

# KENYA MARINE AND FISHERIES RESEARCH INSTITUTE



## TENDER NOTICE

### **Tender No. KMF/HQs/13/2019-2020: For Procurement Services for Wet Leasing of Vessel to support RV Mtafiti Echo-Sounding Fisheries Stock Assessment Surveys**

1. Kenya Marine and Fisheries Research Institute (KMFRI) is a research body established within the provision of Science and Technology Act (1979) Cap 250 charged with the responsibility to undertake research in Marine and freshwater fisheries, aquaculture, environmental and ecological studies and marine research including chemical and physical oceanography, in order to provide scientific data and information for sustainable exploitation, management and conservation of Kenya's fisheries resources and aquatic environment and contribute to National strategies towards food security, poverty alleviation, and creation of employment.
2. The Director-KMFRI therefore wishes to invite sealed tenders from eligible and qualified bidders for **Tender No. KMF/HQs/13/2019-2020; Being for Wet Leasing of Vessel to support RV Mtafiti Echo-Sounding Fisheries Stock Assessment Surveys;**

S/No	Tender No.	Description of Goods	QTY
1	KMF/HQS/13/2019-2020	Wet Leasing of Vessel to support RV Mtafiti Echo-Sounding Fisheries Stock Assessment Surveys	1 No.

3. Interested firms may obtain tender documents from the office of the Head of Procurement Function at KMFRI Headquarters located at English Point Mkomani in Mombasa during normal working office hours (Monday–Friday) upon payment of a non-refundable fee of Kshs 1,000/= (One thousand Shillings only) for the tender document only payable to the KMFRI Cashier in Mombasa. The document can also be viewed and downloaded from the website [www.kmfri.go.ke](http://www.kmfri.go.ke) at no fee. Bidders who opt to download from the website must immediately register with the Head of Procurement, KMFRI Headquarters a **Mandatory Requirement**. Enquiries can be made via email address: [kmfriprocurement@kmfri.go.ke](mailto:kmfriprocurement@kmfri.go.ke)
4. Completed Tender documents in plain sealed envelopes marked with the respective **“Tender Title and Reference Number”** should be addressed to:-

The Director, Kenya Marine and Fisheries Research Institute  
East African Time: 0900 to 1500 hours.  
Silos Road, English Point - Mkomani  
MOMBASA. Email: [kmfriprocurement@kmfri.go.ke](mailto:kmfriprocurement@kmfri.go.ke) / [supplies@kmfri.go.ke](mailto:supplies@kmfri.go.ke)  
Telephone: +254-20-2353904 or +254-20-8041560/1/ +254 020 8021560/1  
Tel: +254 41 475154 or +25420 8041560/1, +254 020 8021560/1

OR be deposited into the Tender Box mounted at the entrance of the supplies office of Kenya Marine and Fisheries Research Institute situated at English point MOSC Wing, Mkomani, Mombasa on or before **Wednesday, 2<sup>nd</sup> October, 2019 at 12.00 noon.**

Tenders will be opened immediately thereafter in the presence of the candidates representatives who choose to attend in the Auditorium Hall at KMFRI Headquarters in

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

5. Qualifications requirements include:
- (a) Valid Certified Audited Statements of accounts for financial year 2016, 2017 and 2018
  - (b) Proof of similar contracts in scope and value
  - (c) Certificate(s) of incorporation
  - (d) Valid tax compliance certificate
  - (e) Valid In-Date Vessel Safety Certificate (Sea Worthiness certificate)
6. All bids must be accompanied by bid security as follows:

<i>Contract No</i>	<i>Description of the Contract</i>	<i>Qty</i>	<i>Tender Security Amount in KES.</i>
<i>KMF/HQS/13/2019-2020</i>	Wet Leasing of Vessel to support RV Mtafiti Echo-Sounding Fisheries Stock Assessment Surveys	<b>1 No</b>	2% of Tender Sum

Mr. Isack Owiti Kojo  
**For: DIRECTOR/KMFRI**

**17<sup>th</sup> September, 2019**

# TABLE OF CONTENTS

	PAGE
INTRODUCTION .....	3
SECTION I INVITATION TO TENDER.....	4
SECTION II INSTRUCTIONS TO TENDERERS.....	5
Appendix to Instructions to Tenderers .....	21
SECTION III GENERAL CONDITIONS OF CONTRACT.....	23
SECTION IV SPECIAL CONDITIONS OF CONTRACT.....	30
SECTION V TECHNICAL SPECIFICATIONS.....	32
SECTION VI SCHEDULE OF REQUIREMENTS.....	34
SECTION VII PRICE SCHEDULE FOR GOODS.....	35
SECTION VIII STANDARD FORMS.....	36
8.1 FORM OF TENDER.....	37
8.2 CONFIDENTIAL BUSINESS QUESTIONNAIRES FORMS.....	38
8.3 TENDER SECURITY FORM.....	39
8.4 CONTRACT FORM.....	40
8.5 PERFORMANCE SECURITY FORM.....	41
8.6 BANK GUARANTTE FOR ADVANCE PAYMENT FORM.....	42
8.7 MANUFACTURER’S AUTHORIZATION FORM.....	43

## **Introduction**

- 1.1 This Standard Tender Document has been prepared for use by public entities in Kenya
- 1.2 The following general directions should be observed when using the document.
  - (a) Specific details should be furnished in the Invitation to Tender and in the special conditions of contract. The final documents to be provided to the tenderers should not have blank spaces or give options
  - (b) The Instructions to Tenderers and the general conditions of contract should remain unchanged. Any necessary amendments to these parts should be made through the special conditions of contract and the appendix to instructions to tenderers.
- 1.3
  - (a) Information contained in the Invitation to Tender shall conform to the data and information in the tender documents to enable potential tenderers to decide whether or not to participate and shall indicate any important tender requirements.
  - (b) The Invitation to Tender shall be issued as an advertisement in accordance with the regulations or a letter of invitation addressed to tenderers who have expressed interest following the invitation for expression of interest for which the invitation is issued.

