

South Nyanza Sugar Company Limited

P.O. Box 107, CODE 40405, SARE – AWENDO (KENYA)

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SONYSUGAR
Simply The Sweetest

TENDER DOCUMENT

TENDER FOR THE UPGRADE OF THE IP PABX SOLUTION

TENDER REF NO: SNSC/053/2022/2023

CLOSING DATE: 30TH MARCH, 2023 AT 2PM

INVITATION TO TENDER

South Nyanza Sugar Company Limited,
Off Kisii – Migori Road

P.O. Box 107

Sare – Awendo

(Procurement Office)

1. South Nyanza Sugar Company invites sealed tenders for **THE UPGRADE OF THE IP PABX SOLUTION** Tendering will be conducted under open competitive method using a standardized tender document. This tender is open to ALL eligible Tenderers.
2. Qualified and interested tenderers may obtain further information and inspect the Tender Documents during office hours from **7.30am to 5.00 pm** the address given below.
3. Tender documents may be viewed and downloaded for free from the website www.sonysugar.co.ke. Tenderers who download the tender document must forward their particulars immediately to administration@sonysugar.co.ke OR cochele@sonysugar.co.ke **0208029201/2/3 cell.0722205345 P.O. Box 107-40405 Sare Awendo** to facilitate any further clarification or addendum.
4. Tenders be quoted in Kenya Shillings and should include all taxes. Tenders shall remain valid **for 128 days** from the date of opening of tenders.
5. All Tenders must be accompanied by a *tender Security” of KES 100,000.00 (Kenya Shilling one hundred thousand only)*
6. The Tenderer shall chronologically serialize all pages of the tender documents submitted.
7. Completed tenders must be delivered to the address below on or **before 30TH March, 2023**. Electronic Tenders will not be permitted.
8. Tenders will be opened immediately after the deadline date and time specified above or any dead line date and time specified later. Tenders will be publicly opened in the presence of the Tenderers' designated representatives who choose to attend at the address below.
9. Late tenders will be rejected.
10. The addresses referred to above are:
 - A. **Address for obtaining further information or clarification is as below;**

South Nyanza Sugar Company Limited,
Off Kisii – Migori Road

P.O. Box 107

Sare – Awendo

(Managing Director Office) Email: administration@sonysugar.co.ke

OR

Head of Procurement

Tel no.020-809200-3/020-8029043, 0722471786

Email: cochele@sonysugar.co.ke

B. Address for Submission of Tenders.

The Managing Director,
South Nyanza Sugar Company Limited,
off Kisii – Migori Road
P.O. Box 107
Sare – Awendo
(Managing Director Office /Tender Box)

C. Address for Opening of Tenders.

South Nyanza Sugar Company Limited,
Off Kisii – Migori Road
P.O. Box 107
Sare – Awendo
(Managing Director Office /Tender Box)

Head of Procurement

Signature

Date

PART1: TENDERING PROCEDURES

SECTION I - INSTRUCTIONS TO

TENDERERS A GENERAL PROVISIONS

10 *Scope of tender*

11 The Procuring Entity as defined in the Appendix to Conditions of Contract invites tenders for Supplies Contract as described in the tender documents. The name, identification, and number of lots (contracts) of this Tender Document are specified in the TDS.

12 Throughout this tendering document:

- a) The term “in writing” means communicated in written form (e.g. by mail, e-mail, fax, including if specified in the TDS, distributed or received through the electronic-procurement system used by the Procuring Entity) with proof of receipt;
- b) if the context so requires, “singular” means “plural” and vice versa;
- c) “Day” means calendar day, unless otherwise specified as “Business Day”. A Business Day is any day that is an official working day of the Procuring Entity. It excludes official public holidays.

20 *Fraud and corruption*

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

22 The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Tenders shall be required to complete and sign the “Certificate of Independent Tender Determination” annexed to the Form of Tender.

23 Tenderers shall permit and shall cause their agents (whether declared or not), subcontractors, sub-consultants, service providers, suppliers, and their personnel, to permit the Procuring Entity to inspect all accounts, records and other documents relating to any initial selection process, pre-qualification process, tender submission, proposal submission, and contract performance (in the case of award), and to have them audited by auditors appointed by the Procuring Entity.

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

30 *Eligible tenderers*

31 A Tenderer may be a firm that is a private entity, a state-owned enterprise or institution subject to IIT 3.8, or an individual or any combination of such entities in the form of a joint venture (JV) under an existing agreement with the intent to enter in to such an agreement supported by a letter of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the tendering process and, in the event the JV is awarded the Contract, during contract execution. Members of a

joint venture may not also make an individual tender, be a subcontractor in a separate tender or be part of another joint venture for the purposes of the same Tender. The maximum number of JV members shall be specified in the TDS.

- 32 Public Officers of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.**
- 33** A Tenderer shall not have a conflict of interest. Any tenderer found to have a conflict of interest shall be disqualified. A tenderer may be considered to have a conflict of interest for the purpose of this tendering process, if the tenderer:

- a) Directly or indirectly controls, is controlled by or is under common control with another tenderer;
 - b) Receives or has received any direct or indirect subsidy from another tenderer;
 - c) Has the same legal representative as another tenderer;
 - d) Has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process;
 - e) Any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the goods or works that are the subject of the tender;
 - f) Any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity as a consultant for Contract implementation;
 - g) Would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the contract specified in this Tender Document;
 - h) Has a close business or personal relationship with senior management or professional staff of the Procuring Entity who has the ability to influence the bidding process and:
 - i) Are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract; or
 - ii) May be involved in the implementation or supervision of such Contract unless the conflicts teeming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.
- 34** A tenderer shall not be involved in corrupt, coercive, obstructive or fraudulent practice. A tenderer that is proven to have been involved in any of these practices shall be automatically disqualified
- 35** A Tenderer (either individually or as a JV member) shall not participate in more than one Tender, except for permitted alternative tenders. This includes participation as a subcontractor in other Tenders. Such participation shall result in the disqualification of all Tenders in which the firm is involved. Members of a joint venture may not also make an individual tender, be a sub-contractor in a separate tender or be part of another joint venture for the purposes of the same Tender. A firm that is not a tenderer or a JV member may participate as a subcontractor in more than one tender.
- 36** A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT3.9. A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed sub-contractors or sub-consultants for any part of the Contract including related Services.
- 37** A Tenderer that has been debarred from participating in public procurement shall be ineligible to tender or be awarded a contract. The list of debarred firms and individuals is available from the website of PPRA www.ppra.go.ke.
- 38** A Tenderer that is a state-owned enterprise or a public institution in Kenya may be eligible to tender and be awarded Contract(s) only if it is determined by the Procuring Entity to

meet the following conditions, i.e. if it is:

- i) A legal public entity of Government and/or public administration,
- ii) financially autonomous and not receiving any significant subsidies or budget support from any public entity or Government, and;
- (iii) operating under commercial law and vested with legal rights and liabilities similar to any commercial enterprise to enable it to compete with firms in the private sector on an equal basis.

39 Firms and individuals shall be ineligible if their countries of origin are:

- (a) As a matter of law or official regulations, Kenya prohibits commercial relations with that country;
- (b) By an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person, or entity in that country.

A tenderer shall provide such documentary evidence of eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.

- 310** Foreign tenderers are required to source at least forty (40%) percent of their contract inputs (in supplies, local sub-contracts and labor) from citizen suppliers and contractors. To this end, a foreign tenderer shall provide in its tender documentary evidence that this requirement is met. Foreign tenderers not meeting this criterion will be automatically disqualified. Information required to enable the Procuring Entity determine if this condition is met shall be provided for this purpose in "SECTION II - EVALUATION AND QUALIFICATION CRITERIA, Item 9".
- 311** Pursuant to the eligibility requirements of ITT 3.10, a tender is considered a foreign tenderer, If it is registered in Kenya and has less than 51 percent ownership by nationals of Kenya and if it does not subcontract to foreign firms or individuals more than 10 percent of the contract price, excluding provisional sums. JVs are considered as foreign tenderers if the individual member firms registered in Kenya have less 51 percent ownership by nationals of Kenya. The JV shall not subcontract to foreign firms more than 10 percent of the contract price, excluding provisional sums.
- 312** The National Construction Authority Act of Kenya requires that all local and foreign contractors be registered with the National Construction Authority and be issued with a Registration Certificate before they can undertake any construction works in Kenya. Registration shall not be a condition for tender, but it shall be a condition of contract award and signature. A selected tenderer shall be given opportunity to register before such award and signature of contract. Application for registration with National Construction Authority may be accessed from the website www.nca.go.ke.
- 313** The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for tender, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website www.cak.go.ke.
- 4.14 A kenyan tenderer shall be eligible to tender if it provides evidence of having fulfilled his/her tax obligations by producing valid tax compliance certificate or tax exemption certificate issued by the Kenya Revenue Authority.
- 40** *Eligible goods, equipment, and services*
- 41** Goods, equipment and services to be supplied under the Contract may have their origin in any country that is not ineligible under ITT 3.9. At the Procuring Entity's request, Tenderers may be required to provide evidence of the origin of Goods, equipment and services.
- 42** Any goods, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement.
- 50** *Tenderer's responsibilities*
- 51** The tenderer shall bear all costs associated with the preparation and submission of his/her tender, and the Procuring Entity will in no case be responsible or liable for those costs.

- 52 The tenderer, at the tenderer's own responsibility and risk, is encouraged to visit and examine and inspect the Site of the Works and its surroundings and obtain all information that may be necessary for preparing the tender and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the tenderer's own expense.
- 53 The Tenderer and any of its personnel or agents will be granted permission by the Procuring Entity to enter upon its premises and lands for the purpose of such visit. The Tenderer shall indemnify the Procuring Entity against all liability arising from death or personal injury, loss of or damage to property, and any other losses and expenses incurred as a result of the examination and inspection.

- 54 The tenderer shall provide in the Form of Tender and Qualification Information, a preliminary description of the proposed work method and schedule, including charts, as necessary or required.

B. CONTENTS OF TENDER DOCUMENTS

60 Sections of Tender Document

- 61 The tender document consists of Parts 1, 2, and 3, which includes all the sections specified below, and which should be read in conjunction with any Addenda issued in accordance with ITT 10.

