



**THE COUNTY GOVERNMENT OF TAITA TAVETA  
DEPARTMENT OF INDUSTRIALISATION, ENERGY,  
ICT AND RESEARCH**

**TENDER DOCUMENT**

**FOR  
SUPPLY, DELIVERY, INSTALLATION AND  
COMMISSIONING OF 2 NO. PETROL DRIVEN  
BREAKERS**

**TENDER NO: TTCG/008/2016-2017**

**MARCH 2017**

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## **SECTION I-INVITATION FOR TENDERS**

**TENDER REF.NO: TTCG/008/2016-2017**

**TENDER NAME: SUPPLY, DELIVERY, INSTALLATION AND COMMISSIONING OF 2 NO. PETROL DRIVEN BREAKERS**

- 1.2 Taita Taveta county government came into existence pursuant to the constitution of Kenya 2010. The County covers an area of 17,000 square kilometers with a population of 350,000 and is located 80km north of Mombasa and 230km south of Nairobi City.
- 1.3 The County Government of Taita Taveta, Department of Industrialization, Energy, ICT and Research wishes to invite sealed bids for **Supply, Delivery, Installation and Commissioning of 2No.Petrol Driven Breakers**
- 1.4 Prices quoted should be net inclusive of all taxes, and delivery costs, must be in Kenya Shillings and shall remain valid for 120 days from the closing date of the tender.
- 1.5 Completed tender documents enclosed in separate plain sealed envelopes and clearly marked with the tender number, tender name should be addressed and sent to:

**County Secretary  
Taita Taveta County Government,  
P.O BOX 1066-80304,  
Wundanyi, Kenya.**

**Or be deposited in the Tender box provided at County Headquarters, Wundanyi so as to be received on or before 21<sup>st</sup> March 2017 at 10.00 a.m.**

**Tenders must be accompanied by a tender Security of Kenya Shillings Fifty Thousand (50,000) in form of a guarantee from a reputable bank or an insurance company approved by PPOA payable to the Taita Taveta County Government.**

The tender security shall be valid for **an additional thirty (30) days** after the expiry of the tender validity period.

- 1.6 Tenders will be opened immediately thereafter in the presence of the candidates representatives who choose to attend.
- 1.7 Yours sincerely

**Ag. DIRECTOR SUPPLY CHAIN MANAGEMENT  
TAITA TAVETA COUNTY GOVERNMENT**

**SECTION II - INSTRUCTIONS TO TENDERERS**  
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## **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 Appendix to Instructions to Tenderers. Successful tenderers shall complete the supply, install and commissioning of the equipment by the intended completion date specified in the tender documents.
- 2.1.2 The Employer’s employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender unless where specially allowed under section 131 of the Act.
- 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 Employer 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 involved in corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

### **2.2 Eligible Equipment**

- 2.2.1 All equipment to be supplied and installed 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 equipment(s) are 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 equipment is distinct from the nationality of the tenderer and shall be treated thus in the evaluation of the tender.

## **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 Employer, 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 **Ksh 1000.00** for hard copies of the Bid document. Soft copies can be downloaded free of charge from County Website.

2.3.3 The Employer shall allow the tenderer to review the tender document free of charge before purchase.

## **2.4 Contents of 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 Form
- (xiv) Declaration form
- (xv) Request for Review Form

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 Tender Documents**

2.5.1 A prospective tenderer making inquiries of the tender documents may notify the Employer in writing or by post at the entity's address indicated in the invitation for tenders. 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 Employer. 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 Employer 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 Tender Documents**

2.6.1 At any time prior to the deadline for submission of tender, the Employer, 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 issuing an addendum.

2.6.2 All prospective tenderers that have obtained 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 Employer, 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 Employer, shall be written in English language, provided that any printed literature furnished by the tenderer may be written in another language provided they are accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the tender, the English translation shall govern.