**SECTION I**

**INVITATION TO TENDER**

**DATE** 17<sup>th</sup> September, 2019

**TENDER REF NO.** (as per tender document)

**TENDER NAME** (as per tender documents)

- 1.1 The (*procuring entity*) invites sealed bids from eligible candidates for supply of (*brief description of the goods*).
- 1.2 Interested eligible candidates may obtain further information from and inspect the tender documents at (*name and address and physical location of the procuring entity including the relevant office*) during normal working hours.
- 1.3 A complete set of tender documents may be obtained by interested candidates upon payment of non-refundable fees of (*amount*) in cash or Bankers cheque payable to (*Accounting Officer*)
- 1.4 Completed tender documents are to be enclosed in plain sealed envelopes marked with tender reference number and be deposited in the Tender Box at (*address and location*) or be addressed to (*Procuring entity name and address*) so as to be received on or before (*Day, Date and time*)
- 1.5 Prices quoted should be net inclusive of all taxes and delivery must be in Kenya Shillings and shall remain valid for ( ) days from the closing date of the tender.
- 1.6 Tenders will be opened immediately thereafter in the presence of the Candidates or their representatives who choose to attend at (*address and appropriate office*)

For (*Accounting Officer/Procuring entity*)

(*Modify as necessary*) \_ **REFER TO PAGES 1 & 2 ABOVE**

## Table of Clauses

	Page
2.1 Eligible tenderers.....	6
2.2 Eligible goods.....	6
2.3 Cost of tendering.....	6
2.4 Contents of Tender document.....	7
2.5 Clarification of documents.....	7
2.6 Amendment of documents.....	8
2.7 Language of tender.....	8
2.8 Documents comprising the tender.....	8
2.9 Tender forms.....	9
2.10 Tender prices.....	9
2.11 Tender currencies.....	9
2.12 Tenderers eligibility and qualifications.....	0
2.13 Goods' eligibility and conformity to tender documents.....	10
2.14 Tender security.....	11
2.15 Validity of tenders.....	12
2.16 Format and signing of tenders.....	13
2.17 Sealing and marking of tenders.....	13
2.18 Deadline for submission of tender .....	14
2.19 Modification and withdrawal of tenders.....	14
2.20 Opening of tenders.....	15
2.21 Clarification of tenders.....	15
2.22 Preliminary examination.....	15
2.23 Conversion to single currency.....	16
2.24 Evaluation and comparison of tenders.....	16
2.25 Contacting the procuring entity.....	17
2.26 Award of contract.....	17
(a) Post qualification.....	17
(b) Award criteria.....	17
(c) Procuring entity's right to vary quantities....	18
(d) Procuring entity's right to accept or reject any or all tenders .....	18
2.27 Notification of award.....	18
2.28 Signing of contract.....	18
2.29 Performance security.....	19
2.30 Corrupt or fraudulent practices.....	19

## **SECTION II - INSTRUCTIONS TO TENDERERS**

### **2.1 Eligible Tenderers**

- 2.1.1 This Invitation for Tenders is open to all tenderers eligible as described in the Invitation to Tender. Successful tenderers shall complete the supply of goods by the intended completion date specified in the Schedule of Requirements Section VI.
- 2.1.2 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.
- 2.1.3 Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods under this Invitation for tenders.
- 2.1.4 Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices.

### **2.2 Eligible Goods**

- 2.2.1 All goods to be supplied under the contract shall have their origin in eligible source countries.
- 2.2.2 For purposes of this clause, "origin" means the place where the goods are mined, grown, or produced. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially-recognized product results that is substantially different in basic characteristics or in purpose or utility from its components
- 2.2.3 The origin of goods is distinct from the nationality of the tenderer.

### **2.3 Cost of Tendering**

- 2.3.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the procuring entity, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 2.3.2 The price to be charged for the tender document shall not exceed Kshs.1,000/=
- 2.3.3 All firms found capable of performing the contract satisfactorily in accordance with the set prequalification criteria shall be prequalified.

### **2.4 The Tender Document**

- 2.4.1 The tender document comprises the documents listed below and addenda issued in accordance with clause 2.6 of these instructions to Tenderers
  - (i) Invitation to Tender
  - (ii) Instructions to tenderers
  - (iii) General Conditions of Contract
  - (iv) Special Conditions of Contract
  - (v) Schedule of requirements

- (vi) Technical Specifications
- (vii) Tender Form and Price Schedules
- (viii) Tender Security Form
- (ix) Contract Form
- (x) Performance Security Form
- (xi) Bank Guarantee for Advance Payment Form
- (xii) Manufacturer's Authorization Form
- (xiii) Confidential Business Questionnaire

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

## **2.5 Clarification of Documents**

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

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

## **2.6 Amendment of Documents**

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

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

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

## **2.7 Language of Tender**

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

## **2.8 Documents Comprising of Tender**

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



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

## **2.9 Tender Forms**

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

## **2.10 Tender Prices**

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

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

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

2.10.4 The validity period of the tender shall be 60 days from the date of opening of the tender.

## **2.11 Tender Currencies**

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

## **2.12 Tenderers Eligibility and Qualifications**

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

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

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

- (a) that, in the case of a tenderer offering to supply goods under the contract which the tenderer did not manufacture or otherwise produce,

the tenderer has been duly authorized by the goods' Manufacturer or producer to supply the goods.

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

## **2.13 Goods Eligibility and Conformity to Tender Documents**

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

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

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

- (a) a detailed description of the essential technical and performance characteristic of the goods;
- (b) a list giving full particulars, including available source and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the goods for a period of two (2) years, following commencement of the use of the goods by the Procuring entity; and
- (c) a clause-by-clause commentary on the Procuring entity's Technical Specifications demonstrating substantial responsiveness of the goods and service to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.

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

## **2.14 Tender Security**

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

2.14.2 The tender security shall be in the amount of 0.5 – 2 per cent of the tender price.

- 2.14.3 The tender security is required to protect the Procuring entity against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 2.14.7
- 2.14.4 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form of a bank guarantee or a bank draft issued by a reputable bank located in Kenya or abroad, or a guarantee issued by a reputable insurance company in the form provided in the tender documents or another form acceptable to the Procuring entity and valid for thirty (30) days beyond the validity of the tender.
- 2.14.5 Any tender not secured in accordance with paragraph 2.14.1 and 2.14.3 will be rejected by the Procuring entity as non responsive, pursuant to paragraph 2.22
- 2.14.6 Unsuccessful Tenderer's tender security will be discharged or returned as promptly as possible as but not later than thirty (30) days after the expiration of the period of tender validity prescribed by the Procuring entity.
- 2.14.7 The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 2.27 and furnishing the performance security, pursuant to paragraph 2.28
- 2.14.8 The tender security may be forfeited:
- (a) if a tenderer withdraws its tender during the period of tender validity specified by the procuring entity on the Tender Form; or
  - (b) in the case of a successful tenderer, if the tenderer fails:
    - (i) to sign the contract in accordance with paragraph 2.27
    - or
    - (ii) to furnish performance security in accordance with paragraph 2.28

## 2.15 **Validity of Tenders**

- 2.15.1 Tenders shall remain valid for 120 days or as specified in the Invitation to Tender after the date of tender opening prescribed by the Procuring entity, pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the Procuring entity as non responsive.
- 2.15.2 In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 2.14 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

## 2.16 **Format and Signing of Tender**

- 2.16.1 The Procuring entity shall prepare two copies of the tender, clearly marking each "ORIGINAL TENDER" and "COPY OF TENDER," as appropriate. In the event of any discrepancy between them, the original shall govern.
- 2.16.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. The latter authorization shall be indicated

by written power-of-attorney accompanying the tender. All pages of the tender, except for unamended printed literature, shall be initialed by the person or persons signing the tender.