PART 1: Tendering Procedures

Section I - Instructions to Tenderers

Section II - Tender Data Sheet (TDS)

Section III- Evaluation and
Qualification Criteria Section IV -
Tendering Forms

PART 2: Works'

Requirements Section V -
Bills of Quantities Section
VI - Specifications Section
VII - Drawings

PART 3: Conditions of Contract and Contract Forms

Section VIII - General Conditions (GCC)

Section IX - Special Conditions of Contract

Section X- Contract Forms

- 62 The Invitation to Tender Notice issued by the Procuring Entity is not part of the Contract documents. Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of the Tender document, responses to requests for clarification, the minutes of a pre-arranged site visit and those of the pre-Tender meeting (if any), or Addenda to the Tender document in accordance with ITT 10. In case of any contradiction, documents obtained directly from the Procuring Entity shall prevail.
- 63 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the Tender Document and to furnish with its Tender all information and documentation as is required by the Tender document.
- 70 **Clarification of Tender Document, Site Visit, Pre-tender Meeting**
- 71 A Tenderer requiring any clarification of the Tender Document shall contact the Procuring Entity in writing at the Procuring Entity's address specified in the TDS or raise its enquiries during the pre-Tender meeting if provided for in accordance with ITT 7.2. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the TDS prior to the deadline for submission of tenders. The Procuring Entity shall forward copies of its response to all tenderers who have acquired the Tender documents in accordance with ITT 7.4, including a description of the inquiry but without identifying its source. If so specified in the TDS, the Procuring

Entity shall also promptly publish its response at the web page identified in the **TDS**. Should the clarification result in changes to the essential elements of the Tender Documents, the Procuring Entity shall amend the Tender Documents following the procedure under ITT 8 and ITT 22.2.

- 72 The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine and inspect the site(s) of the required contracts and obtain all information that may be necessary for preparing a tender. The costs of visiting the Site shall be at the Tenderer's own expense. The Procuring Entity shall specify in the **TDS** if a pre-arranged Site visit and or a pre-tender meeting will be held, when and where. The Tenderer's designated representative is invited to attend a pre-arranged site visit and a pre-tender meeting, as the case may be. The purpose of the site visit and the pre-tender meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 73 The Tenderer is requested to submit any questions in writing, to reach the Procuring Entity not later than the period specified in the **TDS** before the meeting.
- 74 Minutes of a pre-arranged site visit and those of the pre-tender meeting, if applicable, including the text of the questions asked by Tenderers and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents. Minutes shall not identify the source of the questions asked.
- 75 The Procuring Entity shall also promptly publish anonymized (no names) Minutes of the pre-arranged site visit and those of the pre-tender meeting at the web page identified in the **TDS**. Any modification to the Tender Documents that may become necessary as a result of the pre-arranged site visit and those of the pre-tender meeting shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT 8 and not through the minutes of the pre-Tender meeting. Non-attendance at the pre-arranged site visit and the pre-tender meeting will not be a cause for disqualification of a Tenderer.
- 80 *Amendment of Tender Documents*
- 81 At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the Tender Documents by issuing addenda.
- 82 Any addendum issued shall be part of the Tender Documents and shall be communicated in writing to all who have obtained the Tender Documents from the Procuring Entity. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's website in accordance with ITT 7.5.
- 83 To give Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity should extend the dead line for the submission of Tenders, pursuant to ITT 22.2.

C. PREPARATION OF TENDERS

9. Cost of Tendering

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

10.0 Language of Tender

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

11.0 *Documents Comprising the Tender*

11.1 The Tender shall comprise the following:

- a) Form of Tender prepared in accordance with ITT 12;
- b) Schedules including priced Bill of Quantities, completed in accordance with ITT 12 and ITT 14;
- c) Tender Security or Tender-Securing Declaration, in accordance with ITT 19.1;
- d) Alternative Tender, if permissible, in accordance with ITT 13;
- e) **Authorization:** written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 20.3;
- f) **Qualifications:** documentary evidence in accordance with ITT 17 establishing the Tenderer's qualifications to perform the Contract if its Tender is accepted;
- g) **Conformity:** a technical proposal in accordance with ITT 16;
- h) Any other document required in the **TDS**.

11.2 In addition to the requirements under ITT 11.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful Tender shall be signed by all members and submitted with the Tender, together with a copy of the proposed JV Agreement. Change of membership and conditions of the JV prior to contract signature will render the tender liable for disqualification.

12.0 *Form of Tender and Schedules*

- 12.1 The Form of Tender and Schedules, including the Bill of Quantities, shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITT 20.3. All blank spaces shall be filled in with the information requested. The Tenderer shall chronologically serialize all pages of the tender documents submitted.
- 12.2 The Tenderer shall furnish in the Form of Tender information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Tender.

13 *Alternative Tenders*

- 13.1 Unless otherwise specified in the TDS, alternative Tenders shall not be considered.
- 13.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the TDS, and the method of evaluating different alternative times for completion will be described in Section III, Evaluation and Qualification Criteria.
- 13.3 Except as provided under ITT 13.4 below, Tenderers wishing to offer technical alternatives to the requirements of the Tender Documents must first price the Procuring Entity's design as described in the Tender Documents and shall further provide all information necessary for a complete evaluation of the alternative by the Procuring Entity, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the Tenderer with the Winning Tender conforming to the basic technical requirements shall be considered by the Procuring Entity.
- 13.4 When specified in the TDS, Tenderers are permitted to submit alternative technical solutions for specified parts of the Works, and such parts will be identified in the TDS, as will the method for their evaluating, and described in Section VII, Works' Requirements.

14.0 *Tender Prices and Discounts*

- 14.1 The prices and discounts (including any price reduction) quoted by the Tenderer in the Form of Tender and in the Bill of Quantities shall conform to the requirements specified below.
- 14.2 The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Tenderer shall be deemed covered by the rates for other items in the Bill of Quantities and will not be paid for separately by the Procuring Entity. An item not listed in the priced Bill of Quantities shall be assumed to be not included in the Tender, and provided that the Tender is determined substantially responsive notwithstanding this omission, the average price of the item quoted by substantially responsive Tenderers will be added to the Tender price and the equivalent total cost of the Tender so determined will be used for price comparison.
- 14.3 The price to be quoted in the Form of Tender, in accordance with ITT 12.1, shall be the total price of the Tender, including any discounts offered.
- 14.4 The Tenderer shall quote any discounts and the methodology for their application in the Form of Tender, in accordance with ITT 12.1.
- 14.5 It will be specified in the TDS if the rates and prices quoted by the Tenderer are or are not subject to adjustment during the performance of the Contract in accordance with the

provisions of the Conditions of Contract, except in cases where the contract is subject to fluctuations and adjustments, not fixed price. In such a case, the Tenderer shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data and the Procuring Entity may require the Tenderer to justify its proposed indices and weightings.

- 14.6** Where tenders are being invited for individual lots (contracts) or for any combination of lots (packages), tenderers wishing to offer discounts for the award of more than one Contract shall specify in their Tender the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITT 14.4, provided the Tenders for all lots (contracts) are opened at the same time.

147 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 30 days prior to the deadline for submission of Tenders, shall be included in the rates and prices and the total Tender Price submitted by the Tenderer.

150 *Currencies of Tender and Payment*

151 The currency (ies) of the Tender and the currency (ies) of payments shall be the same.

152 Tenderers shall quote entirely in Kenya Shillings. The unit rates and the prices shall be quoted by the Tenderer in the Bill of Quantities, entirely in Kenya shillings.

a) A Tenderer expecting to incur expenditures in other currencies for inputs to the Works supplied from outside Kenya (referred to as “the foreign currency requirements”) shall (if so allowed in the TDS) indicate in the Appendix to Tender the percentage(s) of the Tender Price (excluding Provisional Sums), needed by the Tenderer for the payment of such foreign currency requirements, limited to no more than two foreign currencies.

b) The rates of exchange to be used by the Tenderer in arriving at the local currency equivalent and the percentage(s) mentioned in (a) above shall be specified by the Tenderer in the Appendix to Tender and shall be based on the exchange rate provided by the Central Bank of Kenya on the date 30 days prior to the actual date of tender opening. Such exchange rate shall apply for all foreign payments under the Contract.

153 Tenderers may be required by the Procuring Entity to justify, to the Procuring Entity's satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices and shown in the Schedule of Adjustment Data in the Appendix to Tender are reasonable, in which case a detailed breakdown of the foreign currency requirements shall be provided by Tenderers.

16.0 *Documents Comprising the Technical Proposal*

The Tenderer shall furnish a technical proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section IV, Tender Forms, and insufficient detail to demonstrate the adequacy of the Tenderer's proposal to meet the work's requirements and the completion time.

170 *Documents Establishing the Eligibility and Qualifications of the Tenderer*

171 Tenderers shall complete the Form of Tender, included in Section IV, Tender Forms, to establish Tenderer's eligibility in accordance with ITT 4.

172 In accordance with Section III, Evaluation and Qualification Criteria, to establish its qualifications to perform the Contract the Tenderer shall provide the information requested in the corresponding information sheets included in Section IV, Tender Forms.

173 If a margin of preference applies as specified in accordance with ITT 33.1, national tenderers, individually or in joint ventures, applying for eligibility for national preference shall supply all information required to satisfy the criteria for eligibility specified in accordance with ITT 33.1.

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

175 The purpose of the information described in ITT 17.4 above overrides any claims to

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

- 17.6** The Tenderer shall provide further documentary proof, information or authorizations that the Procuring Entity may request in relation to ownership and control which in formation on any changes to the information which was provided by the tenderer under ITT 6.4. The obligations to require this information shall continue for the duration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.
- 17.7** All information provided by the tenderer pursuant to these requirements must be complete, current and accurate as at the date of provision to the Procuring Entity. In submitting the information required pursuant to these requirements, the Tenderer shall warrant that the information submitted is complete, current and accurate as at the date of submission to the Procuring Entity.
- 17.8** If a tenderer fails to submit the information required by these requirements, its tender will be rejected. Similarly, if the Procuring Entity is unable, after taking reasonable steps, to verify to a reasonable degree the information submitted by a tenderer pursuant to these requirements, then the tender will be rejected.
- 17.9** If information submitted by a tenderer pursuant to these requirements, or obtained by the Procuring Entity (whether through its own enquiries, through notification by the public or otherwise), shows any conflict of interest which could materially and improperly benefit the tenderer in relation to the procurement or contract management process, then:
- i) If the procurement process is still ongoing, the tenderer will be disqualified from the procurement process,
 - ii) if the contract has been awarded to that tenderer, the contract award will be set aside depending on the outcome of (iii),
 - iii) the tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other person have committed any criminal offence.
- 17.10** If a tenderer submits information pursuant to these requirements that is incomplete, inaccurate or out-of-date, or attempts to obstruct the verification process, then the consequences of ITT 17.8 will ensue unless the tenderer can show to the reasonable satisfaction of the Procuring Entity that any such act was not material, or was due to genuine error which was not attributable to the intentional act, negligence or recklessness of the tenderer.

