

ETHICS AND ANTI- CORRUPTION COMMISSION



STANDARD TENDER DOCUMENT

FOR

PROVISION OF PETROLEUM PRODUCTS AND ITS RELATED SERVICES

(Frame work contract for one year renewable subject to satisfactory performance)

TENDER NO. EACC /39/2017-2018

DEADLINE FOR SUBMISSION: **7<sup>TH</sup> JUNE 2018 AT 10.00 AM**

***INTEGRITY CENTRE***  
*Valley Rd/Milimani Rd Junction*  
*P.O Box 61130-00200, Nairobi, Kenya*  
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## SECTION I INVITATION TO TENDER

<b>ETHICS AND ANTI-CORRUPTION COMMISSION</b> P.O Box 61130-00200, Nairobi, Kenya	<b>INTEGRITY CENTRE</b> Valley Rd/Jakaya Kikwete Rd Junction P.O Box 61130-00200, Nairobi, Kenya Tel: 2717318/310722 fax 254 (020) 2719757 Email: <a href="mailto:eacc@integrity.go.ke">eacc@integrity.go.ke</a>
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Date: 21<sup>st</sup> May, 2018

**Re: TENDER NO. EACC /39/2017-2018:- PROVISION OF PETROLEUM PRODUCTS AND ITS RELATED SERVICES**

The Ethics and Anti-Corruption Commission (EACC) invites sealed bids from eligible candidates for Provision of Petroleum Products and related services for Integrity Centre, Kenya Leadership and Integrity Forum and its regional offices located in Nyeri, Garissa, Eldoret, Mombasa, Kisumu, Machakos, Malindi, Malaba, Isiolo, Nakuru, JKIA and Kisii.

Interested eligible candidates may obtain further information from and inspect the tender documents at the Supply chain office, Ethics and Anti-Corruption Commission, ground Floor, Integrity Centre during normal working hours.

A complete set of tender documents may be *downloaded free of charge from the Ethics and Anti-Corruption Commission's websites: [www.eacc.go.ke](http://www.eacc.go.ke) and/or IFMIS tenders' portal [supplier.treasury.go.ke](http://supplier.treasury.go.ke).*

Completed bid documents are to be enclosed in plain sealed envelopes marked with the Tender numbers and be deposited in the Tender box provided at Integrity Centre, Ground floor, Nairobi; so as to be received on or before **7<sup>th</sup> June 2018 at 10.00 a.m**

Prices quoted should be net inclusive of all taxes, must be in Kenya Shillings and should remain valid for 150 days after date of tender opening.

Bids will be opened immediately thereafter in the presence of the tenderers representatives who choose to attend at the Board room, 1<sup>st</sup> Floor Integrity Centre.

**THE SECRETARY/CEO,  
ETHICS AND ANTI-CORRUPTION COMMISSION.**

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

### **(a) Eligible Tenderers**

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

### **(b) Eligible Goods**

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

### **(c) Cost of Tendering**

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

## **2.4. The Tender Document**

2.4.1 The tender document comprises the documents listed below and addenda issued in accordance with clause 2.6 of these instructions to Tenderers

- (ii) Invitation to Tender
- (iii) Instructions to tenderers
- (iv) General Conditions of Contract
- (v) Special Conditions of Contract
- (vi) Schedule of requirements
- (vii) Technical Specifications
- (viii) Tender Form and Price Schedules
- (ix) Tender Security Form
- (x) Contract Form
- (xi) Performance Security Form
- (xii) Bank Guarantee for Advance Payment Form
- (xiii) Manufacturer's Authorization Form
- (xiv) Confidential Business Questionnaire

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

### **(a) Clarification of Documents**

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

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

### **(c) Amendment of Documents**

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

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

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

**(d) Language of Tender**

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

**(e) Documents Comprising of Tender**

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

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

**(j) Tender Forms**

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

**(k) Tender Prices**

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

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

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

2.10.4 The validity period of the tender shall be 150 days from the date of opening of the tender.

**(l) Tender Currencies**

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

**(m) Tenderers Eligibility and Qualifications**

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

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

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

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

**(n) Goods Eligibility and Conformity to Tender Documents**

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

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

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

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

2.13.4 For purposes of the documentary evidence to be furnished pursuant to paragraph 2.13.3© above, the tenderer shall note that standards for workmanship, material, and



equipment, as well as references to brand names or catalogue numbers designated by the Procurement entity in its Technical Specifications, are intended to be descriptive only and not restrictive. The tenderer may substitute alternative standards, brand names, and/or catalogue numbers in its tender, provided that it demonstrates to the Procurement entity's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