## **2.8 Documents Comprising the Tender**

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

- (a) a Tender Form and a Price Schedule completed in accordance with paragraph 2.9, 2.10 and 2.11 below
- (b) documentary evidence established in accordance with paragraph 2.12 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 2.13 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
- (e) Confidential Business Questionnaire

## **2.9 Tender Form**

2.9.1 The tenderer shall complete the Form of Tender and the appropriate Price Schedule furnished in the tender documents, indicating the equipment to be supplied, installed and commissioned and a brief description of the equipment, 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 where applicable and total tender price of the equipment and installation it proposes to supply under the contract.

2.10.2 Prices indicated on the Price Schedule shall be entered separately in the following manner:

- (i) the price of the equipment quoted EXW (ex works, ex factory, ex warehouse, ex showroom, or off-the-shelf, as applicable), including all customs duties and sales and other taxes already paid or payable;
- (ii) charges for inland transportation, insurance, and other local costs incidental to delivery of the goods to their final destination; and
- (iii) installation charges shall also be indicated separately for each equipment

2.10.3 Prices quoted by the tender shall remain fixed during the Tender's performance of the contract. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.22 unless otherwise agreed by the parties.

## **2.11 Tender Currencies**

2.11.1 Prices shall be quoted in the following currencies:

- (a) For equipment that the tenderer will supply from within Kenya, the prices shall be quoted in Kenya Shillings; and
- (b) For equipment that the tenderer will supply from outside Kenya, the prices may be quoted in US Dollars or in another freely convertible currency.
- (c) Cost of installation and commissioning will be in Kenya Shillings.

## **2.12 Tenderers Eligibility and Qualifications**

2.12.1 Pursuant to paragraph 2.1. the tenderers 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.

2.12.1 The documentary evidence of the tenderers eligibility to tender shall establish to the Employer'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

2.12.2 The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall establish to the Employer's satisfaction;

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

2.13.1 Pursuant 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 equipment which the tenderer proposes to supply under the contract

2.13.2 The documentary evidence of the eligibility of the goods shall consist of 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 equipment 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 equipment

- 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 equipment for a period of two (2) years, following commencement of the use of the equipment by the Employer; and
- c) a clause-by-clause commentary on the Employer'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 commentary 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 and form specified in the Appendix to Instructions to Tenderers.

**2.14.2** The tender security shall be in the amount not exceeding **Ksh.50,000.00**

2.14.3 The tender security is required to protect the Employer 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) Cash
- b) A bank guarantee
- c) Such insurance guarantee approved by the Authority

d) Letter of credit.

2.14.5 Any tender not secured in accordance with paragraph 2.14.1 and 2.14.3 will be rejected by the Employer 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 Employer.

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 Employer 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

- 1. or

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

- c) If the tenderer rejects correction of an arithmetic error in the tender.

## **2.15 Validity of Tenders**

2.15.1 Tender shall remain valid for **120 days** or as specified in the tender documents after date of tender opening prescribed by the Employer, pursuant to paragraph 2.20. A tender valid for a shorter period shall be rejected by the Employer as non responsive.

2.15.2 In exceptional circumstances, the Employer 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 Employer 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. 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 Employer at the address given on the Invitation to Tender.

(b) bear the tender number and name in the Invitation to Tender and the words “**DO NOT OPEN BEFORE 21<sup>st</sup> March, 2017 at 10:00am.**”

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 Employer 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 Employer at the address specified under paragraph 2.17.2 not later than **21st March, 2017 at 10:00am.**

2.18.2 The Employer 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 Employer and candidates previously subject to the deadline will therefore be subject to the deadline as extended

2.18.3 Bulky tenders which will not fit in the tender box shall be received by the Employer as provided for in the Appendix.

## **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 Employer 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

## **2.20 Opening of Tenders**

**2.20.1** The Employer will open all tenders in the presence of tenderers' representatives who choose to attend, at Governor's Board Room, County Headquarters offices, Wundanyi.