18.0 Period of Validity of Tenders

- 18.1.** Tenders shall remain valid for the Tender Validity period specified in the **TDS**. The Tender Validity period starts from the date fixed for the Tender submission deadline (as prescribed by the Procuring Entity in accordance with ITT 22). A tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.
- 18.2** In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 19, it shall also be extended for thirty (30) days beyond the deadline of

the extended validity period. A Tenderer may refuse the request without forfeiting its Tender security. A Tenderer granting the request shall not be required or permitted to modify its Tender.

19.0 Tender Security

- 191** The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender Security as specified in the **TDS**, in original form and, in the case of a Tender Security, in the amount and currency **specified** in the **TDS**. A Tender-Securing Declaration shall use the form included in Section IV, Tender Forms.
- 192** If a Tender Security is specified pursuant to ITT 19.1, the Tender Security shall be a demand guarantee in any of the following forms at the Tenderer's option:
- I) cash;
 - ii) a bank guarantee;
 - iii) a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Authority;
 - (iv) a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya, from a reputable source, and an eligible country.
- 193** If an unconditional bank guarantee is issued by a bank located outside Kenya, the issuing bank shall have a correspondent bank located in Kenya to make it enforceable. The Tender Security shall be valid for thirty (30) days beyond the original validity period of the Tender, or beyond any period of extension if requested under ITT 18.2.
- 194** If a Tender Security or Tender-Securing Declaration is specified pursuant to ITT 19.1, any Tender not accompanied by a substantially responsive Tender Security or Tender-Securing Declaration shall be rejected by the Procuring Entity as non-responsive.
- 195** If a Tender Security is specified pursuant to ITT 19.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's signing the Contract and furnishing the Performance Security and any other documents required in the TDS. The Procuring Entity shall also promptly return the tender security to the tenderers where the procurement proceedings are terminated, all tenders were determined non-responsive or a bidder declines to extend tender validity period.
- 196** The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required Performance Security, and any other documents required in the TDS.
- 197** The Tender Security may be forfeited or the Tender-Securing Declaration executed:
- a) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer on the Form of Tender, or any extension there to provided by the Tenderer; or
 - b) if the successful Tenderer fails to:
 - i) sign the Contract in accordance with ITT47; or
 - ii) Furnish a Performance Security and if required in the TDS, and any other documents required in the TDS.
- 198** Where tender securing declaration is executed, the Procuring Entity shall recommend to the PPRA to debar the Tenderer from participating in public procurement as provided in the law.

199 The Tender Security or the Tender-Securing Declaration of a JV shall be in the name of the JV that submits the Tender. If the JV has not been legally constituted into a legally enforceable JV at the time of tendering, the Tender Security or the Tender-Securing Declaration shall be in the names of all future members as named in the letter of intent referred to in ITT 4.1 and ITT 11.2.

1910 A tenderer shall not issue a tender security to guarantee itself.

200 *Format and Signing of Tender*

201 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 11 and clearly mark it "ORIGINAL." Alternative Tenders, if permitted in accordance with ITT 13, shall be clearly marked "ALTERNATIVE." In addition, the Tenderer shall submit copies of the Tender, in the number specified in the TDS and clearly mark them "COPY." In the event of any discrepancy between the origins and the copies, the original shall prevail.

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

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

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

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

D. SUBMISSION AND OPENING OF TENDERS

210 *Sealing and Marking of Tenders*

211 The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to the Procuring Entity and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, the Tenderer shall place the following separate, sealed envelopes:

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

The inner envelopes or packages or containers shall:

- a) bear the name and address of the Procuring Entity,
- b) bear the name and address of the Tenderer; and
- c) bear the name and Reference number of the Tender.

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

220 *Deadline for Submission of Tenders*

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

222 The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the Tender Documents in accordance with ITT 8, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

23.0 *Late Tenders*

The Procuring Entity shall not consider any Tender that arrives after the deadline for submission of tenders, in accordance with ITT 22. Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

240 *Withdrawal, Substitution, and Modification of Tenders*

241 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITT 20.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:

- a) prepared and submitted in accordance with ITT 20 and ITT 21 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," "MODIFICATION;" and
- b) received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT 22.

242 Tenders requested to be withdrawn in accordance with ITT 24.1 shall be returned unopened to the Tenderers.

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

25 *Tender Opening*

251 Except in the cases specified in ITT 23 and ITT 24.2, the Procuring Entity shall publicly open and read out all Tenders received by the deadline, at the date, time and place specified in the TDS, in the presence of Tenderers' designated representatives who chooses to attend. Any specific electronic Tender opening procedures required if electronic Tendering is permitted in accordance with ITT 22.1, shall be as specified in the TDS.

- 252 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelopes with the corresponding Tender shall not be opened but returned to the Tenderer. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Tender opening.
- 253 Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening.
- 254 Next, envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening.
- 255 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the total Tender Price, per lot (contract) if applicable, including any discounts and alternative Tenders; the presence or absence of a Tender Security or Tender-Securing Declaration, if required; and any other details as the Procuring Entity may consider appropriate.
- 256 Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further for evaluation. The Form of Tender and pages of the Bill of Quantities (to be decided on by the tender opening committee) are to be initialed by the members of the tender opening committee attending the opening.
- 257 At the Tender Opening, the Procuring Entity's shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT 23.1).
- 258 The Procuring Entity shall prepare minutes of the Tender Opening that shall include, as a minimum: -
- a) the name of the Tenderer and whether there is a withdrawal, substitution, or modification;
 - b) the Tender Price, per lot (contract) if applicable, including any discounts;
 - c) any alternative Tenders;
 - d) the presence or absence of a Tender Security, if new as required;
 - e) number of pages of each tender document submitted.
- 259 The Tenderers' representatives who are present shall be requested to sign the minutes. The omission of a Tenderer's signature on the minutes shall not invalidate the contents and effect of the minutes. A copy of the tender opening register shall be distributed to all Tenderers.

E. EVALUATION AND COMPARISON OF TENDERS

26. Confidentiality

- 261 Information relating to the evaluation of Tenders and recommendation of contract award shall not be disclosed to Tenderers or any other persons not officially concerned with the Tender process until information on Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 43.
- 262 Any effort by a Tenderer to influence the Procuring Entity in the evaluation of the Tenders or Contract award decisions may result in the rejection of its tender.

263 Notwithstanding ITT 26.2, from the time of tender opening to the time of contract award, if a tenderer wishes to contact the Procuring Entity on any matter related to the tendering process, it shall do so in writing.

270 Clarification of Tenders

271 To assist in the examination, evaluation, and comparison of the tenders, and qualification of the tenderers, the Procuring Entity may, at its discretion, ask any tenderer for a clarification of its tender, given a reasonable time for a response. Any clarification submitted by a tenderer that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the tenders, in accordance with ITT 31.

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

280 Deviations, Reservations, and Omissions

281 During the evaluation of tenders, the following definitions apply: -

- a) "Deviation" is a departure from the requirements specified in the tender document;
- b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the tender document; and
- c) "Omission" is the failure to submit part or all of the information or documentation required in the Tender document.

290 Determination of Responsiveness

291 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the tender itself, as defined in ITT 11.

292 A substantially responsive Tender is one that meets the requirements of the Tender document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that, if accepted, would:

- a) Affecting any substantial way the scope, quality, or performance of the Works specified in the Contract;
- b) limit in any substantial way, inconsistent with the tender document, the Procuring Entity's rights or the tenderer's obligations under the proposed contract;
- c) if rectified, would unfairly affect the competitive position of other tenderers presenting substantially responsive tenders.

293 The Procuring Entity shall examine the technical aspects of the tender submitted in accordance with ITT 16, to confirm that all requirements of Section VII, Works' Requirements have been met without any material deviation, reservation or omission.

294 If a tender is not substantially responsive to the requirements of the tender document, it shall be rejected by the Procuring Entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

300 Non-material Non-conformities

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

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

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

31.0 *Arithmetical Errors*

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

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

- a) Any error detected if considered a major deviation that affects the substance of the tender, shall lead to disqualification of the tender as non-responsive.
- b) Any errors in the submitted tender arising from a miscalculation of unit price, quantity, subtotal and total bid price shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of the tender as non-responsive. and
- c) if there is a discrepancy between words and figures, the amount in words shall prevail

31.3 Tenderers shall be notified of any error detected in their bid during the notification of award.

32.0 *Conversion to Single Currency*

For evaluation and comparison purposes, the currency(ies) of the Tender shall be converted in to a single currency as specified in the **TDS**.

33.0 *Margin of Preference and Reservations*

33.1 A margin of preference may be allowed only when the contract is open to international competitive tendering where foreign contractors are expected to participate in the tendering process and where the contract exceeds the value/threshold specified in the Regulations.

33.2 A margin of preference shall not be allowed unless it is specified so in the **TDS**.

33.3 Contracts procured on basis of international competitive tendering shall not be subject to reservations exclusive to specific groups as provided in ITT 33.4.

33.4 Where it is intended to reserve a contract to a specific group of businesses (these groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case may be), and who are appropriately registered as such by the authority to be specified in the **TDS**, a procuring entity shall ensure that the invitation to tender specifically indicates that only businesses or firms belonging to the specified group are eligible to tender. No tender shall be reserved to more than one group. If not so stated in the Invitation to Tender and in the Tender documents, the invitation to tender will be open to all interested tenderers.

34.0 *Nominated Subcontractors*

34.1 Unless otherwise stated in the **TDS**, the Procuring Entity does not intend to execute any specific elements of the Works by subcontractors selected/nominated by the Procuring Entity. In case the Procuring Entity nominates a subcontractor, the subcontract agreement shall be signed by the Subcontractor and the Procuring Entity. The main contract shall specify the working arrangements between the main contractor and the nominated subcontractor.

34.2 Tenderers may propose sub-contracting up to the percentage of total value of contracts or the volume of works as specified in the **TDS**. Subcontractors proposed by the Tenderer shall be fully qualified for their parts of the Works.

34.3 Domestic subcontractor's qualifications shall not be used by the Tenderer to qualify for the Works unless their specialized parts of the Works were previously designated so by the Procuring Entity in the **TDS** a can be met by subcontractors referred to hereafter as 'Specialized Subcontractors', in which case, the qualifications of the Specialized Subcontractors proposed by the Tenderer may be added to the qualifications of the Tenderer.

35. *Evaluation of Tenders*

35.1 The Procuring Entity shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification Criteria No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies the Procuring Entity shall determine the Lowest Evaluated Tender in accordance with ITT 40.

35.2 To evaluate a Tender, the Procuring Entity shall consider the following:

- a) price adjustment in accordance with ITT 31.1 (iii); excluding provisional sums and contingencies, if any, but including Day work items, where priced competitively;
- b) price adjustment due to discounts offered in accordance with ITT 14.4;
- c) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT 32;
- d) price adjustment due to quantifiable non material on-conformities in accordance with ITT 30.3; and
- e) any additional evaluation factors specified in the **TDS** and Section III, Evaluation and Qualification Criteria.