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

## **2.17 Sealing and Marking of Tenders**

- 2.17.1 The Tenderer shall seal the original and each copy of the tender in separate envelopes, duly marking the envelopes as “ORIGINAL” and “COPY.” The envelopes shall then be sealed in an outer envelope.

- 2.17.2 The inner and outer envelopes shall:

(a) be addressed to the Procuring entity at the address given in the Invitation to Tender:

(b) bear, tender number and name in the Invitation for Tenders and the words, “DO NOT OPEN BEFORE,” 16<sup>th</sup> May, 2018 at 12.00 noon

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

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

## **2.18 Deadline for Submission of Tenders**

- 2.18.1 Tenders must be received by the Procuring entity at the address specified under paragraph 2.17.2 no later than **Wednesday, 2<sup>nd</sup> October, 2019 at 12.00 noon**

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

## **2.19 Modification and Withdrawal of Tenders**

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

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

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

- 2.19.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the Tenderer's forfeiture of its tender security, pursuant to paragraph 2.14.7
- 2.19.5 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 2.19.6 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

## **2.20 Opening of Tenders**

- 2.20.1 The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, at **Wednesday, 2<sup>nd</sup> October, 2019 at 12.00 noon** and in the location specified in the Invitation to Tender.

The tenderers' representatives who are present shall sign a register evidencing their attendance.

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

## **2.21 Clarification of Tenders**

- 2.21.1 To assist in the examination, evaluation and comparison of tenders the Procuring entity may, at its discretion, ask the tenderer for a clarification of its tender. The request for clarification and the response shall be in writing, and no change in the prices or substance of the tender shall be sought, offered, or permitted.
- 2.21.2 Any effort by the tenderer to influence the Procuring entity in the Procuring entity's tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderers' tender.

## **2.22 Preliminary Examination**

- 2.22.1 The Procuring entity will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order.
- 2.22.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantify, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security forfeited. If there is a discrepancy between words and figures the amount in words will prevail
- 2.22.3 The Procuring entity may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or effect the relative ranking of any tenderer.

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

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

### **2.23 Conversion to Single Currency**

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

### **2.24 Evaluation and Comparison of Tenders**

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

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

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

### **2.25 Preference**

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

### **2.26 Contacting the Procuring entity**

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

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

### **2.27 Award of Contract**

#### **(a) Post-qualification**

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

2.27.2 The determination will take into account the tenderer financial, technical, and production capabilities. It will be based upon an examination of the documentary

evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 2.12.3 as well as such other information as the Procuring entity deems necessary and appropriate.

2.27.3 An affirmative determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the Tenderer's tender, in which event the Procuring entity will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

(b) **Award Criteria**

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

(c) **Procuring entity's Right to Vary quantities**

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

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

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

**2.28 Notification of Award**

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

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

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

**2.29 Signing of Contract**

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

2.29.2 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

2.29.3 Within thirty (30) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Procuring entity.

**2.30 Performance Security**

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

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

### **2.31 Corrupt or Fraudulent Practices**

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

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

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

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

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



## **Appendix to Instructions to Tenderers**

### **Notes on the Appendix to the Instruction to Tenderers**

1. The Appendix to instructions to tenderers is intended to assist the procuring entity in providing specific information in relation to the corresponding clause in the instructions to Tenderers included in Section II and has to be prepared for each specific procurement.
2. The procuring entity should specify in the appendix information and requirements specific to the circumstances of the procuring entity, the goods to be procured and the tender evaluation criteria that will apply to the tenders.
3. In preparing the Appendix the following aspects should be taken into consideration;
  - (a) The information that specifies and complements provisions of Section II to be incorporated
  - (b) Amendments and/or supplements if any, to provisions of Section II as necessitated by the circumstances of the goods to be procured to be also incorporated
4. Section II should remain unchanged and can only be amended through the Appendix.
5. Clauses to be included in this part must be consistent with the public procurement law and the regulations.

## Appendix to Instructions to Tenderers

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

## Section II. Bidding Data Sheet (BDS) – Instruction To Bidders (ITB)

<b>ITB Clause Reference</b>	<b>A. General</b>		
<b>ITB 1.1</b>	The Purchaser is: <b>Kenya Marine &amp; Fisheries Research Institute (KMFRI)</b>		
<b>ITB 1.1</b>	The name and identification number of the tender: Wet Leasing of Vessel to support RV Mtafiti Echo-Sounding Fisheries Stock Assessment Surveys <b>Tender No. KMF/HQS/13/2019-2020</b> The number, identification and names of the items comprising this IFB are: <b>KMF/HQS/13/2019-2020; for Wet Leasing of Vessel to support RV Mtafiti Echo-Sounding Fisheries Stock Assessment Surveys</b> is as herein under:		
	<b>ITem No.</b>	<b>Description</b>	<b>Quantity</b>
	1	Wet Leasing of Vessel to support RV Mtafiti Echo-Sounding Fisheries Stock Assessment Surveys	1
<b>ITB 2.1</b>	The name of the Purchaser is: <b>Kenya Marine and Fisheries Research Institute</b>		
	<b>B. Contents of Bidding Documents</b>		
<b>ITB 7.1</b>	For <u>Clarification of bid purposes</u> only, the Purchaser’s address is: Attention: <b>Director– Kenya Marine &amp; Fisheries Research Institute,</b> Address: <b>Silos Road, English Point – Mkomani.</b> City: <b>Mombasa.</b> ZIP Code: <b>+254,</b> Country: <b>KENYA. (EAST AFRICA)</b> Telephone: <b>+254-20-2353904 or +254-20-8041560/1/ +254 020 8021560/1</b> Facsimile number: <b>+254-20-235 3226; Cell-phone No. +254 712004853</b> Electronic mail address: <a href="mailto:supplies@kmfri.go.ke">supplies@kmfri.go.ke</a>		
	<b>C. Preparation of Bids</b>		
<b>ITB 10.1</b>	The language of the bid is English.		
<b>ITB 11.1 (h)</b>	The Bidder shall submit the following additional <b>MANDATORY DOCUMENTS</b> which will be used during Preliminary Examination to		