The tenderers' representatives who are present shall sign a tender opening 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 Employer, at its discretion, may consider appropriate, will be announced at the opening.

**2.20.3** The Employer 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 Employer 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 Employer in the Employer's tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderers' tender.

## **2.22 Preliminary Examination and Responsiveness**

**2.22.1** The Employer 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 quantity, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and

its tender security may be forfeited. If there is a discrepancy between words and figures the amount in words will prevail

2.22.3 The Employer 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 Employer 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 Employer'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 Employer 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 Employer will convert those currencies to Kenya Shillings using the selling exchange rate on the date of tender closing provided by the Central Bank of Kenya.

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

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

2.24.2 The Employer's evaluation of a tender will exclude and not take into account

- (a) in the case of equipment manufactured in Kenya or equipment of foreign origin already located in Kenya, sales and other similar taxes, which will be payable on the goods if a contract is awarded to the tenderer; and
- (b) any allowance for price adjustment during the period of execution of the contract, if provided in the tender.



2.24.3 The comparison shall be of the ex-factory/ex-warehouse/off-the-shelf price of the goods offered from within Kenya, such price to include all costs, as well as duties and taxes paid or payable on components and raw material incorporated or to be incorporated in the goods.

2.24.4 The Employer's evaluation of a tender will take into account, in addition to the tender price and the price of incidental services, the following factors, in the manner and to the extent indicated in paragraph 2.23.5 and in the technical specifications:

- (a) delivery and installation schedule offered in the tender;
- (b) deviations in payment schedule from the specifications in the Special Conditions of Contract;
- (c) the cost of components, mandatory spare parts and service;
- (d) the availability in Kenya of spare parts and after-sales service for the equipment offered in the tender;

2.24.5 Pursuant to paragraph 2.24.4 the following evaluation methods will be applied

(a) *Delivery schedule*

- (i) The Employer requires that the equipment under the Invitation for Tenders shall be delivered at the time specified in the Schedule of Requirements. Tenders offering deliveries longer than the Employer's required delivery time will be treated as non-responsive and rejected.

(b) *Deviation in payment schedule*

Tenderers shall state their tender price for the payment of schedule outlined in the special conditions of contract. Tenders will be evaluated on the basis of this base price. Tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in tender price they wish to offer for such alternative payment schedule. The Employer may consider the alternative payment schedule offered by the selected tenderer.

(c) *Spare parts and after sales service facilities*

Tenderers must offer items with service and spare parts back-up. Documentary evidence and locations of such back-up must be given. Where a tenderer offers items without such back-up in the country, he

must give a documentary evidence and assurance that he will establish adequate back-up for items supplied.

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

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

## **2.25 Contacting the Employer**

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

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

## **2.26 Award of Contract**

### **(a) Post-Qualification**

2.26.1 In the absence of pre-qualification, the Employer 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.

2.26.2 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 Employer deems necessary and appropriate.

2.26.3 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 Employer will

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

(b) **Award Criteria**

2.26.4 The Employer 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.

2.26.5 To qualify for contract awards, the tenderer shall have the following:

- a) Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.
- b) Legal capacity to enter into a contract for procurement
- c) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
- d) Shall not be debarred from participating in public procurement.

(c) **Employer's Right to accept or Reject any or All Tenders**

2.26.6 The Employer 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 tenderer of the grounds for the Employer's action

2.26.7 The Employer may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination

2.26.8 The Employer 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.

2.26.9 A tenderer who gives false information in the tender document about is 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.

## **2.27 Notification of Award**

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

2.27.2 The notification of award will signify the formation of the Contract but will have to wait until the contract is finally signed by both parties. Simultaneous other tenderers shall be notified that their tenders have not been successful.

2.27.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 2.29, the Employer will simultaneously inform the other tenderers that this tenders have not been successful

## **2.28 Signing of Contract**

2.28.1 At the same time as the Employer notifies the successful tenderer that its tender has been accepted, the Employer will simultaneously inform the other tenderers that their tenders have not been successful.