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

35.4 Where the tender involves multiple lots or contracts, the tenderer will be allowed to tender for one or more lots (contracts). Each lot or contract will be evaluated in accordance with ITT 35.2. The methodology to determine the lowest evaluated tenderer or tenderers base done lot (contract) or based on a combination of lots (contracts), will be specified in Section III, Evaluation and Qualification Criteria. In the case of multiple lots or contracts, tenderer will be will be required to prepare the Eligibility and Qualification Criteria Form for each Lot.

36.0 *Comparison of tenders*

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

370 *Abnormally low tenders and abnormally high tenders*

Abnormally Low Tenders

- 371** An Abnormally Low Tender is one where the Tender price, in combination with other elements of the Tender, appears so low that it raises material concerns as to the capability of the Tenderer in regards to the Tenderer's ability to perform the Contract for the offered Tender Price or that genuine competition between Tenderers is compromised.
- 372** In the event of identification of a potentially Abnormally Low Tender, the Procuring Entity shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Tender document.
- 373** After evaluation of the price analyses, in the event that the Procuring Entity determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, the Procuring Entity shall reject the Tender.

Abnormally high tenders

- 374** An abnormally high tender price is one where the tender price, in combination with other constituent elements of the Tender, appears unreasonably too high to the extent that the Procuring Entity is concerned that it (the Procuring Entity) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Tenderers is compromised.
- 375** In case of a nab normally high price, the Procuring Entity shall make a survey of the market prices, check if the estimated cost of the contract is correct and review the Tender Documents to check if the specifications, scope of work and conditions of contract are contributory to the abnormally high tenders. The Procuring Entity may also seek written clarification from the tenderer on the reason for the high tender price. The Procuring Entity shall proceed as follows:
- i) If the tender price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the tender depending on the Procuring Entity's budget considerations.
 - ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, the Procuring Entity shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work and conditions of contract, as the case may be.
- 376** If the Procuring Entity determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (often due to collusion, corruption or other manipulations), the Procuring Entity shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before retendering.

380 *Unbalanced and/ or front-loaded tenders*

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

- 382** After the evaluation of the information and detailed price analyses presented by the Tenderer, the Procuring Entity may as appropriate:
- a) accept the Tender;
 - b) require that the total amount of the Performance Security be increased at the expense of the Tenderer to a level not exceeding a 30% of the Contract Price;
 - c) agree on a payment mode that eliminates the inherent risk of the Procuring Entity paying too much for undelivered works;
 - d) reject the Tender,

39.0 *Qualifications of the tenderer*

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

392 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to IIT 17. The determination shall not take into consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates, subcontractors (other than Specialized Sub-contractors if permitted in the Tender document), or any other firm(s) different from the Tenderer.

393 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event the Procuring Entity shall proceed to the Tenderer who offers a substantially responsive Tender with the next lowest evaluated price to make a similar determination of that Tenderer's qualifications to perform satisfactorily.

40.0 *Lowest evaluated tender*

Having compared the evaluated prices of Tenders, the Procuring Entity shall determine the Lowest Evaluated Tender. The Lowest Evaluated Tender is the Tender of the Tenderer that meets the Qualification Criteria and whose Tender has been determined to be:

- a) Most responsive to the Tender document; and
- b) the lowest evaluated price.

41.0 *Procuring entity's right to accept any tender, and to reject any or all tenders.*

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

Section II - Tender Data Sheet (TDS)

The following specific data shall complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT). Whenever there is a conflict, the provisions herein shall prevail over those in ITT

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
A. General	
ITT 1.1	The name of the contract is TENDER FOR UPGRADE OF THE IP PABX SOLUTION The reference number of the Tender is SNSC/053/2022//2023
ITT 2.4	The Information made available on competing firms is as follows: N/A
ITT 3.1	Maximum number of members in the Joint Venture (JV) shall be: N/A
B. Contents of Tender Document	
ITT 7.1	The Tenderer will submit any request for clarifications in writing to the Email Address below: Email: cochele@sonysugar.co.ke OR administration@sonysugar.co.ke to reach them not later than 30TH MARCH, 2023 (ii) The Procuring Entity shall publish its response at the website www.sonysugar.co.ke .
ITT 7.2	(A) A pre-arranged pretender site visit shall take place at the following date, time and place: Date: 23RD & 24TH MARCH, 2023 Time: FROM 9 AM TO 11 PM Place: AT SONY SUGAR ICT (B) Pre-Tender meeting shall take place at the following date, time and place: Date: 23RD & 24TH MARCH, 2023

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	<p>Time: 11AM TO 1PM</p> <p>Place: AT SONY SUGAR CO. LTD AT THE TRAINING CENTRE</p>
ITT 7.3	The Tenderer will submit any questions in writing, to reach the Procuring Entity not later than 3 days before the Opening date.
ITT 7.5	The Procuring Entity's website where Minutes of the pre-Tender meeting and the pre-arranged pretender will be published is N/A
ITT 9.1	<p>For Clarification of Tender purposes or obtaining further information or clarification please write to the Emails below:</p> <p>administration@sonysugar.co.ke (Managing Directors Office)</p> <p>OR</p> <p>Head of Procurement</p> <p>Tel no.020-809200-3/020-8029043, 0722471786</p> <p>Email: cochele@sonysugar.co.ke</p>
C. Preparation of Tenders	
ITT 11.1 (h)	The Tenderer shall submit the following additional documents in its Tender: N/A
ITT 13.1	Alternative Tenders shall not be considered. N/A
ITT 13.2	Alternative times for completion shall not be permitted. N/A
ITT 13.4	Alternative technical solutions shall be permitted for the following parts of the Works: N/A
ITT 14.5	The prices quoted by the Tenderer shall be: fixed
ITT 15.2 (a)	Foreign currency requirements not allowed. Quotation shall be in Kenya Shillings
ITT 18.1	The Tender validity period shall be 128 days.
ITT 18.3	<p>(a) The Number of days beyond the expiry of the initial tender validity period will be N/A days.</p> <p>(b) The Tender price shall be adjusted by the following percentages of the tender price:</p> <p>(i) By _____% of the local currency portion of the Contract price adjusted to reflect local inflation during the period of extension, N/A</p>

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	and (ii) By _____% the foreign currency portion of the Contract price adjusted to reflect the international inflation during the period of extension. N/A
ITT 19.1	The Tenderer shall provide a Tender-Security of 2% of the tender sum
ITT 20.1	In addition to the original of the Tender, the number of copies shall be TWO ORIGINAL & COPY
ITT 20.3	<i>The written confirmation of authorization to sign on behalf of the Tenderer shall consist of: N/A</i>
D. Submission and Opening of Tenders	
ITT 22.1	<p>Shall be to: South Nyanza Sugar Company Limited, Off Kisii - Migori Road P.O. Box 107 Sare - Awendo (Managing Directors Office)</p> <p>OR</p> <p>Head of Procurement Tel no.020-809200-3/020-8029043 Email: cochele@sonysugar.co.ke</p> <p>(5) Tenderers shall not submit tenders electronically.</p>
ITT 25.1	<p>The Tender opening shall take place at the time and the address for Opening of Tenders provided below:</p> <p>Head of procurement Offices.</p> <p>South Nyanza Sugar Company Limited, Off Kisii - Migori Road ,P.O. Box 107, Sare - Awendo (Training centre) on 30th March, 2023</p>
ITT 25.1	<p>Tenderers are NOT allowed to submit Tenders electronically.</p> <p>SUBMISSIONS ELECTRONICALLY NOT ALLOWED.</p>
E. Evaluation, and Comparison of Tenders	
ITT 30.3	The adjustment shall be based on the _____ [insert "average" or "highest"] price of the item or component as quoted in other substantially

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	responsive Tenders. If the price of the item or component cannot be derived from the price of other substantially responsive Tenders, the Procuring Entity shall use its best estimate. N/A
TT 32.1	<p>The currency that shall be used for Tender evaluation and comparison purposes only to convert at the selling exchange rate all Tender prices expressed in various currencies into a single currency is: KENYA SHILLINGS</p> <p>The source of exchange rate shall be: The Central bank of Kenya (mean rate)</p> <p>The deadline date for Submission of the Tenders SHALL BE 30TH MARCH, 2023.</p> <p>For comparison of Tenders, the Tender Price, corrected pursuant to ITT 31, shall first be broken down into the respective amounts payable in various currencies by using the selling exchange rates specified by the Tenderer in accordance with ITT 15.1. N/A</p> <p>In the second step, the Procuring Entity will convert the amounts in various currencies in which the Tender Price is payable (excluding Provisional Sums but including Day work where priced competitively) to the single currency identified above at the selling rates established for similar transactions by the authority specified and, on the date, stipulated above. N/A</p>
ITT 33.2	A margin of preference [insert either “shall” or “shall not”] __ N/A
ITT 33.4	The invitation to tender is extended to the following group that qualify for Reservations N/A
ITT 34.1	At this time, the Procuring Entity does not intend to execute certain specific parts of the Works by subcontractors selected in advance. N/A
ITT 34.2	Contractor’s may propose subcontracting: Maximum percentage of subcontracting permitted is: __N/A____% of the total contract amount. Tenderers planning to subcontract more than 10% of total volume of work shall specify, in the Form of Tender, the activity (ies) or parts of the Works to be subcontracted along with complete details of the subcontractors and their qualification and experience.
ITT 34.3	<p>The parts of the Works for which the Procuring Entity permits Tenderers to propose Specialized Subcontractors are designated as follows:</p> <p>N/A</p>
ITT 35.2 (e)	Additional requirements apply. These are detailed in the evaluation criteria in Section III, Evaluation and Qualification Criteria. N/A
ITT 47.3	Performance security if so required shall be 10% of the tender sum and be provided after an award to apply to the winning tender.

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 48.1	Other documents required in addition to the Performance Security are N/A
ITT 50.1	<p>The procedures for making a Procurement-related Complaint are detailed in the “Notice of Intention to Award the Contract” herein and are also available from the PPRA Website www.ppra.go.ke or email complaints@ppra.go.ke.</p> <p>If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to:</p> <p>Email address: administration@sonysugar.co.ke (Managing Directors office)</p> <p>OR</p> <p>cochele@sonysugar.co.ke (Head of Procurement)</p>

SECTION III - EVALUATION AND QUALIFICATION CRITERIA

10 GENERAL PROVISIONS

- 11** This section contains the criteria that the Employer shall use to evaluate tender and qualify tenderers. No other factors, methods or criteria shall be used other than specified in this tender document. The Tenderer shall provide all the information requested in the forms included in Section IV, Tendering Forms. The Procuring Entity shall use **the Standard Tender Evaluation Document for Goods and Works** for evaluating Tenders.
- 12** Wherever a Tenderer is required to state a monetary amount, Tenderers should indicate the Kenya Shilling equivalent using the rate of exchange determined as follows:
- a) For construction turnover or financial data required for each year - Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year is to be converted) was originally established.
 - b) Value of single contract - Exchange rate prevailing on the date of the contract signature.
 - (c) Exchange rates shall be taken from the publicly available source identified in the ITT 14.3. Any error in determining the exchange rates in the Tender may be corrected by the Procuring Entity.