	<p>determine responsiveness:</p> <ol style="list-style-type: none"> <li>1) Copy of certificate of Registration/Incorporation;</li> <li>2) Copy of Valid Tax Compliance certificate;</li> <li>3) Must Fill the Form of Tender in the format provided;</li> <li>4) Valid work permits;</li> <li>5) Audited accounts for the year 2016/2017/2018;</li> <li>6) The bid validity period shall be <b>120 days</b> from the tender opening date and the bid guarantee shall remain valid for 28 days beyond the validity period for the bids;</li> <li>7) Proof of similar contracts in scope and value</li> <li>8) Vessel Registration,</li> <li>9) In-Date Vessel Safety Certificate (Sea Worthiness)</li> <li>10) P&amp;I Insurance certificate</li> <li>11) Must fill Confidential Business Questionnaire Form</li> <li>12) Bidders shall sequentially serialize all pages for each tender document submitted failure to which the bidder shall be disqualified</li> </ol> <p>At this stage, the tenderer's submission will either be responsive or non-responsive. The non-responsive submissions will be eliminated from the entire evaluation process and will not be considered further.</p>
<b>ITB 13.1</b>	Alternative Bids <b>shall not</b> be considered.
<b>ITB 14.5</b>	<ul style="list-style-type: none"> <li>• A Bank Guaranteed cheque for the full value of the cost of the survey to be given. This is amortized over the period of the contract.</li> <li>• Vessel down-time due to engine failure is for vessel account – sea days lost to be recovered through additional sea days to complete survey design.</li> </ul>
ITB 14.6 (b) (i) and (c) (iii)	Place of Destination is <b>Kenya Marine And Fisheries Research Institute – Mombasa, Kenya</b> - in the Kenya territorial waters
<b>ITB 14.6 (a) (iii);(b)(ii) and (c)(v)</b>	<p><b>Final destination for purpose of delivery of the goods under this procurement”: shall be the Project Sites office premises in:</b></p> <ul style="list-style-type: none"> <li>• Wet Leasing of Vessel to support RV Mtafiti Echo-Sounding Fisheries Stock Assessment Surveys in the Kenya territorial waters (Indian Ocean)</li> </ul>
<b>ITB 14.6 (b) (iii)</b>	In addition to the CIP price specified in ITB 14.6 (b)(i), the price of the Goods manufactured outside the Purchaser's Country shall be quoted: <i>Not Applicable</i>
<b>ITB 14.7</b>	The prices quoted by the Bidder <b>shall not</b> be adjustable.
<b>ITB 14.8</b>	<p>Prices quoted for each lot shall correspond at least to 100 % of the items specified for each lot. <i>Not Applicable</i></p> <p>Prices quoted for each item of a lot shall correspond at least to 100% of the quantities specified for this item of a lot. <i>Not Applicable</i></p>
<b>ITB 15.1</b>	The Bidder is required to quote in the currency of the Purchaser's Country the portion of the bid price that corresponds to expenditures incurred in that currency.
<b>ITB 18.3</b>	<b>Period of time the Goods are expected to be functioning (for the purpose of spare parts) one (1) years – N/A</b>
<b>ITB 19.1 (a)</b>	<b>Manufacturer's authorization is required – N/A</b>

<b>ITB 19.1 (b)</b>	<b>After sales service is required:</b> The bidder should provide a detailed action plan for the establishment of an adequate after sales and parts facility by the appointment of an acceptable local agent with adequate facility to fully support the equipment offered by the bidder – N/A		
<b>ITB 20.1</b>	The bid validity period shall be 120 days from the tender opening date.		
<b>ITB 21.1</b>	(b) Bid shall include a Bid Security (issued by bank/ a reputable Insurance firm) included in section IV Bidding Forms.		
<b>ITB 21.2</b>	The amount of the Bid Security shall be in amounts as tabulated below. The bid guarantee shall remain valid for 28 days beyond the validity period for the bids, as stated above – See ITB 20.1.		
	<b>Tender No</b>	<b>Description</b>	<b>Bid Security Amount in KES</b>
	<b>KMF/HQs/13/2019-2020</b>	Wet Leasing of Vessel to support RV Mtafiti Echo-Sounding Fisheries Stock Assessment Surveys	<b>2% of Tender Sum</b>
<b>ITB 21.7</b>	If the Bidder incurs any of the actions prescribed in subparagraphs (a) or (b) of this provision, the Borrower will declare the Bidder ineligible to be awarded contracts by the Purchaser for a period of - <b><i>Not Applicable</i></b>		
<b>ITB 22.1</b>	In addition to the original of the bid, the number of copies shall be <b>two, one</b> of them shall be clearly marked either ‘ <b><i>Original</i></b> ’ or ‘ <b><i>Copy</i></b> ’. In the event of any discrepancy between the original and the copies, the original shall prevail.		
<b>D. Submission and Opening of Bids</b>			
<b>ITB 23.1</b>	Bidders <b><i>shall not</i></b> have the option of submitting their bids electronically.		
<b>ITB 23.1 (b)</b>	If bidders shall have the option of submitting their bids electronically, the electronic bidding submission procedures shall be – <b><i>Not Applicable</i></b> .		
<b>ITB 23.2 (c)</b>	<p>The inner and outer envelopes shall bear the following additional identification marks:</p> <p style="text-align: center;"><b>THE DIRECTOR</b>  <b>Kenya Marine and Fisheries Research Institute,</b>  <b>P.O. Box 81651-80100</b>  <b>English Point – Mkomani, MOMBASA</b></p> <p>Bear <b>Tender No. KMF/HQs/13/2019-2020</b> for Wet Leasing of Vessel to support RV Mtafiti Echo-Sounding Fisheries Stock Assessment Surveys and the words: “DO NOT OPEN BEFORE,” <b>Wednesday, 2<sup>nd</sup> October, 2019 at 12.00 noon</b> (East African Time)</p>		
<b>ITB 24.1</b>	<p>For bid submission purposes, the Purchaser’s address is:</p> <p>Attention: <b>Director, Kenya Marine &amp; Fisheries Research Institute,</b></p> <p>Address: <b>Silos Road, English Point- Mkomani</b></p> <p>Floor-Room number CB04: Tenders shall be deposited into the Tender Box mounted at the entrance of the supplies office of Kenya Marine and Fisheries Research Institute situated at English point MOSC Wing, Mkomani, Mombasa on or before <b>Wednesday, 2<sup>nd</sup> October, 2019 at 12.00 noon at the Kenya Marine &amp; Fisheries Research Institute,</b> Or For bulky documents that cannot go through the slot of the Tender Box, be submitted to the office of <b>Chief Supplies Officer</b></p> <p>City: <b>MOMBASA, ZIP Code: +254, Country: KENYA</b></p>		