**(o) Tender Security**

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

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

2.14.3 The tender security is required to protect the Procuring entity against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 2.14.7

2.14.4 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form of a bank guarantee or a bank draft issued by a reputable bank located in Kenya or abroad, or a guarantee issued by a reputable insurance company in the form provided in the tender documents or another form acceptable to the Procuring entity and valid for thirty (30) days beyond the validity of the tender.

2.14.5 Any tender not secured in accordance with paragraph 2.14.1 and 2.14.3 will be rejected by the Procuring entity as non-responsive, pursuant to paragraph 2.22

2.14.6 Unsuccessful Tenderer's tender security will be discharged or returned as promptly as possible. But not later than thirty (30) days after the expiration of the period of tender validity prescribed by the Procuring entity.

2.14.7 The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 2.27 and furnishing the performance security, pursuant to paragraph 2.28

2.14.8 The tender security may be forfeited:

- (a) if a tenderer withdraws its tender during the period of tender validity specified by the procuring entity on the Tender Form; or
- (b) in the case of a successful tenderer, if the tenderer fails:
  - (i) to sign the contract in accordance with paragraph 2.27
  - Or
  - (ii) to furnish performance security in accordance with paragraph 2.28

**(p) Validity of Tenders**

- 2.15.1 Tenders shall remain valid for 90 days or as specified in the Invitation to tender after the date of tender opening prescribed by the Procuring entity, pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the Procuring entity as non-responsive.
- 2.15.2 In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 2.14 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

**(q) Format and Signing of Tender**

- 2.16.1 The Procuring entity shall prepare two copies of the tender, clearly marking each "ORIGINAL TENDER" and "COPY OF TENDER," as appropriate. In the event of any discrepancy between them, the original shall govern.
- 2.16.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. The latter authorization shall be indicated by written power-of-attorney accompanying the tender. All pages of the tender, except for unamended printed literature, shall be initialed by the person or persons signing the tender.
- 2.16.3 The tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

**(r) Sealing and Marking of Tenders**

- 2.17.1 The Tenderer shall seal the original and each copy of the tender in separate envelopes, duly marking the envelopes as "ORIGINAL" and "COPY." The envelopes shall then be sealed in an outer envelope.
- 2.17.2 The inner and outer envelopes shall:
- (s) Be addressed to the Procuring entity at the address given in the Invitation to Tender:
  - (t) Bear, tender number and name in the Invitation for Tenders and the words, "DO NOT OPEN BEFORE," **7<sup>TH</sup> JUNE 2018 AT 10.00 AM**
- 2.17.3 The inner envelopes shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared "late".

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

**(u) Deadline for Submission of Tenders**

Tenders must be received by the Procuring entity at the address specified under paragraph 2.17.2 no later than **7<sup>TH</sup> JUNE 2018 AT 10.00 AM**

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

**(v) Modification and Withdrawal of Tenders**

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

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

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

2.19.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the Tenderer's forfeiture of its tender security, pursuant to paragraph 2.14.7

2.19.5 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

2.19.6 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

**(w) Opening of Tenders**

The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, at **7<sup>TH</sup> JUNE 2018 AT 10.00 AM**

and in the location specified in the Invitation to Tender.

- 2.19 The tenderers' representatives who are present shall sign a register evidencing their attendance.
- 2.20.1 The tenderers' names, tender modifications or withdrawals, tender prices, discounts and the presence or absence of requisite tender security and such other details as the Procuring entity, at its discretion, may consider appropriate, will be announced at the opening.
- 2.20.1 The Procuring entity will prepare minutes of the tender opening.