1.3 EVALUATION AND CONTRACT AWARD CRITERIA

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

2.0 PRELIMINARY EXAMINATION FOR DETERMINATION

OF RESPONSIVENESS Preliminary examination for

Determination of Responsiveness

The Procuring Entity will start by examining all tenders to ensure they meet in all respects the eligibility criteria and other mandatory requirements in the ITT, and that the tender is complete in all aspects in meeting the requirements provided for in the preliminary evaluation criteria outlined below. The Standard Tender Evaluation Report Document for Goods and Works for evaluating Tenders provides very clear guide on how to deal with review of these requirements. Tenders that do not pass the Preliminary Examination will be considered non-responsive and will not be considered further.

221 Evaluation of Technical aspects of the Tender -

The Procuring Entity shall evaluate the Technical aspects of the Tender to determine compliance with the Procuring Entity's requirements under Section V 'Schedule of Requirement' and whether the Tenders are substantially responsive to the Technical Specifications and other Requirements.

EVALUATION CRITERIA

The following **Evaluation Criteria** will be applied;

- a) Evaluation shall be carried out in three stages - (Mandatory, Technical and Financial evaluations of tender),
- b) Technical evaluation shall carry a maximum of 100% of total points, while Financial Evaluation shall carry no point.

A. MANDATORY EVALUATION REQUIREMENTS

- Bidders must respond to the below form and attach all relevant documentation for each item.
- Bidders who fail to comply with any of the provided requirements will be automatically disqualified.
- Bidders who fail to attach the required documentation will also be automatically disqualified.

	ITEM	REQUIREMENTS	YES/NO
MR 1	Certificate of Incorporation	The bidder MUST attach a copy of the certificate of Incorporation.	
MR2	Tax Compliance certificate	Attach a Valid KRA Tax Compliance certificate; to be verified through the KRA TCC checker	
MR3	Business Questionnaire	Confidential Business Questionnaire dully filled, signed & stamped	
MR 4	Bid security	ORIGINAL Tender Security of Kenya Shillings 100,000.00 from a reputable bank in the form of a Banker's guarantee or an Insurance Company Guarantee issued by an insurance firm approved by the Public Procurement Regulatory Authority (PPRA), or guarantee by Youth Enterprise Development Fund or the Women Enterprise Fund valid for 120 days from the date of tender opening in	

		the format provided in the tender document	
MR 5	Form of tender	Duly filled, Signed and stamped Form of tender in the format provided	
MR 6	Bid documents	Submission of original & copy of tender document properly TAPE BOUND and PAGINATED in the correct sequence and all pages MUST be initialed & stamped. NB: Spiral binding and box files shall lead to disqualification	
MR7	Partnership Certificate(Premium and above)	Submission of a Valid Partnership Certificate.	
MR8	Manufacturer Authorization form	Bidders are required to provide a MAF letter from the Vendor of the proposed solution addressed to the Company.	
MR9	CR 12 Form	Valid copy of CR12 form issued by Registrar of Companies	
MR10	Integrity Pact and Bidders declaration	Integrity Pact and Bidders Declaration shall be duly signed and stamped in the format provided	
MR11	Communication Authority certificate	Certificate from the Communications Authority of Kenya	
MR 12	Site Visit	The bidder shall be required to submit the signed site visit certificate.	
MR13	ICT Authority Certificate	Copy of Certification from the ICT Authority: <ul style="list-style-type: none"> • Data Centre • ICT Networks • End-point computing • Information Security 	

Note:

The submission of the above items is mandatory. Failure to attach the same shall lead to automatic disqualification.

B. MANDATORY TECHNICAL SPECIFICATIONS

The successful bidder must meet the following specifications for active devices. Technical Documentation must be provided.

UCM Operating System Technical Specifications

No	Feature	Description	Bidder Response
1	MLPP	The system must support Multilevel Precedence and Preemption (MLPP) service to allow properly validated users to place priority calls.	
2	Server Security Profile	The system must support Unified Communications Manager Administration groups' security-related settings to allow SONY Administrator to integrate it with the existing security setup and solutions.	
3	Call Routing	The system must use Unified Communications Manager (UCM) to use route plans to route internal calls within a Unified Communications Manager (UCM) cluster, and external calls to a private network or the public switched telephone network (PSTN).	
4	Media Termination Point	The system must support Media Termination Point software device to allows Unified Communications Manager to relay calls that are routed through SIP or H.323 endpoints or gateways	

No	Feature	Description	Bidder Response
5	AAR Group	The system must be automated alternate routing (AAR) to provide a mechanism to reroute calls through the PSTN when calls are blocked due to insufficient location bandwidth. With automated alternate routing, the caller shall not need to hang up and redial the called party.	
6	LDAP	The system must support DirSync service to ensure the Unified Communications Manager database stores all user information. If SONY use an integrated corporate directory, for example, Microsoft Active Directory, with Unified Communications Manager, the DirSync service shall migrate the user data to the Unified Communications Manager database. The DirSync service shall not synchronize the passwords from the corporate directory.	
7	SRST	The system must support survivable remote site telephony (SRST) reference that shall comprise the gateway that can provide limited Unified Communications Manager (UCM) functionality when all other Unified Communications Manager (UCM) servers for a device are unreachable.	
8	Device Mobility	The system must support Device Mobility feature to dynamically change important location settings, such as	

No	Feature	Description	Bidder Response
		calling search space, region, date/time group, and SRST reference, for roaming devices.	
9	Voicemail and networked messaging.	The system must support Voicemail to provide a telephone answering machine with a personalized greeting on every employee's desk and allows callers to leave spoken messages when the user cannot answer a telephone call.	
10	Unified IVR	It must provide more comprehensive and effective customer service by efficiently handling call traffic with self-service or fast transfer to the correct agent the first time	
		It must delivers notification to users through email	
		It must provide the ability to integrate with external database and web services to provide data-led call routing.	
11	Vendor training	Bidders must include technical training and Certification for three officers at an Accredited Training Center from the manufacturer, costs to include travel and accommodation. Please provide brochures of the course.	
12	Interoperability	The proposed system should be interoperable with the company's existing PABX to facilitate seamless operations during the transition	

System Device specifications

1)

	Minimum Feature	Minimum Desired Requirement	Bidder Response with supporting literature	Named Equipment/ Software
	Item Quantity: 1			
	UC Servers			
1.	Form Factor	Rack-Mount		
2.	Overview	The PABX System must be a unified communications solution for businesses that provides premium voice, video, messaging, instant messaging and presence, conferencing, video conferencing, contact center services and mobility capabilities		
3.		This easy-to-manage platform must be business-class, proven unified communications technologies to full advantage and supports flexible deployment models based on the needs—a wide array of IP Phones		
4.		Should enable session and call control for video, voice, messaging, mobility, instant messaging, and presence. Should allow for effective secure collaboration on any network, with any device, and from anywhere cost-effectively, reliably, and securely.		
5.		Platform should support up to 1000 users and at least four collaboration applications Compatible to Integrated Call Center/Contact Center Functionality		

6.		Should support up to 1000 mailboxes and 24 voicemail ports		
7.		Advanced IP System		
8.	Instant messaging and presence capabilities	Should support persistent chat high availability that helps ensure that clients can seamlessly continue to use persistent chat rooms in the event of Instant Messaging and Presence Service node failure or Text Conferencing (TC) service failure.		
9.	PIN synchronization	Should support PIN synchronization that allows users to log in to Extension Mobility,		
10.		Conference Now, Mobile Connect, and Voicemail using the same end-user PIN. Should ensure that end-user PIN is synchronized from the Communications Manager to Voicemail and vice versa when the feature is enabled.		
11.	Enterprise directory user search	Should provide the ability to search users in the enterprise directory through UDS proxy.		
12.		Should support expansion of the user search base as administrators no longer need to configure or synchronize user accounts to the database solely for user searches.		
13.		Should enable mobile and remote access (MRA) clients or endpoints to search the enterprise directory directly when they are connected outside the enterprise firewall. Should support various directory server types.		
14.		Should support single number reach		
15.	Location Awareness Service	Should allow administrators to determine the physical location from which a phone connects to the company network. Should		

		allow administrators to view the wireless access point infrastructure and which mobile devices currently associate to those access points. For wired networks, should allow administrators to view the Ethernet switch infrastructure and see which devices are currently connected to those switches.		
16.		Should help integrated applications such as Emergency Responder determine the physical location of a user who places an emergency call.		
17.		Should allow third-party applications to query location information through the AXL interface and get location updates through AXL change notification.		
18.		Should allow administrator to provision a single SAML single sign-on (SSO) agreement per Communications Manager cluster, resulting in improved SSO configuration manageability and reduced total cost of ownership (TCO).		
19.	Administration simplicity	Should allow self-provisioning functionality.		
20.		Should allow better manageability of locally significant certificates (LSCs) by the ability to generate LSC reports, renew LSCs via BAT, and monitor LSCs for certificate expiration.		
21.	Security enhancements	Should have improved cryptography with the inclusion of 3072- and 4096-bit RSA certificate key size and AES-256 RSA/elliptical curve support for SIP, Tomcat, and XMPP interfaces. Should offer support for SHA-2 file		

		signature for the Communications Manager		
22.		Configuration and trust list files for supported endpoints.		
23.		Should support ability to configure minimum cipher control on the SIP/SRTP interface and enable/disable elliptical curve cipher on the HTTPS Tomcat interface. Should offer Form-based authentication support for web applications and API services to avoid browser caching of credentials.		
24.		Should support for SAML SSO for Real-time Monitoring Tool (RTMT) to enable two-factor authentication.		
25.		Should have the ability to segregate roles as read-only or read-write for AXL and CLI.		