	<p>The deadline for the submission of bids is: Date: <b>Wednesday, 2<sup>nd</sup> October, 2019.</b>  Time: <b>12.00 NOON</b> The bid opening shall take place at:  Street Address: Silos Road, English Point- Mkomani,  Floor/ Room number: <b>KMFRI-CONFERENCE HALL – 1<sup>ST</sup> FLOOR</b>  <b>City: MOMBASA.</b> Country: KENYA  Date: <b>Wednesday, 2<sup>nd</sup> October, 2019 at 12.00 noon.</b></p>																	
<b>ITB 27.1</b>	<p>The bid opening shall take place at:  Street Address: Silos Road, English Point- Mkomani,  Floor/ Room number: KMFRI-CONFERENCE HALL – 1<sup>ST</sup> FLOOR  City: MOMBASA. Country: KENYA  Date: <b>Wednesday, 2<sup>nd</sup> October, 2019 at 12.00 noon</b></p>																	
<b>ITB 27.1</b>	<p>If electronic bid submission is permitted in accordance with ITB sub-clause 23.1, the specific bid opening procedures shall be: <b>Not Applicable</b></p>																	
<b>E. Evaluation and Comparison of Bids</b>																		
<b>ITB 33.2</b>	<p>The following evaluation criteria shall be applied notwithstanding any other requirement in the tender documents:  <u><b>Selection Process</b></u>  Below is a description of the evaluation steps that will be adopted.  <u><b>STEP 1: Preliminary evaluation</b></u>  This will be an elimination stage which will be done as per paragraph 11.1(h) above.  <u><b>STEP 2: Technical evaluation</b></u>  Bidders will be required to provide technical details of their Vessel to support RV Mtafiti Echo-Sounding Fisheries Stock Assessment Surveys that meets the provided technical requirement. Only Tenderers who score 75% and above will be considered to be technically responsive and therefore be considered for further evaluation</p> <table border="1"> <thead> <tr> <th>Area</th> <th>Sub-area</th> <th>Rating/Scores</th> </tr> </thead> <tbody> <tr> <td>Preliminary Evaluation</td> <td>Compliance Evaluation</td> <td>Elimination</td> </tr> <tr> <td rowspan="2">Technical Evaluation (85%)</td> <td>Submission of technical literature of all the Vessel they intend to lease and how it meets the requirements as set in the <b>Terms of reference</b> for wet-leasing of a hydro-acoustic research service – Section VII of this tender (<b>Page 34</b>) and worthiness of the vessel</td> <td>60</td> </tr> <tr> <td>Proof of similar contracts in scope and value during the last three years: <ul style="list-style-type: none"> <li>• 1 project – 5 marks;</li> <li>• 2 projects – 10 marks;</li> <li>• 3 or more projects – 25 marks</li> </ul> </td> <td>25</td> </tr> <tr> <td>Financial (15%)</td> <td>Financial Proposals (filling of Bid submission form and applicable price schedules) &amp; Sea worthiness</td> <td>15</td> </tr> <tr> <td colspan="2">Total</td> <td>100</td> </tr> </tbody> </table> <p><u><b>FINANCIAL SCORE</b></u>  Each of the financial submissions will be divided by the lowest financial quote to determine the financial score of each. This section will carry a total of 15% of the whole evaluation.</p>	Area	Sub-area	Rating/Scores	Preliminary Evaluation	Compliance Evaluation	Elimination	Technical Evaluation (85%)	Submission of technical literature of all the Vessel they intend to lease and how it meets the requirements as set in the <b>Terms of reference</b> for wet-leasing of a hydro-acoustic research service – Section VII of this tender ( <b>Page 34</b> ) and worthiness of the vessel	60	Proof of similar contracts in scope and value during the last three years: <ul style="list-style-type: none"> <li>• 1 project – 5 marks;</li> <li>• 2 projects – 10 marks;</li> <li>• 3 or more projects – 25 marks</li> </ul>	25	Financial (15%)	Financial Proposals (filling of Bid submission form and applicable price schedules) & Sea worthiness	15	Total		100
Area	Sub-area	Rating/Scores																
Preliminary Evaluation	Compliance Evaluation	Elimination																
Technical Evaluation (85%)	Submission of technical literature of all the Vessel they intend to lease and how it meets the requirements as set in the <b>Terms of reference</b> for wet-leasing of a hydro-acoustic research service – Section VII of this tender ( <b>Page 34</b> ) and worthiness of the vessel	60																
	Proof of similar contracts in scope and value during the last three years: <ul style="list-style-type: none"> <li>• 1 project – 5 marks;</li> <li>• 2 projects – 10 marks;</li> <li>• 3 or more projects – 25 marks</li> </ul>	25																
Financial (15%)	Financial Proposals (filling of Bid submission form and applicable price schedules) & Sea worthiness	15																
Total		100																

	<p><b><u>STEP 3: Financial Evaluation</u></b> This will include the following:-</p> <p>a) Confirmation and considering price schedule duly completed and signed</p> <p>b) Conducting a financial comparison</p> <p>c) Award to the lowest Responsive Bidder</p>
<b>ITB 34.1</b>	<p>Bid prices expressed in different currencies shall be converted in: <b>KENYA SHILLINGS and Payment will also be made in Kenya Shilling.</b></p> <p>The source of exchange rate shall be: <i>Central Bank of Kenya</i></p> <p><i>The date for the exchange rate shall be the date of submission of bids.</i></p>
<b>ITB 35.1</b>	Domestic preference <b>shall not</b> be a bid evaluation factor.
<b>ITB 36.3(a)</b>	Bids will be evaluated and subsequently contract awarded as a single contract for Wet Leasing of Vessel to support RV Mtafiti Echo-Sounding Fisheries Stock Assessment Surveys
<b>ITB 36.3(d)</b>	<p>The adjustments shall be determined using the following criteria, from amongst those set out in Section III, Evaluation and Qualification Criteria:</p> <p>(a) Deviation in Delivery schedule - <b>No</b></p> <p>(b) Deviation in payment schedule - <b>No</b></p> <p>(c) The cost of major replacement components, mandatory spare parts, and service - <b>No</b></p> <p>(d) The availability in the Purchaser's Country of spare parts and after-sales services for the equipment offered in the bid - <b>No</b></p> <p>(e) the projected operating and maintenance costs during the life of the equipment - <b>No</b></p> <p>(f) the performance and productivity of the equipment offered - <b>No</b></p>
<b>ITB 36.6</b>	Bidders <b>shall not</b> be allowed to quote separate prices for one or more lots.
	<b>F. Award of Contract</b>
<b>ITB 41.1</b>	<p>The maximum percentage by which quantities may be increased is <b>-15%</b></p> <p>The maximum percentage by which quantities may be decreased is <b>-15%</b></p>

