (d) The bank guarantee for the advance payment shall be released when the advance payment has been fully amortized.
6.5	Payment shall be made within ***30*** **days** of receipt of the invoice and the relevant documents specified in Sub-Clause 6.4, and within ***45*** **days** in the case of the final payment. The interest rate is **prevailing Central Bank of Kenya mean rate.**
6.6.1	**Not Applicable:** Price adjustment is _____ in accordance with Sub-Clause 6.6. The coefficients for adjustment of prices are _____: (a) For local currency: A_L is _____ B_L is _____ C_L is _____ L_{mc} and L_{oc} are the index for Labor from _____ I_{mc} and I_{oc} are the index for _____ from _____ (b) For foreign currency A_F is _____ B_F is _____ C_F is _____ L_{mc} and L_{oc} are the index for Labor from _____ I_{mc} and I_{oc} are the index for _____ from _____
7.1	The principle and modalities of inspection of the Services by the Procuring Entity are as follows: ***the Proposed 30kwp solar plants at Freedom Height Mall and issuance of Certificate of Service*** The Defects Liability Period is **three months.**
9.1	The designated Appointing Authority for a new Adjudicator is the **Chief Executive Officer**
9.2	The Adjudicator is appointed by the **Chartered Institute of Arbitrators Kenya.** Who will be paid a **rate agreed between the parties** per hour of work. The following reimbursable expenses are recognized: **to be determined for each case**.

Appendices

Appendix A - Description of the Services

Give detailed descriptions of the Services to be provided, dates for completion of various tasks, place of performance for different tasks, specific tasks to be approved by Procuring Entity, etc.

Appendix B - Schedule of Payments and Reporting Requirements

List all milestones for payments and list the format, frequency, and contents of reports or products to be delivered; persons to receive them; dates of submission; etc. If no reports are to be submitted, state here "Not applicable."

Appendix C - Subcontractors

List under: C-1 List of approved Subcontractors (if already available); same information with respect to their Personnel as in C-1.

Appendix D – Breakdown of Contract Price *List here the elements of cost used to arrive at the breakdown of the lump-sum price. This appendix will exclusively be used for determining remuneration for additional Services.*

Appendix E - Services and Facilities Provided by the Procuring Entity

Section X - Contract Forms

Table of Forms

(a) Notification of Award

(b) Request for Review

(c) Performance Security-Unconditional Demand Guarantee

(d) Performance Security-Performance Bond

(e) Advance Payment Security-Demand Bank Guarantee

(f) Beneficial Ownership Form

NOTIFICATION OF AWARD

[Form head paper of the Procuring Entity] [date] To: *.....[name and address of the Service Provider]*

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

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

Please return the attached Contract dully signed Authorized Signature:

Name and Title of Signatory:

Name of Agency:

Attachment: Contract

FORM FOR REVIEW (r.203(1))

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO……. OF…….20……...

BETWEEN

……..…….. APPLICANT

AND

……RESPONDENT (Procuring Entity)

Request for review of the decision of the…… (Name of the Procuring Entity of ……dated the…day of ……20…….in the matter of Tender No……..…of ……...20….. for .....(Tender description).

REQUEST FOR REVIEW

I/We……, the above named Applicant(s), of address: Physical address……. P. O. Box No……. Tel. No……...Email ……., hereby request the Public Procurement Administrative Review Board to review the whole/part of the above mentioned decision on the following grounds, namely:

1.

2.

By this memorandum, the Applicant requests the Board for an order/orders that:

1.

2.

SIGNED ……. (Applicant) Dated on……. day of ……/…20……

FOR OFFICIAL USE ONLY Lodged with the Secretary Public Procurement Administrative Review Board on……day of ……....20……

SIGNED

Board Secretary

FORM OF CONTRACT [Form head paper of the Procuring Entity]

LUMP-SUMREMUNERATION

This CONTRACT (herein after called the "Contract") is made the *[day]* day of the month of *[month], [year]*, between, on the one hand, *[name of Procuring Entity]* (herein after called the "Procuring Entity") and, on the other hand, *[name of Service Provider]* (herein after called the "Service Provider").

[***Note**: In the text below text in brackets is optional; all notes should be deleted in final text. If the Service Provider consist of more than one entity, the above should be partially amended to read as follows:* "… (herein after called the "Procuring Entity") and, on the other hand, a joint venture consisting of the following entities, each of which will be jointly and severally liable to the Procuring Entity for all the Service Provider's obligations under this Contract, namely, *[name of Service Provider]* and *[name of Service Provider]* (herein after called the "Service Provider").]