2.28.2 Within fourteen (14) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Employer.

2.28.3 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 Performance Security**

2.29.1 Within Thirty (30) days of the receipt of notification of award from the Employer, 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 Employer.

2.29.2 Failure of the successful tenderer to comply with the requirements of paragraph 2.28 or paragraph 2.29 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Employer may make the award to the next lowest evaluated Candidate or call for new tenders.

## **2.30 Corrupt or Fraudulent Practices**

2.30.1 The Employer requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts. A tenderer shall sign a declaration that he has and will not be involved in corrupt or fraudulent practices.

3.30.2 The Employer 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.

3.30.3 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 Instructions to Tenderers**

1. The Appendix to instructions to the tenderers is intended to assist the Employer in providing specific information in relation to corresponding clause in the instructions to Tenderers including in Section II and has to be prepared for each specific procurement.
2. The Employer should specify in the appendix information and requirement specific to the circumstances of the Employer, 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.

## CRITERIA OF EVALUATION

The evaluation criteria will be applied as indicated here below:-

1.	MANDATORY REQUIREMENTS	YES/NO
a)	Submit a tender security of <b>Ksh.50, 000.00</b> valid for an <b>additional thirty (30) days after the expiry of the tender validity period.</b>	
b)	Submit a Copy of a License of Manufacturer's Authorization.	
c)	Submit a copy of Valid/current Tax Compliance Certificate from Kenya Revenue Authority.	
d)	Submit a Certified Copy of the Certificate of Incorporation/Registration.	
e)	Submit a Certified Copy of CR 12 for Incorporated Entities ( Companies)	
e)	Submit Tenders in the correct Format (All forms filled, signed and rubber stamped i.e. Tender form, Business Questionnaire, price schedule)	
f)	Tender Document Must be Serialized.	
g)	Audited Accounts for the Last Two Years (2016& 2015).	

### NB:

- ❖ **Bidders must meet all the mandatory requirements to qualify for technical evaluation. Bidders who do not meet the mandatory requirements will not proceed to the technical evaluation stage and will be adjudged unresponsive.**



## 2. TECHNICAL EVALUATION:

### COMPLIANCE WITH TECHNICAL REQUIREMENTS

The specifications of plant and equipment offered by the bidders will be examined and compared with the requirement's specifications.

Detailed examination will be done for all items / requirements specified and whether or not (and to what extent) each bid complies with the requirements.

Certain deviations from the required specification are critical/detrimental to the performance (or capacity) or efficient operation of the plant and equipment concerned. Deviations of this type are classified as major deviations. Bids with one or more major deviations from the requirement will be in all cases rejected as technically non-responsive. However deviations which are not critical to the performance or efficient operation of the plant and equipment will not result in rejection of the bid but the bidder will lose a point(s) for every such minor deviation.

### BID EVALUATION

A point system will be used to rate all the technically responsive bidders with the maximum score being 60 marks distributed as below.

(i) Technical compliance - Maximum 15 points

For every minor deviation the bidder loses a point(s).

(ii) Spare parts availability - Maximum 15 points

Any bidder with proven dealership scores a maximum of 15 points. Bidders whose dealership cannot be established will automatically be disqualified.

A minimum of spare parts stock especially fast moving parts should be available. The points will be awarded as follows:

(a) Disqualification if no dealership is proven

(b) Proven dealership - Five (5) points.

(c) Bidders who have previously supplied equipment and given satisfactory spare parts support to Government Departments- Five (5) points with no evidence of a proven dealership

(d) Stock of spare parts - five (5) points. Attach a list of available spare parts with the going price

iii) Workshop facilities and after sales service - maximum 15 points

A maximum of 15 points will be awarded to any bidder with proven workshop facilities. Workshop facilities should be of proven standards for repair and maintenance of plant and equipment.