#### **(x) Clarification of Tenders**

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

#### **2.22 Preliminary Examination**

- 2.22.1 The Procuring entity will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order.
- 2.22.1 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantify, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security forfeited. If there is a discrepancy between words and figures the amount in words will prevail
- 2.22.1 The Procuring entity may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or effect the relative ranking of any tenderer.
- 2.22.1 Prior to the detailed evaluation, pursuant to paragraph 2.23 the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one, which conforms to all the terms and conditions of the tender documents without material deviations. The Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

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

**2.23 Conversion to Single Currency**

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

**2.24 Evaluation of Technical Proposal**

2.24.1 The evaluation committee appointed by the Client shall evaluate the proposals on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria as follows

	<b>Points</b>
Specific experience of the consultant related to the assignment	(5-10)
Adequacy of the proposed work plan and methodology in responding to the terms of reference	(20-40)
Qualifications and competence of the key staff for the assignment	(30-40)
Suitability to the transfer of Technology Programme (Training)	<u>(0-10)</u>
<b>Total Points</b>	<b><u>100</u></b>

(y) Each responsive proposal will be given a technical score (St). A proposal shall be rejected at this stage if it does not respond to important aspects of the Terms of Reference or if it fails to achieve the minimum technical score indicated in the Appendix “ITC”.

**(z) Public Opening and Evaluation of Financial Proposal**

(aa) After Technical Proposal evaluation , the Client shall notify those consultants whose proposals did not meet the minimum qualifying mark or were considered non-responsive to the RFP and Terms of Reference, indicating that their Financial Proposals will be returned after completing the selection process. The Client shall simultaneously notify the consultants who have secured the minimum qualifying mark, indicating the date and time set for opening the Financial Proposals and stating that the opening ceremony is open to those consultants who choose to attend. The opening date shall not be sooner than seven (7) days after the notification date. The notification may be sent by registered letter, cable, telex, facsimile or electronic mail.

- 2.25.2 The Financial Proposals shall be opened publicly in the presence of the consultants' representatives who choose to attend. The name of the consultant, the technical. Scores and the proposed prices shall be read aloud and recorded when the Financial Proposals are opened. The Client shall prepare minutes of the public opening.
- 2.25.3 The evaluation committee will determine whether the financial proposals are complete (i.e. whether the consultant has costed all the items of the corresponding Technical Proposal and correct any computational errors. The cost of any unpriced items shall be assumed to be included in other costs in the proposal. In all cases, the total price of the Financial Proposal as submitted shall prevail.
- 2.25.4 While comparing proposal prices between local and foreign firms participating in a selection process in financial evaluation of Proposals, firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias in proposal prices. However, there shall be no such preference in the technical evaluation of the tenders. Proof of local incorporation and citizenship shall be required before the provisions of this sub-clause are applied. Details of such proof shall be attached by the Consultant in the financial proposal.
- 2.25.5 The formulae for determining the Financial Score (Sf) shall, unless an alternative formulae is indicated in the Appendix "ITC", be as follows:-  $Sf = 100 \times \frac{Fm}{F}$  where Sf is the financial score; Fm is the lowest priced financial proposal and F is the price of the proposal under consideration. Proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weights (T=the weight given to the Technical Proposal; P = the weight given to the Financial Proposal;  $T + p = 1$ ) indicated in the Appendix. The combined technical and financial score, S, is calculated as follows:-  $S = St \times T\% + Sf \times P\%$ . The firm achieving the highest combined technical and financial score will be invited for negotiations.
- 2.25.6 The tender evaluation committee shall evaluate the tender within 30 days of from the date of opening the tender.
- 2.25.7 Contract price variations shall not be allowed for contracts not exceeding one year (12 months).
- 2.25.8 Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price
- 2.25.9 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.

## **2.26 Negotiations**

- 2.26.1 Negotiations will be held at the same address as "address to send information to the Client" indicated in the Appendix "ITC". The aim is to reach agreement on all points and sign a contract.