## SECTION III: GENERAL CONDITIONS OF CONTRACT

### Table of Clauses

Page		
3.1	Definitions.....	24
3.2	Application.....	24
3.3	Country of Origin.....	24
3.4	Standards.....	25
3.5	Use of Contract documents and information.....	25
3.6	Patent Rights.....	25
3.7	Performance security.....	25
3.8	Inspection and Tests.....	26
3.9	Packing.....	27
3.10	Delivery and documents.....	27
3.11	Insurance .....	27
3.12	Payment.....	27
3.13	Price.....	28
3.14	Assignments.....	28
3.15	Sub contracts.....	28
3.16	Termination for default.....	28
3.17	Liquidated damages.....	29
3.18	Resolution of Disputes.....	29
3.19	Language and law.....	29
3.20	Force Majeure.....	29

## **SECTION III - GENERAL CONDITIONS OF CONTRACT**

### **3.1 Definitions**

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

- (a) “The Contract” means the agreement entered into between the Procuring entity and the tenderer, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- (b) “The Contract Price” means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations
- (c) “The Goods” means all of the equipment, machinery, and/or other materials, which the tenderer is required to supply to the Procuring entity under the Contract.
- (d) “The Procuring entity” means the organization purchasing the Goods under this Contract.
- (e) “The Tenderer” means the individual or firm supplying the Goods under this Contract.

### **3.2 Application**

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

### **3.3 Country of Origin**

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

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

### **3.4 Standards**

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

### **3.5 Use of Contract Documents and Information**

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

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

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



### **3.6 Patent Rights**

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

### **3.7 Performance Security**

- 3.7.1 Within thirty (30) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the performance security in the amount specified in Special Conditions of Contract.
- 3.7.2 The proceeds of the performance security shall be payable to the Procuring entity as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.
- 3.7.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Procuring entity and shall be in the form of a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in Kenya or abroad, acceptable to the Procuring entity, in the form provided in the tender documents.
- 3.7.4 The performance security will be discharged by the Procuring entity and returned to the Candidate not later than thirty (30) days following the date of completion of the Tenderer's performance obligations under the Contract, including any warranty obligations, under the Contract

### **3.8 Inspection and Tests**

- 3.8.1 The Procuring entity or its representative shall have the right to inspect and/or to test the goods to confirm their conformity to the Contract specifications. The Procuring entity shall notify the tenderer in writing in a timely manner, of the identity of any representatives retained for these purposes.
- 3.8.2 The inspections and tests may be conducted in the premises of the tenderer or its subcontractor(s), at point of delivery, and/or at the Goods' final destination. If conducted on the premises of the tenderer or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring entity.
- 3.8.3 Should any inspected or tested goods fail to conform to the Specifications, the Procuring entity may reject the equipment, and the tenderer shall either replace the rejected equipment or make alterations necessary to make specification requirements free of costs to the Procuring entity.
- 3.8.4 The Procuring entity's right to inspect, test and where necessary, reject the goods after the Goods' arrival shall in no way be limited or waived by reason of the equipment having previously been inspected, tested and passed by the Procuring entity or its representative prior to the equipment delivery.
- 3.8.5 Nothing in paragraph 3.8 shall in any way release the tenderer from any warranty or other obligations under this Contract.

### **3.9 Packing**

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

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

### **3.10 Delivery and Documents**

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

### **3.11 Insurance**

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

### **3.12 Payment**

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

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

### **3.13 Prices**

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

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

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

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

### **3.14. Assignment**

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

### **3.15 Subcontracts**

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

### **3.16 Termination for default**

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

- (a) if the tenderer fails to deliver any or all of the goods within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring entity
- (b) if the tenderer fails to perform any other obligation(s) under the Contract
- (c) if the tenderer, in the judgment of the Procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the Contract

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

### **3.17 Liquidated Damages**

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

### **3.18 Resolution of Disputes**

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

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

### **3.19 Language and Law**

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

### **3.20 Force Majeure**

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

## **SECTION IV - SPECIAL CONDITIONS OF CONTRACT**

### **Notes on Special Conditions of Contract**

The clauses in this section are intended to assist the procuring entity in providing contract-specific information in relation to corresponding clauses in the General Conditions of Contract.

The provisions of Section IV complement the General Conditions of Contract included in Section III, specifying contractual requirements linked to the special circumstances of the procuring entity and the goods being procured. In preparing Section IV, the following aspects should be taken into consideration.

- (a) Information that complement provisions of Section III must be incorporated and
- (b) Amendments and/or supplements to provisions of Section III, as necessitated by the circumstances of the goods being procured must also be incorporated.

**SECTION IV - SPECIAL CONDITIONS OF CONTRACT**

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

42. Special conditions of contract as relates to the GCC

REFERENCE OF GCC	SPECIAL CONDITIONS OF CONTRACT
3.7.1	<p>Within thirty (30) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the performance security</p> <p>A Performance Security shall be required from the successful bidder.</p> <p>The Performance Security shall be in the form of a Bank Guarantee</p> <p>The Performance security shall be denominated in the currency of the contract</p>
3.12.1	<p>The method and conditions of payment to be made to the tenderer under this Contract shall be specified in Special Conditions of Contract</p> <p>The method and conditions of payment to be made to the Supplier under this Contract shall be as follows:</p> <p><b>Payment for Goods supplied from abroad:</b></p> <p>Payment of foreign currency portion shall be made in US DOLLARS _____</p> <ul style="list-style-type: none"> <li>(i) <b>Advance Payment:</b> Ten (10) percent of the Contract Price shall be paid within thirty (30) days of signing of the Contract, and upon submission of claim and a bank guarantee for equivalent amount valid until the Goods are delivered and in the form provided in the bidding documents or another form acceptable to the Purchaser. – <b>Not Applicable</b></li> <li>(ii) <b>On Shipment:</b> Eighty (80) percent of the Contract Price of the Goods shipped shall be paid through irrevocable confirmed letter of credit opened in favor of the Supplier in a bank in its country, upon submission of documents specified in GCC Clause 12. – <b>Not Applicable</b></li> <li>(iii) <b>On Acceptance:</b> One Hundred (100) percent of the Contract Price of Goods received shall be paid within thirty (30) days of receipt of the Goods upon submission of claim supported by the acceptance certificate issued by the Purchaser.</li> </ul> <p>Payment of local currency portion shall be made in Kenya Shillings within thirty (30) days of presentation of claim supported by a certificate from the Purchaser declaring that the Goods have been delivered and that all other contracted Services have been performed.</p> <p><b>Payment for Goods and Services supplied from within the Purchaser’s country:</b></p> <p>Payment for Goods and Services supplied from within the Purchaser’s country shall be made in Kenya Shillings, as follows:</p> <ul style="list-style-type: none"> <li>(i) <b>Advance Payment:</b> Ten (10) percent of the Contract Price shall be paid within thirty (30) days of signing of the Contract against a simple receipt and a bank guarantee for the equivalent amount and in the form provided in the bidding documents or another form</li> </ul>