The points will be awarded as follows:

(a) Workshop facilities - five (5) points.

(b) Mobile workshop facilities - three (3) points.

(c) Experience with the dealer in satisfactory repair of equipment - Seven (7) points:

- Excellent (7)
- Good (5)
- Fair (3)
- Poor (1)

(iv) Performance rating- maximum 5 points

Takes into account fuel consumption, and how a particular item is likely to perform under local conditions based on other Government Agencies past experience. Any equipment whose performance has been unsatisfactory will stand disqualified.

Good performance (5)

- Satisfactory performance (3)
- Fair performance (2)
- Unsatisfactory performance (0)

(v) Warranty - maximum 4 points

Warranty is to be supported by a letter of authorization from the manufacturer. Manufacturers participating in the tender will earn a maximum of 4 points. Manufacturers without an established local dealer will be disqualified. Bidders with warranty/authorization letters from manufacturers /assemblers will earn 2 points. A binding agreement between the bidder and the manufacturer should be in place to support the warranty and will be mandatory otherwise the bid will be disqualified.

(vi) Concurrence with plant and equipment standardization maximum 2 points.

This takes into consideration the makes and models of plant and equipment which are already operating within the Government Departments fleet.

The points will be awarded as follows:

(a) The makes and models recommended in the standardization of plant and equipment for Government use - two (2) points.

(b) Where the make is in the recommended fleet but model is not recommended fleet 1 points.

(vii) Dealership - maximum 4 points considering whether the bidder is a franchise holder, or dealer, the marks will be awarded as follows. Franchise holder - 4 marks appointed dealer - 3 marks

**The minimum marks is 45 Marks for the Bidder to Proceed to Financial Evaluation.**

**FINANCIAL EVALUATION**

3.	<b>FINANCIAL EVALUATION</b>	<b>Total</b>
a)	Price Quoted:	

## SECTION III: GENERAL CONDITIONS OF CONTRACT

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## **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 Employer 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 Employer under the Contract.
- (d) “The Employer” 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 Employer for the procurement installation and commissioning of equipment to the extent that they are not superseded by provisions of other part of contract.

### **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 and will be treated thus in the evaluation of the tender.

### 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 Candidate shall not, without the Employer'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 Employer 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 Employer'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 Employer and shall be returned (all copies) to the Employer on completion of the Tenderer's performance under the Contract if so required by the Employer

### 3.6 **Patent Rights**

3.6.1 The tenderer shall indemnify the Employer 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 Employer's country

### 3.7 **Performance Security**

3.7.1 Within twenty eight (28) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Employer the performance security where applicable in the amount specified in Special Conditions of Contract.

3.7.2 The proceeds of the performance security shall be payable to the Employer 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 Employer and shall be in the form of

- a) Cash
- b) Bank guarantee
- c) Such insurance guarantee approved by the Authority
- d) Letter of credit

3.7.4 The performance security will be discharged by the Employer 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 Employer or its representative shall have the right to inspect and/or to test the equipment to confirm their conformity to the Contract specifications. The Employer 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. All reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Employer.

3.8.3 Should any inspected or tested equipment fail to conform to the Specifications, the Employer 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 Employer.

3.8.4 The Employer's right to inspect test and where necessary, reject the equipment after the equipment arrival and installation shall in no way be limited or waived by reason of the equipment having previously been inspected, tested and passed by the Employer 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 and packaging of the equipment 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 equipment, documents and installation of the same shall be made by the tenderer in accordance with the terms specified by Employer in its Schedule of Requirements and the Special Conditions of Contract

### **3.11 Insurance**

3.11.1 The equipment 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 Employer as specified in the contract

### **3.13 Prices**

3.13.1 Prices charged by the tenderer for equipment delivered and installation 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 requests shall be processed by the Employer within 30 days of receiving the request.