2)

	Minimum Feature	Minimum Desired Requirement	Bidder Response with supporting literature	Named Equipment/ Software
1.	Item Quantity: 1			
	Voice Gateway			
2.	Overview	The router should deliver powerful security features, such as Zone-Based Firewall, VPN, and infrastructure security services with WAN access technologies, providing high levels of performance, scalability, and availability to meet today's growing business requirements.		
3.		It should enable unified communications through a comprehensive signaling and media-processing infrastructure.		
4.	Form Factor	1 RU		
5.	Total onboard WAN or LAN 10/100/1000 ports	Must have at least 3		
6.		Must have at least 3 SFP based port		
7.		Must have at least 200 Mbps to 400 Mbps		
8.		Must have at least 3		
9.		Default memory double-data-rate 3	Must have at least 4	
10.	(DDR3) error-	Must have at least 2		
11.	correction-code (ECC) DRAM (Combined	SIP trunk must support connection to you and allow you to make		

	control/services/data planes)	outbound calls on your existing system, without restrictions on the number of concurrent calls.		
12.		Must have embedded hardware-based cryptography and acceleration		
13.	Support	The router should support free software maintenance updates		

3)

	Minimum Feature	Minimum Desired Requirement	Bidder Response with supporting literature	Named Equipment / Software
	Item Quantity 2			
	Unified Attendant Console			
1.		Minimum Desired Requirement		
2.	Overview	It must Connect customers, employees, and business partners with the right person, the first time and gives corporate operators and receptionists the tools they need to process incoming calls efficiently and professionally. This desktop application communicates directly with Unified Communications Manager to control the user's phone.		
3.	Queue features	Must support at least for 100 queues with prioritization		
4.		Must support operator queue assignment		
5.		Must support queue view		

6.		Must support queue statistics		
7.	Directory features	Must support Active Directory, Unified Communications Manager, iPlanet directory integration		
8.		Must support manually add contacts		
9.		Must support bulk add, update, and delete contacts		
10.		Must support personal directory groups		
11.		Must support search options		
12.		Must support presence integration		
13.		Presence integration	Must support operator handset ringing	
14.	Must support transfer reversion (call recall)			
15.	Must support call park			
16.	Must support call park recall			
17.	Must support call toggle			
18.	Must support conference			
19.	Must support emergency Mode switch			
20.	Must support out-of-hours routing			
21.	2		Qwerty Keypads	

4)			
Managerial IP Phones			
Item Quantity: 15			
S. No.	SONYSUGAR Requirement	Bidders Response with supporting literature	Named Gadgets/ Software
1.	Must have touch screen 5-inch (12.5 cm) graphical TFT color display, 320 x 240 effective pixel resolution, with backlight display		
2.	Must support for wideband including handset, headset, and speakerphone		
3.	Must support G.711a, G.711 μ , G.729a, G.729ab, G.722, and iLBC audio compression codecs		
4.	Must have Full-duplex speakerphone with acoustic echo cancellation		
5.	Must provide direct access to voicemail		
6.	Must allow user to adjust display brightness, select background images, and select ringer sounds through the User Preference menu		
7.	Must have internal 2-port Ethernet switch to allow for a direct connection to a 10/100/1000 BASE-T Ethernet network through an RJ-45 interface with single LAN connectivity for both the phone		

	and a co-located PC		
8.	Must support SCCP and SIP protocols		
9.	Must provide direct access to two telephone lines (or combination of lines, speed dials, and direct access to telephony features)		
10.	Managerial IP Phones must have at least 1 Year Next Business Day advance hardware replacement warranty from the OEM		
11	Qwerty Keypads		
5)			
IP Wireless Handsets - Item Quantity: 20			
S. No.	SONYSUGAR Requirement	Bidders Response with supporting literature	Named Gadgets/ Softwares
1.	Must have IEEE 802.11 a/b/g radio		
2.	Must have at least 2-inch color display		
3.	Must have at least 2D image bar-code scanner		
4.	Must have at least IP54 rating for protection against dust and splashing water		
5.	Must have MIL-STD-810F standard for shock resistance		

6.	Must have Long battery life (at least 240 hours of standby time or 13 hours of talk time)		
7.	Must have Built-in speakerphone for hands-free operation		
8.	Must have Exceptional voice quality with support for wideband audio		

6) Item Number 6

IP DeskPhones- Item Quantity: 260

S. No.	SONYSUGAR Requirement	Bidders Response with supporting literature	Named Gadgets/Software
1.	Must be supporting at least 2 lines		
2.	Must have 3.5" 396×162 pixel-based display on the IP Phone		
3.	Must support backlit indicators for the audio path keys (handset, headset and speakerphone), select key, line keys, and message waiting		
4.	Must have Full-duplex speakerphone to give flexibility in placing and receiving calls		
5.	Must have the following keys Line keys Two-way navigation and select keys Hold/Resume, Transfer and Conference keys Messaging, Service and Directory keys Standard key pads Volume control toggle key		

	Speakerphone, headset and mute keys		
6.	Must support IEEE 802.3af PoE (Class 1)		
7.	Must support latest version of call manager. Mention the version		
8.	Licensing must be part of centralized licensing for PABX		
9.	Must support 802.1Q/P standards for quality of service		
10.	User IP Phones must have at least 1 Year Next Business Day advance hardware replacement warranty from the OEM		

Item Number 7

Secretarial IP Phones Item Quantity: 25

S. No.	SONYSUGAR Requirement	Bidders Response with supporting literature	Named Gadgets/Software
11.	Must have touch screen 5-inch (12.5 cm) graphical TFT color display, 320 x 240 effective pixel resolution, with backlight display		
12.	Must support for wideband including handset, headset, and speakerphone		
13.	Must support G.711a, G.711 μ , G.729a, G.729ab, G.722, and iLBC audio compression codecs		
14.	Must have Full-duplex speakerphone with acoustic echo cancellation		
15.	Must provide direct access to voicemail		

16.	Must allow user to adjust display brightness, select background images, and select ringer sounds through the User Preference menu		
17.	Must allow users to quickly access diverse information such as weather, stocks, quote of the day, or any Web-based information using XML		
18.	Must have internal 2-port Ethernet switch to allow for a direct connection to a 10/100/1000 BASE-T Ethernet network through an RJ-45 interface with single LAN connectivity for both the phone and a co-located PC		
19.	Must support IEEE 802.3af PoE (Class 3)		
20.	Must support SCCP and SIP protocols		
21.	Must provide direct access to six telephone lines (or combination of lines, speed dials, and direct access to telephony features)		
22.	Secretarial IP Phones must have at least 1 Year Next Business Day advance hardware replacement warranty from the OEM		
	Qwerty Keypads		

Note:

- 1. Bidders MUST respond to ALL the requirements on a clause-by-clause basis (under the "Bidders response" column) stating clearly how their solution meets the requirements against the minimum specifications. Responses to compliance to technical specifications in any other way other than clause by clause will be treated as NON-RESPONSIVE.**
- 2. Responses such as "complied", "possible to do", "meets" will be considered as NON-RESPONSIVE if not accompanied by evidence.**

Technical Evaluation Criteria

C. THE TECHNICAL EVALUATION (CAPACITY TO DELIVER THE SERVICE)

AREA	TECHNICAL EVALUATION CRITERION SCORE	
1. CAPABILITY OF THE FIRM, PAST PERFORMANCE, METHODOLOGY (TOTAL SCORE=55 Marks)		
CAPABILITY OF THE FIRMS, PAST PERFORMANCE, METHODOLOGY	Experience (Specific experience of the firm related to the assignment) <i>The Firm shall provide at least 4 reference sites/ institutions where they have undertaken similar assignments successfully. Include contact persons, in the format prescribed. (2.5mks per site)</i>	10
	<i>Provide evidence of having undertaken similar assignments in the last 5 years by submitting at least five (5) LSOs, Contracts or reference letters of recommendations (5mks per letter)</i>	20
	Methodology <i>Firms are expected to demonstrate an understanding of the terms of reference by providing the following: -</i> <i>1. Technical Approach, design diagrams and Methodology (10mks)</i> <i>2. Project or Work Plan (10mks)</i> <i>3. Service level agreement (5mks)</i>	25
4. QUALIFICATIONS AND COMPETENCE OF THE KEY STAFF FOR THE ASSIGNMENT: (TOTAL SCORE=45 MARKS)		
<i>The key experts should provide the assignments they have undertaken with their reference contacts.</i>		
<i>Attach CVs accompanied by copies of Academic and specialization certificates for key personnel proposed for administration and execution of the contract.</i>		

NB: It is expected that the proposed staff are the ones to be engaged for the project if the bidder is successful and changes can only be made with consent of the client.		
Project Manager	<ol style="list-style-type: none"> 1. Degree in Business Management, Computer Science, Engineering or related field (6 marks) 2. at least 5 years of experience in project management assignments. Give a minimum of three related projects (3mks per project) 	15
Senior Engineers (2)	<ol style="list-style-type: none"> 1. Degree in IT, Computer Science, Engineering or related field – (2mks) 2. Voice, and Routing and Switching level certification and above, CCIE and above(2mks) 3. At least 5 years of experience on deployment of enterprise IP PABX solution. (4mks per project with a maximum of 4 projects) 	20
Network Engineers (1)	<ol style="list-style-type: none"> 1. Degree in IT, Computer Science, Engineering or related field – (2mks) 2. Voice routing and switching i.e CCNP and above (2mks) 3. At least 5 years of experience in network deployments in installations, configuration and management in large enterprises or government entities. Give a minimum of three projects related to network installations. (2mks per project) 	10
TOTAL SCORE		100

NOTE

1. **The pass mark for technical score shall be 85% of the total marks. All bidders who do not attain this minimum shall be disqualified from financial evaluation.**
2. **The bidder who will have passed the Mandatory and Technical stages in “A”, “B” & scored at least 85% in “C” and has submitted the lowest bid price inclusive of taxes will be awarded the tender.**

d)Financial Evaluation

The Financial proposal shall clearly indicate the total cost of carrying out the procurement, supply, delivery, installation, configuration, customization, testing, commissioning and setting to work Contact Centre and related works as called for in the specifications as per requirements stated herein, but should be broken down to enable partial payments or scaling of requirements All the associated costs irrespective should be comprehensively lumped in the Bid Sum.

Transport and accommodation should be included in the total unit cost quoted per item except on online Skills Support. Supply, delivery, installation, configuration, customization, testing, training commissioning and setting to work Contact Centre and related works shall be carried out on site- Awendo HQ Offices.

The price schedules of the spares, and consumables (based on the make and model of the winning bidder) shall include cost of “transport and installation” and shall be evaluated separately with the lowest being awarded.

Payments

- 1. Payment shall be made in Kenya Shillings as specified in the tender document within thirty (30) days of presentation of Invoice.*
- 2. 100% billing after successful implementation and commissioning and upon acceptance by the inspection and acceptance committee.*

SCOPE OF WORKS

BACKGROUND

South Nyanza Sugar Company (SonySugar), Governed by the State Corporations Act stands out as the most significant industrial investment by the Government of Kenya (GOK) in South Nyanza. Located in South Western Kenya in Migori County, it was established in 1976 under the Companies Act Cap 486 of The Laws of Kenya and commissioned in 1979, The Company premises and sugarcane nucleus estate sits on an area covering 2,492 hectares, with out-grower cane area of 15,500 hectares.