	<p>acceptable to the Purchaser. – <b>Not Applicable</b></p> <p>(ii) <b>On Delivery:</b> Eighty (80) percent of the Contract Price shall be paid on receipt of the Goods and upon submission of the documents specified in GCC Clause 13. – <b>Not Applicable.</b></p> <p>(iii) <b>On Acceptance:</b> One Hundred (<b>100</b>) percent of the Contract Price shall be paid to the Supplier within thirty (30) days after the date of the acceptance certificate for the respective delivery issued by the Purchaser.</p>
<p>3.18.1</p>	<p>The rules of Resolutions of disputes shall be as follows:</p> <ul style="list-style-type: none"> <li>• The procuring entity and the tenderer shall make every effort to resolve amicably by direct informal negotiation and disagreement or dispute arising between them under or in connection with the contract</li> <li>• If, after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute, either party may require adjudication in an agreed national or international forum, and/or international arbitration.</li> </ul> <p><b>The following Resolution of Disputes shall be followed and The governing law of The Republic of Kenya shall be followed:</b></p> <p><i>(a) Contract with foreign Supplier:</i></p> <p style="padding-left: 40px;"><b><i>If the Purchaser chooses the UNCITRAL Arbitration Rules, the following sample clause should be inserted:</i></b></p> <p style="padding-left: 40px;">Any dispute, controversy or claim arising out of or relating to this Contract, or breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.</p> <p><i>(b) Contracts with Supplier national of the Purchaser’s country:</i></p> <p>In the case of a dispute between the Purchaser and a Supplier who is a national of the Purchaser’s country, the dispute shall be referred to adjudication or arbitration in accordance with the laws of the Purchaser’s country.</p>

## **SECTION V- TECHNICAL SPECIFICATIONS**

### **5.1 General**

- 5.1.1 These specifications describe the requirements for goods. Tenderers are requested to submit with their offers the detailed specifications, drawings, catalogues, etc for the products they intend to supply
- 5.1.2 Tenderers must indicate on the specifications sheets whether the equipment offered comply with each specified requirement.
- 5.1.3 All the dimensions and capacities of the equipment to be supplied shall not be less than those required in these specifications. Deviations from the basic requirements, if any shall be explained in detail in writing with the offer, with supporting data such as calculation sheets, etc. The procuring entity reserves the right to reject the products, if such deviations shall be found critical to the use and operation of the products.
- 5.1.4 The tenderers are requested to present information along with their offers as follows:
- (i) Shortest possible delivery period of each product
  - (ii) Information on proper representative and/or workshop for back-up service/repair and maintenance including their names and addresses.

## **5.2 PARTICULARS**

*[Text of Technical Specifications to be inserted in the tender documents by the Procuring entity, as applicable] –*

Refer to **SECTION VII below for details**



## SECTION VI - SCHEDULE OF REQUIREMENTS

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

Line Lot N°	Description of Goods	Quantity	Physical unit	Final (Project Site) Destination as specified in BDS	<u>Delivery (as per Incoterms) Date</u>		
					Earliest Delivery Date	Latest Delivery Date	<u>Bidder's offered Delivery date</u> <i>[to be provided by the bidder]</i>
1	Wet Leasing of Vessel to support RV Mtafiti Echo-Sounding Fisheries Stock Assessment Surveys	1	No	KMFRI {Refer to Section VIII GCC 1.1(q)}	10 Weeks	16 Weeks	

---

<sup>1</sup> The Procuring entity must specify here the date from which the delivery schedule will start. That date should be either the date of the contract award, or the date of contract signature, or the date of opening of letter of credit, or the date of confirmation of the Letter of Credit, as appropriate. The Tender Form should include only a cross reference to this Schedule.

**SECTION VII - TECHNICAL SPECIFICATIONS AND PRICE SCHEDULE FOR GOODS**

**TENDER NO. KMF/HQS/13/2019-2020**

**Terms of reference for wet-leasing of a hydro-acoustic research service**

1. The vessel will have the research gear and equipment with the following specifications:

Type of sampling	Equipment specifications
Size of vessel	30m or more with standard navigation equipment
Bottom mapping	Multibeam sonar (EM710, EM302), sub bottom profiler (SBH300), Olex (EK80)
Water quality	Rosette Waterbottle System (Niskin)
Hydro-acoustic echo-sounder	EK60 hydro-acoustic echo sounder or above with 120KHz, 330kHz and 1000m depth range
Hydrography-water mass movement	ADCP (75 and 150 kHz), LADCP
Mid-water trawl for fish including mesopelagic fish abundance	Pelagic (Akra and MultPelt trawl) and Demersal trawls (Gisund), Traps, Echo sounders (EK 80), Omni-directional Fisheries sonar (SH 90, SU 90), Scientific sonars (MS70, ME 70)
Bathymetry	Multibeam ecosounders (EM710, EM302), subsurface bottom profiler (SBP 300), Olex (Ek 80)
Phytoplankton	Phytoplankton-net (nonquantitative), Water samples (quantitative), in situ fluorometer (CTD, thermosalinograf),
Zooplanton	WP2 (180 my), Juday (90 my), Multinet medium (-180 my), Echo sounders (EK 80)
Ichtyo plankton and jelly fish	Juday (90 my), Multinet (180 my and 405 my), Acoustics, Multinet mammoth
Plastics	Manta trawl,

2. Time frame: the vessel will undertake the environment and hydro-acoustic survey to cover the entire EEZ of Kenya in two parts: part one 30 day survey between May and June (Southeast monsoon season) and part two one 30 day survey between October and November (Northeast monsoon season).
3. The survey will be guided by the sailing order document to be developed, discussed and agreed upon by KMFRI scientists and the chief scientist responsible for the vessel.
4. The contactor will provide space for at least 6 scientists from KMFRI to participate in the survey and data collection during the surveys
5. All the data and samples to be collected during the survey will be the property of KMFRI

**PRICE SCHEDULE TABLE FOR WET LEASING OF A VESSEL**

ITEM DESCRIPTION	UNIT OF QTY	QTY	TOTAL COST VAT & DISC. INCLUSIVE	DAYS TO DELIVERY	COUNTRY OF ORIGIN	REMARKS
Wet Leasing of Vessel to support RV Mtafiti Echo-Sounding Fisheries Stock Assessment Surveys	<b>No</b>	<b>1</b>				

Tenderer's signature and official stamp. <hr/>
Date:

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

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

## **5. Inspections and Tests**

The following inspections and tests shall be performed:

The Purchaser shall carry-out pre-leasing inspection, of the Wet Leasing of Vessel to support RV Mtafiti Echo-Sounding Fisheries Stock Assessment Surveys for Compliance with the specifications prior to vessel leasing.