### **3.14. Assignment**

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

### **3.15. Subcontracts**

3.15.1 The tenderer shall notify the Employer 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 Employer 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 equipment within the period(s) specified in the Contract, or within any extension thereof granted by the Employer
- (b) if the tenderer fails to perform any other obligation(s) under the Contract
- (c) if the tenderer, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the Contract

3.16.2 In the event the Employer 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 Employer for any excess costs for such similar equipment.

### **3.17. Termination for convenience**

### **3.18. Liquidated Damages**

3.18.1 If the tenderer fails to deliver and/or install any or all of the items within the period(s) specified in the contract, the Employer 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.

### **3.19. Resolution of Disputes**

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

3.19.2 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 that the dispute be referred for resolution to the formal mechanisms specified in the SCC.

### **3.20. Language and Law**

3.20.1 The language of the contract and the law governing the contract shall be English language and the Laws of Kenya respectively unless otherwise specified in the SCC

### **3.21. Force Majeure**

3.21.1 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.

### **3.22 Notices**

3.22.1 Any notice given by one party to the other pursuant to this contract shall be sent to other party by post or by fax or Email and confirmed in writing to the other party's address specified.

3.22.2 A notice shall be effective when delivered or on the notices effective date, whichever is later.

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

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

- 4.1 The clauses in this section are intended to assist the Employer in Providing contract-specific information in relation to corresponding clauses in the General Conditions of Contract
- 4.2 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 Employer 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 those in the GCC.

4.2 Special conditions of contract as relates to the GCC

<b>REFERENCE OF GCC</b>	<b>SPECIAL CONDITIONS OF CONTRACT</b>	
3.7.1	<i>No performance security is required for this tender</i>	
3.12.1	<i>The County Government of Taita Taveta shall pay the contract sum at least within 30 days of submission of invoice/ claim subject to approval by inspection and acceptance of the Machine.</i>	
3.18.1	<i>If at any time any question dispute or difference whatsoever shall arise between the County Government of Taita Taveta and the Supplier regarding the Contract it shall be settled under the provisions of the Arbitration Act Chapter 49, of the Laws of Kenya.</i>	

## **SECTION - V- SCHEDULE OF REQUIREMENTS AND PRICES**

### **Notes on Schedule of Requirements and Prices**

- 5.1 The Employer must state whether the contract is for procurement, installation and commissioning OR whether it is for installation and commissioning only, in which case, the equipment will have been procured separately.
  
- 5.2 The tenderers may use additional paper as will be necessary to indicate the details of their costing.

**SECTION V- SCHEDULE OF REQUIREMENTS AND PRICES**

Delivery Period: **WITHIN 4 (FOUR) WEEKS MANDATORY AFTER NOTIFICATION OF AWARD**

No.	Item Description	Quantity	Unit Price Kshs (including accessories, spare parts and warranty as per Tender documents)	Delivery Period	Total Price Kshs.
1	Hand held Petrol Breaker	2			
<b>TOTAL</b>					

Authorized Official: \_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## **SECTION VI - TECHNICAL SPECIFICATION**

### **6.1 GENERAL**

6.1.1. These specifications describe the basic requirements for equipment. Tenderers are requested to submit with their offers the detailed specifications, drawings, catalogues, etc for the products they intend to supply.

6.1.2 Tenderers must indicate on the specifications sheets whether the equipment offered comply with each specific requirement.

6.1.3 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 Employer reserves the right to reject the products, if such deviations shall be found critical to the use and operation of the products