The mandate of the company includes:

- To increase national sugar production.
- Reduce dependency on sugar imports.
- Create employment opportunities.
- Enhance regional development.
- Cane development supported by appropriate research.
- Manufacturing quality sugar and associated products.
- Marketing of sugar and associated products.
- SONY SUGAR serves over 25,000 cane farmers spread out within the cane growing zones of Migori, Homabay, Narok, Kisii and Nyamira counties.

Project Background

SONYSUGAR desires to implement a state of the art Voice Over Internet Protocol (VoIP) System to enhance its productivity and ensure that there is improved service delivery and new experience to clients as they transact business with the Company. The proposed system that surpasses expectations in terms of robustness, resilience, ease of reporting and scalability shall carry the day

General

The Main Objectives required to be met by the) System are as follows:

- Providing Voice calls, Video Calls and Voicemail. The establishment capacity stands at **500**.
- Cost effective solution that is robust, scalable and easy to use. Other objectives include:
- Comprehensive solution from industry leading manufacturer and vendors

- Reliable and scalable platform with minimum number of servers
- Cost effective total solution including product, installation, and maintenance
- Centralized administration and management of hardware and software
- Easy to use phones, applications, and features with superior voice quality
- Transparent features and dialing between phones regardless of location
- Mobility of users regardless of location
- Centralized auto attendants and voice messaging to all users
- Centralized scheduled, ad-hoc, and dial-out conferencing services for internal and external users
- Choice of regular voice mail or unified messaging for all users
- Standard-based integration with other telephony applications
- Interoperability with existing PABX for ease of transitioning and migration
- Integration with corporate email and instant messaging applications
- Ability to provide integration with corporate business applications
- Connectivity to at least 2 outposts(within the MPLS) with a possibility of expansion to other sector offices
- Communication system should have a failover mechanism
- Solution should be integrated into the existing Network and Unified Threat Management System (UTMS).

Scope of Works

- i. The contract shall comprise the procurement, supply, delivery, installation, configuration, customization, testing, commissioning and setting to work contact centre and related works as called for in the specifications.
- ii. The tenderer shall include for all apparatus, appliances and accessories not particularly called for in this specification or on the contract drawings but which are necessary for the successful completion and satisfactory functioning of the contract works.
- iii. If it is deemed that, in the opinion of the contractor at the time of tendering there existed a discrepancy in the specification, drawing or both, that the contractor clarifies this difference with the SonySugar ICT Department before tendering.
- iv. The tenderer shall provide as an integral part of his bid, a statement of compliance in which he/she shall clearly declare any items of the specification to which his offer does not comply and an alternative which is included in the offer.
- v. The contractor shall be obliged to liaise with other parties involved in the project and to provide any necessary information as and when required especially the core business systems.
- vi. The contractor shall, where applicable mark the details of structural, duct or conduit provisions for the installation of their cables or equipment.
- vii. The contractor shall ensure seamless integration with LAN/wireless and proper segregation of voice and data throughout the network including MPLS.
- viii. The work to be installed under the contract shall comprise but not restricted to the supply and installation of the UPS, IPBX, IP telephony sets and contact centre software bidders are requested to clarify after the site survey if any other components shall be required.
- ix. Supply, install, configure, support and maintenance of entire upgraded IP PABX solution for a period not less than 3 years
- x. Supply, install, configure, support and maintenance of voice logger for contact center set up.

- xi. Provide a detailed post deployment high and low level documentation that will be used for the
- xii. Training from an accredited training center for the Company engineers on the solution to be deployed. Bidder to provide training schedule with course breakdown.
- xiii. The successful bidder will be expected to provide the company with a service level agreement (SLA) and upgrade for three (3) years for the communication solution.
- xiv. The successful bidder will be expected to perform to a complete migration/ rehosting of all the related licenses to the any new appliances within service level agreement (SLA) duration.
- xv. The successful bidder will be expected to respond within four hours of call or notification during working hours for level two engineering support services to the deployed infrastructure that includes but not limited to, tuning and/or configuration modifications or addition of new users, configurations related to hardware failure or software bugs as requested by the Company.
- xvi. The successful bidder shall be expected to diagnose and/or troubleshoot all problems on the unified communications solution either remotely (via phone, e-mail, remote desktop session ...etc.) or onsite at the Company premises during and after working hours or on weekends.
- xvii. Reconfiguring/restoring all hardware and software system components in case of any major failure, damage, or hardware replacement.
- xviii. The Company expects the provision of labor for 24x7 on call availability & the performance of a quarterly preventive maintenance for 3 years post-implementation with detailed maintenance reports provided.
- xix. All the work related to new/add/amend configuration and/or troubleshooting should be implemented in close coordination with the Company's ICT team.

PART II - SUPPLY REQUIREMENTS

Price Schedule Forms

[The tenderer shall fill in these Price Schedule Forms in accordance with the instructions indicated. The list of line items in column 1 of the **Price Schedules** shall coincide with the List of Goods and Related Services specified by the **South Nyanza Sugar Company Ltd in the Schedule of Requirement**

Section V - Schedule of Requirements

Notes for Preparing the Schedule of Requirements -

The Schedule of Requirements shall be included in the Tendering document by the Procuring Entity, and shall cover, at a minimum, a description of the goods and services to be supplied and the delivery schedule.

The objective of the Schedule of Requirements is to provide sufficient information to enable tenderers to prepare their Tenders efficiently and accurately, in particular, the Price Schedule, for which a form is provided in Section IV. In addition, the Schedule of Requirements, together with the Price Schedule, should serve as a basis in the event of quantity variation at the time of award of contract pursuant to ITT 42.1.

The date or period for delivery should be carefully specified, taking into account (a) the implications of delivery terms stipulated in the Instructions to tenderers pursuant to the Incoterms rules that "delivery" takes place when goods are delivered **to the final place of delivery**, and (b) the date prescribed herein from which the Procuring Entity's delivery obligations start (i.e., notice of award, contract signature, opening or confirmation of the letter of credit.

SCHEDULE OF REQUIREMENTS

NB: Tenderers MUST fill in this form. Failure to comply will automatically disqualify the bid. The tenderer will also be expected to submit supporting documents e.g. brochures for such materials offered. Please note that you can extend the listing if itemized entries do not meet the provision of a total solution as prescribed in summary paragraph

<u>Item</u>	<u>Description</u>	<u>Quantity</u>	<u>Manufacturer & Catalogue No.</u>	<u>Country of origin</u>	<u>Dimensions</u>
1.	IPBX / Host Server(s) Model.	1			
2.	Console Make.				
3.	Standard IP Desk phone	260			
4.	Secretarial IP Phones	25			

5.	Standard Contact Centre complete software/ component	Contact Phones with component	2			
6.	Managerial IP Desk phones		15			
7.	IP Wireless Handsets		20			
8.	Voice Router - 1		1			
9.	Call Accounting / Billing / Management Software					
10.	Security Module					
11.	Applicable Licenses (At least 12 Months)					
12.	Labor Charges- Installation and Configuration					
13.	Maintenance Charges for 1 Year renewable					
14.	Contact Centre Headsets		2			
15.	General accessories					
16.	Other Lot (Specific to your solution-Not listed)					
17.	Training					

	Item	Quantity	Unit Costs Kshs.	Total Kshs.
1.	UCM Solution HW & Licenses			
2.	Contact Centre Upgrade services			
3.	Post-Implementation Support Yr 1			
4.	Intermediary Equipment(if needed from site visit)			
5.	End-User Equipment			
6.	Any other cost not specified (if needed from site visit)			
7.	Certified End User training			
			Sub Total Kshs.	
			VAT 16%	
			Grand Total Kshs.	

OTHER FORMS

6. FORM OF TENDER

INSTRUCTIONS TO TENDERERS

- i) The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address.
- ii) All italicized text is to help Tenderer in preparing this form.
- iii) Tenderer must complete and sign CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELF DECLARATION OF THE TENDERER attached to this Form of Tender.
- iv) The Form of Tender shall include the following Forms duly completed and signed by the Tenderer.
 - Tenderer's Eligibility- Confidential Business Questionnaire
 - Certificate of Independent Tender Determination
 - Self-Declaration of the Tenderer

Date of this Tender submission: ----- [insert date (as day, month and year) of Tender submission] **Request** **for Tender No.:** ----- [insert identification]

Name and description of Tender ----- Insert as per ITT) **Alternative No.:** [insert identification No if this is a Tender for an alternative]

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

Dear Sirs,

1. In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Quantities for the execution of the above named Works, we, the undersigned offer to construct and complete the Works and remedy any defects therein for the sum¹ of Kenya Shillings [[Amount in figures] _____ Kenya Shillings [amount in words] _____

The above amount i (s) of [state figure or a percentage and currency]
[figures] _____ [words] _____

2. We undertake, if our tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Architect notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Special Conditions of Contract.
3. We agree to adhere by this tender until _____ [Insert date], and it shall remain binding upon us and may be accepted at any time before that date.

¹ This sum should be carried forward from the Summary of the Bills of Quantities.

4. We understand that you are not bound to accept the lowest or any tender you may receive.
5. We, the under signed, further declare that:
 - i) No reservations: We have examined and have no reservations to the tender document, including Addenda issued in accordance with ITT 28;
 - ii) Eligibility: We meet the eligibility requirements and have no conflict of interest in accordance with ITT 3 and 4;
 - iii) Tender - Securing Declaration: We have not been suspended nor declared ineligible by the Procuring Entity based on execution of a Tender-Securing or Proposal-Securing Declaration in the Procuring Entity's Country in accordance with ITT 19.8;
 - iv) Conformity: We offer to execute in conformity with the tendering documents and in accordance with the implementation and completion specified in the construction schedule, the following Works: [insert a brief description of the Works];
 - v) Tender Price: The total price of our Tender, excluding any discounts offered in item 1 above is: [Insert one of the options below as appropriate]
 - vi) Option 1, in case of one lot: Total price is: [insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies]; or
Option2, in case of multiple lots:
 - (a) Total price of each lot [insert the total price of each lot in words and figures, indicating the various amounts and the respective currencies]; and
 - (b) Total price of all lots (sum of all lots) [insert the total price of all lots in words and figures, indicating the various amounts and the respective currencies];
 - vii) Discounts: The discounts offered and the methodology for their application are:
 - viii) The discounts offered are: [Specify in detail each discount offered.]
 - ix) The exact method of calculations to determine the net price after application of discounts is shown below: [Specify in detail the method that shall be used to apply the discounts];
 - x) Tender Validity Period: Our Tender shall be valid for the period specified in TDS 18.1 (as amended, if applicable) from the date fixed for the Tender submission deadline specified in TDS 22.1 (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
 - xi) Performance Security: If our Tender is accepted, we commit to obtain a Performance Security in accordance with the Tendering document;
 - xii) One Tender Per Tender: We are not submitting any other Tender(s) as an individual Tender, and we are not participating in any other Tender(s) as a Joint Venture member or as a sub-contractor, and meet the requirements of ITT 3.4, other than alternative Tenders submitted in accordance with ITT 13.3;
 - xiii) Suspension and Debarment: We, along with any of our subcontractors, suppliers, Engineer, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the Public Procurement Regulatory Authority or

any other entity of the Government of Kenya, or any international organization.