## **SECTION VIII - STANDARD FORMS**

### **Notes on the sample Forms**

1. Form of Tender - The form of tender must be completed by the tenderer and submitted with the tender documents. It must also be duly signed by duly authorized representatives of the tenderer.
2. Confidential Business Questionnaire Form - This form must be completed by the tenderer and submitted with the tender documents.
3. Tender Security Form - When required by the tender documents the tender shall provide the tender security either in the form included herein or in another format acceptable to the procuring entity.
4. Contract Form - The Contract Form shall not be completed by the tenderer at the time of submitting the tender. The Contract Form shall be completed after contract award and should incorporate the accepted contract price.
5. Performance Security Form - The performance security form should not be completed by the tenderers at the time of tender preparation. Only the successful tenderer will be required to provide performance security in the form provided herein or in another form acceptable to the procuring entity.
6. Bank Guarantee for Advance Payment Form - When Advance payment is requested for by the successful bidder and agreed by the procuring entity, this form must be completed fully and duly signed by the authorized officials of the bank.
7. Manufacturers Authorization Form - When required by the tender documents this form must be completed and submitted with the tender documents. This form will be completed by the manufacturer of the goods where the tenderer is an agent.

8.1 **FORM OF TENDER**

Date \_\_\_\_\_  
Tender No. \_\_\_\_\_

To: \_\_\_\_\_  
\_\_\_\_\_  
*[name and address of procuring entity]*

Gentlemen and/or Ladies:

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

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

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

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

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

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[in the capacity of]

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

## 8.2 CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

You are requested to give the particulars indicated in Part 1 and either Part 2(a), 2(b) or 2 (c ) whichever applied to your type of business  
 You are advised that it is a serious offence to give false information on this form

<i>Part 1 – General:</i>	
Business Name .....	.....
Location of business premises. ....	.....
Plot No.....	Street/Road .....
Postal Address .....	Tel No. .... Fax .....
Nature of Business .....	E mail .....
Registration Certificate No. ....	.....
Maximum value of business which you can handle at any one time – Kshs. ....	.....
Name of your bankers .....	Branch .....

	Part 2 (a) – Sole Proprietor			
Your name in full .....	Age .....			
Nationality .....	Country of origin .....			
	<ul style="list-style-type: none"> <li>• Citizenship details</li> <li>.....</li> <li>.....</li> <li>•</li> </ul>			
	Part 2 (b) Partnership			
Given details of partners as follows:				
	Name	Nationality	Citizenship Details	Shares
	1. ....	.....	.....	.....
	2. ....	.....	.....	.....
	3. ....	.....	.....	.....
	4. ....	.....	.....	.....
	Part 2 (c) – Registered Company			
Private or Public .....				
State the nominal and issued capital of company-				
	Nominal Kshs. ....			
	Issued Kshs. ....			
Given details of all directors as follows				
	Name	Nationality	Citizenship Details	Shares
	1 .....	.....	.....	.....
	2 .....	.....	.....	.....
	3 .....	.....	.....	.....
	4 .....	.....	.....	.....
	5 .....	.....	.....	.....
Date .....	Signature of Candidate .....			

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

### 8.3 TENDER SECURITY FORM

Whereas ..... [*name of the tenderer*]  
(hereinafter called “the tenderer”) has submitted its tender dated  
..... [*date of submission of tender*] for the supply, installation  
and commissioning of ..... [*name and/or description*  
*of the equipment*] (hereinafter called “the Tender”)  
..... KNOW ALL PEOPLE by  
these presents that WE ..... of  
..... having our registered office at  
..... (hereinafter called “the Bank”), are bound unto  
..... [*name of Procuring entity*] (hereinafter called “the  
Procuring entity”) in the sum of ..... for which  
payment well and truly to be made to the said Procuring entity, the  
Bank binds itself, its successors, and assigns by these presents.  
Sealed with the Common Seal of the said Bank this \_\_\_\_\_  
day of \_\_\_\_\_ 20 \_\_\_\_\_.

THE CONDITIONS of this obligation are:-

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

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

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

[*signature of the bank*] \_\_\_\_\_

(Amend accordingly if provided by Insurance Company)



## 8.4 CONTRACT FORM

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

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

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

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

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

Signed, sealed, delivered by \_\_\_\_\_ the \_\_\_\_\_ (for the Procuring entity

Signed, sealed, delivered by \_\_\_\_\_ the \_\_\_\_\_ (for the tenderer in the presence of \_\_\_\_\_

*(Amend accordingly if provided by Insurance Company)*

**8.5 PERFORMANCE SECURITY FORM**

To .....  
[name of Procuring entity]

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

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

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

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

This guarantee is valid until the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Signed and seal of the Guarantors

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

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

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

**8.6 BANK GUARANTEE FOR ADVANCE PAYMENT FORM**

To .....  
[name of Procuring entity]

[name of tender] .....

Gentlemen and/or Ladies:

In accordance with the payment provision included in the Special Conditions of Contract, which amends the General Conditions of Contract to provide for advance payment, ..... [name and address of tenderer](hereinafter called “the tenderer”) shall deposit with the Procuring entity a bank guarantee to guarantee its proper and faithful performance under the said Clause of the Contract in an amount of ..... [amount of guarantee in figures and words].

We, the ..... [bank or financial institutions], as instructed by the tenderer, agree unconditionally and irrevocably to guarantee as primary obligator and not as surety merely, the payment to the Procuring entity on its first demand without whatsoever right of objection on our part and without its first claim to the tenderer, in the amount not exceeding ..... [amount of guarantee in figures and words]

We further agree that no change or addition to or other modification of the terms of the Contract to be performed there-under or of any of the Contract documents which may be made between the Procuring entity and the tenderer, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition, or modification.

This guarantee shall remain valid in full effect from the date of the advance payment received by the tenderer under the Contract until ..... [date].

Yours truly,

Signature and seal of the Guarantors

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

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

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

## 8.7 MANUFACTURER’S AUTHORIZATION FORM

To *[name of the Procuring entity]* .....

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

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

---

*[signature for and on behalf of manufacturer]*

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

**8.8 LETTER OF NOTIFICATION OF AWARD**

Address of Procuring Entity

\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RE: Tender No. \_\_\_\_\_

Tender Name \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

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

*(FULL PARTICULARS)* \_\_\_\_\_

\_\_\_\_\_

SIGNED FOR ACCOUNTING OFFICER

**8.9 FORM RB 1**

**REPUBLIC OF KENYA  
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...

**REQUEST FOR REVIEW**

I/We.....,the above named Applicant(s), of address: Physical  
address.....Fax 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.
- etc.

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

- 1.
  - 2.
- etc

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