6.1.4 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



**SUPPLY, DELIVERY, INSTALLATION AND COMMISSIONING OF  
2No. PETROL DRIVEN BREAKERS.**

	<b>SPECIFICATION</b>	<b>REQUIREMENT</b>	<b>TENDERER'S OFFER</b>
	MAKE	-	
	MODEL	-	
	COUNTRY OF ORIGIN	-	
	MANUFACTURER'S LITERATURE , AUTHORITY AND SPECIFICATIONS SUPPLIED	Yes (Mandatory)	----- (Y/N)
<b>1.</b>	<b>GENERAL</b>		
a)	A Standard handheld petrol breaker of latest design, in current production.	Yes, Yes, Yes	----- (Y/N)
b)	Supplied new, unused.	New	----- (Y/N)
c)	Capable of operating in tropical conditions.	Yes	----- (Y/N)
<b>2.</b>	<b>DIMENSIONS.</b>		
a)	Overall length, approx.	927 mm	----- mm
b)	Overall width, across handle, approx.	611 mm	----- mm
c)	Overall depth, approx.	331 mm	----- mm
d)	Operating weight	24 Kg	----- Kg
e)	Impact energy	60 Joules	----- Joules
f)	Blow frequency (blows per minute)	1,440 bpm	----- bpm
<b>3.</b>	<b>ENGINE</b>		
a)	Engine type, 1 cylinder, 2-stroke	Yes	
b)	Cylinder displacement	90 cc	----- cc
c)	Country of origin	-	
d)	Fan cooled.	Yes	----- (Y/N)
e)	Starter system: Recoil starter	Yes	-----
f)	Fuel type: Alkylat or 90-100 octane unleaded petrol	Yes	-----

	<b>SPECIFICATION</b>	<b>REQUIREMENT</b>	<b>TENDERER'S OFFER</b>
g)	Rated power output (kw/rpm), approx.	2 kW/5800	----- kW/rpm
h)	Fuel capacity	specify	-----
i)	Fuel mixture	2% or (1:50)	-----
j)	Fuel consumption	0.8 liters/hour	-----
k)	Oil type, 2-stroke oil or similar, Alkylate	Yes, Yes	-----
<b>4.</b>	<b>VIBRATION &amp; SOUND.</b>		
a)	Vibration level 3 axes (ISO 28927-10)	3.8 m/s <sup>2</sup>	-----
b)	Sound pressure level (ISO 11203), Lp, r =1m	96dB(A)	.....dB(A)
<b>5</b>	<b>SHANK SIZE AND MANDATORY TOOLS TO BE SUPPLIED</b>		
a)	Shank size- Mandatory	H32 x 160 mm	-----
b)	10 no. Moil point 380 mm working length supplied	Yes	----- (Y/N)
c)	10 no. Narrow Chisel 380 mm working length supplied	Yes	----- (Y/N)
d)	10 no. Wedge Chisel 400 mm working length supplied	Yes	----- (Y/N)
<b>6</b>	<b>MANDATORY ACCESSORIES TO BE SUPPLIED</b>		
a)	2no. Fuel can, 5 liter capacity	Yes	----- (Y/N)
b)	Two -stroke oil 4 liters	Yes	----- (Y/N)
c)	2no. carrying harness	Yes	----- (Y/N)
d)	2 no. Transport box	Yes	----- (Y/N)
<b>7</b>	<b>WARRANTY.</b>		
a)	Petrol Breaker supplied to be covered by manufacturer's warranty.	Yes (Mandatory)	----- (Y/N)
b)	Warranty duration.	2000Hrs or One (1) year, whichever comes first.	-----months ----- Hrs



	<b>SPECIFICATION</b>	<b>REQUIREMENT</b>	<b>TENDERER'S OFFER</b>
h)	Availability of spare parts.	Indicate equipment dealers who stock spare parts.	----- ----- ----- -----
i)	Names and addresses of dealers/agents where back-up service can be obtained indicating the location of the workshops facilities.	Specify	----- ----- ----- -----
j)	Adequate training on the operation and maintenance of machine to be provided for one week by experts from the manufacturers or their agents.	Yes (Mandatory)	_____(Y/N)
<b>9</b>	<b>SERVICE PARTS FOR 1,000 HRS OF OPERATION AS PER SERVICE MANUAL</b>		
	Service Part	Part. No	Quantity
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			

**Dimension indicated at least Minimum**

## **SECTION VII - STANDARD FORMS**

*Notes on the Standard Forms:*

### **7.1 Form of Tender**

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

### **7.2 Confidential Business Questionnaire Form**

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

### **7.3 Tender Security Form**

When required by the tender document the tenderer shall provide the tender security either in the form included therein after or in another format acceptable to the Employer.