- xiv) State-owned enterprise or institution: [select the appropriate option and delete the other] [We are not a state- owned enterprise or institution]/ [We are a state-owned enterprise or institution but meet the requirements of ITT3.8];
- xv) Commissions, gratuities, fees: We have paid, or will pay the following commissions, gratuities, or fees with respect to the tender process or execution of the Contract: [insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity].

Name of Recipient	Address	Reason	Amount

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

- xvi) Binding Contract: We understand that this Tender, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- xvii) Not Bound to Accept: We understand that you are not bound to accept the lowest evaluated cost Tender, the Most Advantageous Tender or any other Tender that you may receive;
- xviii) Fraud and Corruption: We here by certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption; and
- xix) Collusive practices: We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the “Certificate of Independent Tender Determination” attached below.
- xx) We undertake to adhere by the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal, copy available from ___(specify website) during the procurement process and the execution of any resulting contract.
- xxi) We, the Tenderer, have completed fully and signed the following Forms as part of our Tender:
 - a) Tenderer's Eligibility; Confidential Business Questionnaire - to establish we are not in any conflict to interest.
 - (b) Certificate of Independent Tender Determination - to declare that we completed the tender without colluding with other tenderers.
 - (a) Self-Declaration of the Tenderer - to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.
 - (d) Declaration and commitment to the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal.

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

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

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

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

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

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

Date signed _____ day of _____, _____

Notes

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

**Person signing the Tender shall have the power of attorney given by the Tenderer to be attached with the Tender.

(a) TENDERER'S ELIGIBILITY-CONFIDENTIAL BUSINESS

QUESTIONNAIRE Instruction to Tenderer

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

(a) Tenderer's details

	ITEM	DESCRIPTION
1	Name of the Procuring Entity	
2	Reference Number of the Tender	
3	Date and Time of Tender Opening	
4	Name of the Tenderer	
5	Full Address and Contact Details of the Tenderer.	1. Country 2. City 3. Location 4. Building 5. Floor 6. Postal Address 7. Name and email of contact person.
6	Current Trade License Registration Number and Expiring date	
7	Name, country and full address (postal and physical addresses, email, and telephone number) of Registering Body/ Agency	
8	Description of Nature of Business	
9	Maximum value of business which the Tenderer handles.	
10	State if Tenders Company is listed in stock exchange, give name and full address (postal	

	and physical addresses, email, and telephone number) of state which stock exchange	
--	--	--

General and Specific Details

(b) **Sole Proprietor**, provide the following details.

Name in full _____ Age _____
 Nationality _____ Country of Origin _____
 Citizenship _____

(c) **Partnership**, provide the following details.

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

(d) **Registered Company**, provide the following details.

- i) Private or public Company _____
- ii) State the nominal and issued capital of the Company _____

Nominal Kenya Shillings (Equivalent).....
 Issued Kenya Shillings (Equivalent).....

iii) Give details of Directors as follows.

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

(e) **DISCLOSURE OF INTEREST - Interest of the Firm in the Procuring Entity.**

- i) Are there any person/persons in..... (Name of Procuring Entity) who has/have an interest or relationship in this firm? Yes/No.....

If yes, provide details as follows.

	Names of Person	Designation in the Procuring Entity	Interest or Relationship with Tenderer
1			
2			
3			

(i) *Conflict of interest disclosure*

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
1	Tenderer is directly or indirectly controls, is controlled by or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Tender has a relationship with another tenderer, directly or through common third parties that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process.		
5	Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender.		
6	Tenderer would be providing goods, works, non-consulting services or consulting services		

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
	during implementation of the contract specified in this Tender Document.		
7	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract.		
8	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision of the such Contract.		
9	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.		

Certification

On behalf of the Tenderer, I certify that the information given above is complete, current and accurate as at the date of submission.

Full Name _____

Title or Designation _____

(Signature)

(Date)

b) CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

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

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

1. I have read and I understand the contents of this Certificate;
2. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;
4. For the purposes of this Certificate and the Tender, I understand that the word "competitor" shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:
 - a) Has been requested to submit a Tender in response to this request for tenders;
 - b) could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;
5. The Tenderer discloses that [check one of the following, as applicable]:
 - a) The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
 - b) The Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements;
6. In particular, without limiting the generality of paragraphs (5)(a) or(5)(b) above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - a) prices;
 - b) methods, factors or formulas used to calculate prices;
 - c) the intention or decision to submit, or not to submit, a tender; or
 - d) the submission of a tender which does not meet the specifications of the request for Tenders; except as specifically disclosed pursuant to paragraph (5)(b) above;
7. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this request for tenders relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph(5)(b) above;
8. The terms of the Tender have not been, and will not be, knowingly disclosed by the Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official tender opening, or of the awarding of the Contract, whichever comes first, unless otherwise required

by law or as specifically disclosed pursuant to paragraph (5)(b) above.

Name _____

Title _____

Date _____

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

(c) SELF- DECLARATION FORMS

FORM SD1

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

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

1. THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Director of (Insert name of the Company) who is a Bidder in respect of **Tender No.**

..... For (Insert tender title/description) for (Insert name of the Procuring entity) and duly authorized and competent to make this statement.

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

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

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

Bidder Official Stamp

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

I (Person) on behalf of **(Name of the Business/ Company/Firm)**
.....

..... Declare that I have read and fully understood the contents of the Public Procurement & Asset Disposal Act, 2015, Regulations and the Code of Ethics for persons participating in Public Procurement and Asset Disposal and my responsibilities under the Code.

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

Name of Authorized signatory.....

Sign.....

Position.....

.

Office address.....

Telephone..... E-mail.....

.....

Name of the Firm/Company.....

Date.....

(Company Seal/ Rubber Stamp where applicable)

Witness

Name.....

.....

Sign.....

.

Date.....

.

(d) APPENDIX 1 - FRAUD AND CORRUPTION

(Appendix 1 shall not be modified)

1. Purpose

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

2. Requirements

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

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

- 1) A person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or as set disposal proceeding;
- 2) A person referred to under subsection (1) who contravenes the provisions of that subsection commits an offence;
- 3) Without limiting the generality of the subsection (1) and (2), the person shall be: -
 - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
 - b) if a contract has already been entered into with the person, the contract shall be voidable;
- 4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
- 5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement: -
 - a) Shall not take part in the procurement proceedings;
 - b) shall not, after a procurement contract has been entered in to, take part in any decision relating to the procurement or contract; and
 - c) Shall not be a subcontract or for the tender to whom was awarded contract, or a

member of the group of tenderers to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.

- 6) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;
 - 7) If a person contravenes subsection (1) with respect to a conflict of interest described in subsection (5) (a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer. Etc.
3. In compliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:

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

- i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- ii) "fraudulent practice" is any act or omission, including is representation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
- iii) "collusive practice "is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party; "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- iv) "obstructive practice" is:
 - Deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
 - acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3 e. below.

b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.

- c) Rejects a proposal for award¹ of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- d) Pursuant to the Kenya's above stated Acts and Regulations, may recommend to appropriate authority(ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;
- e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring(i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by

Government of Kenya to inspect² all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and

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

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

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

FORM OF TENDER SECURITY-[Option 1-Demand Bank Guarantee]

Beneficiary: _____

Request for Tenders No:

Date: _____

TENDER GUARANTEE No.: _____

Guarantor: _____

1. We have been informed that _____ (hereinafter called "the Applicant") has submitted or will submit to the Beneficiary its Tender (hereinafter called "the Tender") for the execution of _____ under Request for Tenders No. ("the ITT").
2. Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.
3. At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of ____ (____) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:
 - (a) has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Applicant; or
 - b) having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension there to provide by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the Performance.
4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) thirty days after the end of the Tender Validity Period.
5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

[signature(s)]

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

FORMAT OF TENDER SECURITY [Option 2-Insurance Guarantee]

TENDER GUARANTEE No.: _____

1. Whereas [Name of the tenderer] (Hereinafter called "the tenderer") has submitted its tender dated [Date of submission of tender] for the [Name and/or description of the tender] (Hereinafter called "the Tender") for the execution of under Request for Tenders No. _____ ("the ITT").
2. KNOW ALL PEOPLE by these presents that WE of [**Name of Insurance Company**] having our registered office at (hereinafter called "the Guarantor"), are bound unto [Name of Procuring Entity] (hereinafter called "the Procuring Entity") in the sum of (Currency and guarantee amount) for which payment well and truly to be made to the said Procuring Entity, the Guarantor binds itself, its successors and assigns, jointly and severally, firmly by these presents.

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

3. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Applicant:
 - a) has withdrawn its Tender during the period of Tender validity set forth in the Principal's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Principal; or
 - b) having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity Period or any extension thereto provided by the Principal; (i) failed to execute the Contract agreement; or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to tenderers ("ITT") of the Procuring Entity's Tendering document.

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

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

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

[Date]

[Witness]

[Signature of the Guarantor]

[Seal]

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

FORM OF TENDER - SECURING DECLARATION

[The Bidder shall complete this Form in accordance with the instructions indicated]

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

Tender No.: [insert number of tendering process]

To: [insert complete name of Purchaser] I/We, the

undersigned, declare that:

1. I/We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.
2. I/We accept that I/we will automatically be suspended from being eligible for tendering in any contract with the Purchaser for the period of time of [insert number of months or years] starting on [insert date], if we are in breach of our obligation(s) under the bid conditions, because we-(a) have withdrawn our tender during the period of tender validity specified by us in the Tendering Data Sheet; or (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the instructions to tenders.
3. I/We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer(s), upon the earlier of:
 - a) Our receipt of a copy of your notification of the name of the successful Tenderer; or
 - b) thirty days after the expiration of our Tender.
4. I/We understand that if I am /we are/ in a Joint Venture, the Tender Securing Declaration must be in the name of the Joint Venture that submits the bid, and the Joint Venture has not been legally constituted at the time of bidding, the Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed:..... Capacity/title (director or partner or sole proprietor, etc.)

Name:..... Duly

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

Dated on day of, [Insert date of signing] Seal or stampe