WHEREAS

a) the Procuring Entity has requested the Service Provider to provide certain Services as defined in the General Conditions of Contract attached to this Contract (herein after called the "Services");

b) the Service Provider, having represented to the Procuring Entity that they have the required professional skills, and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract at a contract price of……;

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents shall be deemed to form and be read and construed as part of this Agreement, and the priority of the documents shall be as follows:

   a) The Form of Acceptance.

   b) The Service Provider's Tender

   c) The Special Conditions of Contract.

   d) The General Conditions of Contract.

   e) The Specifications and the Priced Activity Schedule; and

   f) The following Appendices: ***[Note**: If any of these Appendices are not used, the words "Not Used" should be inserted below next to the title of the Appendix and on the sheet attached hereto carrying the title of that Appendix.]*

   Appendix A: Description of the Services

   Appendix B: Schedule of Payments

   Appendix C: Subcontractors Appendix

   D: Breakdown of Contract Price

2. The mutual rights and obligations of the Procuring Entity and the Service Provider shall be as set forth in the Contract, in particular:

   a) The Service Provider shall carry out the Services in accordance with the provisions of the Contract; and

   b) The Procuring Entity shall make payments to the Service Provider in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in the irrespective names as of the day and year first above written.

For and on behalf of *[name of Procuring*

_____

Entity] [Authorized Representative]

For and on behalf of *[name of Service*

_____

Provider] [Authorized Representative]

*[**Note**: If the Service Provider consists of more than one entity, all these entities should appear as signatories, e.g., in the following manner:]*

For and on behalf of each of the Members of the Service Provider

_____

[name of member]

_____

[Authorized Representative]

_____

[name of member]

_____

[Authorized Representative]

FORM NO. 1 - PERFORMANCE SECURITY - (Unconditional Demand Bank Guarantee)

*[*Guarantor *letterhead or SWIFT identifier code]*

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

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

PERFORMANCE GUARANTEE No.:_____

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

1. We have been informed that_____(herein after called" the Applicant") has entered into Contract No._____*[dated*]_____with the Beneficiary, for the execution of_____(herein after called" the Contract").

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

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

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

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

_____

_____

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

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

PERFORMANCE SECURITY OPTION 2 - (Performance Bond)

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

[Guarantor letterhead or SWIFT identifier code]

Beneficiary:_____*[insert name and Address of* Procuring Entity*]* **Date:**_____*[Insert date of issue]*

PERFORMANCE BOND No.:_____

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

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

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

3. NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Procuring Entity to be, in default under the Contract, the Procuring Entity having performed the Procuring Entity's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:
   1) Complete the Contract in accordance with its terms and conditions; or
   2) Obtain a tender or tenders from qualified tenderers for submission to the Procuring Entity for completing the Contract in accordance with its terms and conditions, and upon determination by the Procuring Entity and the Surety of the lowest responsive Tenderers, arrange for a Contract between such Tenderer, and Procuring Entity and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "Balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by Procuring Entity to Contractor under the Contract, less the amount properly paid by Procuring Entity to Contractor; or
   3) Pay the Procuring Entity the amount required by Procuring Entity to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

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

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

6. In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this day_____of_____20_____.

SIGNED ON_____on behalf of

By_____in the capacity

of In the presence of_____SIGNED ON

_____on behalf of

By_____in the capacity of

In the presence of _____

ADVANCE PAYMENT SECURITY [Demand Bank Guarantee]
[Guarantor letterhead or SWIFT identifier code] [Guarantor letterhead or SWIFT

identifier code]

Beneficiary: *[Insert name and Address of* Procuring Entity*]* **Date:** *[Insert date of issue]*

ADVANCE PAYMENT GUARANTEE No.: *[Insert guarantee reference number]* **Guarantor: [***Insert name and address of place*

of issue, unless indicated in the letterhead]

1. We have been informed that (herein after called "the Applicant") has entered into Contract No. *dated* with the Beneficiary, for the execution of (herein after called" the Contract").

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

3. At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of ()[1] upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:

   a) Has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or

b) Has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Applicant on its account number__at_____.

5. The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the day of, 2,[2] whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

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

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

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

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[1]*The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency (ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Procuring Entity.*

[2]*Insert the expected expiration date of the Time for Completion. The Procuring Entity should note that in the event of an extension of the time for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Procuring Entity might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months] [one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."*

FORM NO. 4 BENEFICIAL OWNERSHIP DISCLOSURE FORM

INSTRUCTIONS TO TENDERERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE FORM

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

For the purposes of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the Tenderer by meeting one or more of the following conditions:

- *Directly or indirectly holding 25% or more of the shares.*
- *Directly or in directly holding 25% or more of the voting rights.*
- *Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer.*

Tender Reference No.:_____[*insert identification no*] Name of the Assignment:__

_____*[insert name of the assignment]* to:____*[insert complete name of Procuring Entity]*

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

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

Details of beneficial ownership

Identity of Beneficial Owner	**Directly or indirectly holding 25% or more of the shares (Yes / No)**	**Directly or indirectly holding 25 % or more of the Voting Rights (Yes / No)**	**Directly or indirectly having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer (Yes / No)**
[include full name (last, middle, first), nationality, country of residence]			

OR

ii) We declare that there is no Beneficial Owner meeting one or more of the following conditions: directly or indirectly holding 25% or more of the shares. Directly or indirectly holding 25% or more of the voting rights. Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer.

OR

We declare that we are unable to identify any Beneficial Owner meeting one or more of the following conditions. [If this option is selected, the Tenderer shall provide explanation on why it is unable to identify any Beneficial Owner]

Directly or indirectly holding 25% or more of the shares. Directly or indirectly holding25% or more of the voting rights.

Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer]"

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

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

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

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

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