### **7.4 Contract Form**

The Contract form shall not be completed by the tenderer at the time of submitting the tenderer at the time of submitting the tender. The contract form shall be completed after contract award.

### **7.5 Performance Security form**

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

### **7.6 Bank Guarantee for Advance Payment.**

When there is an agreement to have Advance payment, this form must be duly completed.

### **7.7 Manufacturer's Authorization Form**

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

7.1 **FORM OF TENDER**

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

To: \_\_\_\_\_  
\_\_\_\_\_  
*[name and address of Employer]*

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 of 2No. Petrol Drive Breakers ( ..... *(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 .....*( Employer)*.

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 that you may receive.

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

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

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

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

## 7.2 CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

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

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

*Part 1 – General:*

Business Name  
 .....

Location of business premises.  
 .....

Plot No..... Street/Road  
 .....

Postal Address ..... Tel No. .... Fax ..... E mail  
 .....

Nature of Business  
 ,.....

Registration Certificate No.  
 .....

Maximum value of business which you can handle at any one time – Kshs.  
 .....

Name of your bankers ..... Branch  
 .....

Part 2 (a) – Sole Proprietor	
Your name in full .....	Age .....
Nationality .....	Country of origin .....
<ul style="list-style-type: none"> <li>• Citizenship details            .....</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 .....Seal/Signature of Candidate .....



### 7.3 TENDER SECURITY FORM

Whereas ..... [*name of the tenderer*]  
(hereinafter called “the tenderer”) has submitted its tender dated .....  
[*date of submission of tender*] for the supply, installation and commissioning  
of ..... [*name and/or description of the equipment*]  
(hereinafter called “the Tender”) .....  
KNOW ALL PEOPLE by these presents that WE .....  
..... of ..... having our  
registered office at ..... (hereinafter called “the Bank”), are  
bound unto ..... [*name of Employer*] (hereinafter called “the  
Employer”) in the sum of ..... for which  
payment well and truly to be made to the said Employer, 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 Employer 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 Employer up to the above amount upon receipt of its first written demand, without the Employer having to substantiate its demand, provided that in its demand the Employer will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

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

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

(Amend accordingly if provided by Insurance Company)

## 7.4 CONTRACT FORM

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

WHEREAS the Employer 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 Employer’s Notification of Award
3. In consideration of the payments to be made by the Employer to the tenderer as hereinafter mentioned, the tenderer hereby covenants with the Employer to provide the goods and to remedy the defects therein in conformity in all respects with the provisions of this Contract
4. The Employer 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 Employer)

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

**7.5 PERFORMANCE SECURITY FORM**

To .....  
Uasin Gishu County

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*]

(Amend accordingly if provided by Insurance Company)

**7.6 BANK GUARANTEE FOR ADVANCE PAYMENT**

To .....  
[name of Employer]

[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 Employer a bank guarantee to guarantee its proper and faithful performance under the said Clause of the Contract 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 Employer 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 Employer 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]

**7.7 MANUFACTURER’S AUTHORIZATION FORM**

To *[name of the Employer]* .....

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.

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*[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 an authorized person.

**7.8. LETTER OF NOTIFICATION OF AWARD**

Address of Employer

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

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

7.9

**FORM RB 1**  
**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

APPLICATION NO.....OF.....20.....

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (*Employer*)

Request for review of the decision of the..... (*Name of the Employer*) 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...

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**FOR OFFICIAL USE ONLY**

Lodged with the Secretary Public Procurement Administrative Review Board on ..... day of  
.....20.....

SIGNED  
Board Secretary