- 2.26.2 Negotiations will include a discussion of the Technical Proposal, the proposed methodology (work plan), staffing and any suggestions made by the firm to improve the Terms of Reference. The Client and firm will then work out final Terms of Reference, staffing and bar charts indicating activities, staff periods in the field and in the head office, staff-months, logistics and reporting. The agreed work plan and final Terms of Reference will then be incorporated in the “Description of Services” and form part of the Contract. Special attention will be paid to getting the most the firm can offer within the available budget and to clearly defining the inputs required from the Client to ensure satisfactory implementation of the assignment.
- 2.26.3 Unless there are exceptional reasons, the financial negotiations will not involve the remuneration rates for staff (no breakdown of fees).
- 2.26.4 Having selected the firm on the basis of, among other things, an evaluation of proposed key professional staff, the Client expects to negotiate a contract on the basis of the experts named in the proposal. Before contract negotiations, the Client will require assurances that the experts will be actually available. The Client will not consider substitutions during contract negotiations unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the firm may be disqualified.
- 2.26.5 The negotiations will conclude with a review of the draft form of the Contract. To complete negotiations the Client and the selected firm will initial the agreed Contract. If negotiations fail, the Client will invite the firm whose proposal received the second highest score to negotiate a contract.
- 2.26.6 The procuring entity shall appoint a team for the purpose of the negotiations.

## **2.27 Award of Contract**

- 2.27.1 The Contract will be awarded following negotiations. After negotiations are completed, the Client will promptly notify other consultants on the shortlist that they were unsuccessful and return the Financial Proposals of those consultants who did not pass the technical evaluation.
- 2.27.2 The selected firm is expected to commence the assignment on the date and at the location specified in Appendix “A”.
- 2.27.3 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.
- 2.27.4 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 2.27.5 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.
- 2.27.6 To qualify for contract awards, the tenderer shall have the following:

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

## **2.28 Confidentiality**

2.28.1 Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals or to other persons not officially concerned with the process, until the winning firm has been notified that it has been awarded the Contract.

## **2.29 Corrupt or fraudulent practices**

2.29.1 The procuring entity requires that the consultants observe the highest standards of ethics during the selection and award of the consultancy contract and also during the performance of the assignment. The tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.

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

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

## **2.30 Preference**

- (bb) Preference where allowed in the evaluation of tenders shall not exceed 15%

## **2.31 Contacting the Procuring entity**

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

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



## **2.32 Award of Contract**

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

- 2.32.1 In the absence of pre-qualification, the Procuring entity will determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.
- 2.32.2 The determination will take into account the tenderer financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 2.12.3 as well as such other information as the Procuring entity deems necessary and appropriate.
- 2.32.3 An affirmative determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the Tenderer's tender, in which event the Procuring entity will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

### **(cc) Award Criteria**

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

### **(dd) ©Procuring entity's Right to Vary quantities**

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

### **(ee) Procuring entity's Right to accept or Reject any or All Tenders**

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

## **2.33 Notification of Award**

- 2.33.1 Prior to the expiration of the period of tender validity, the Procuring entity will notify the successful tenderer in writing that its tender has been accepted.
- 2.33.2 The notification of award will constitute the formation of the Contract but will have to wait until the contract is finally signed by both parties

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

## **2.34 Signing of Contract**

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

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

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

## **2.35 Performance Security**

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

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

## **2.36 Corrupt or Fraudulent Practices**

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

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

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

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

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

## Appendix to Instructions to Tenderers

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

Instructions to tenderers	Particulars of appendix to instructions to tenderers																																					
2.1	Particulars of eligible tenders: <b>OPEN</b>																																					
2.2.2	Price to be charged for tender documents. <b>Nil</b>																																					
2.10	Particulars of other currencies allowed. <b>None</b>																																					
2.11	Particulars of eligibility and qualifications documents of evidence required. <b>Copies of all the documents requested in the evaluation criteria.</b>																																					
2.12.2	Particulars of tender security if applicable. <b>Bid security of Kes. 200,000</b>																																					
2.13	Validity of Tenders: <b>Tenders Shall remain valid for 150 days</b>																																					
2.22	<p><b>Evaluation Criteria</b>            The following requirements must be met by the tenderer not withstanding other requirements in the tender documents:-  <b>a) Mandatory Requirements (MR)</b></p> <table border="1" data-bbox="428 968 1446 1843"> <thead> <tr> <th data-bbox="428 968 537 1037">No.</th> <th data-bbox="542 968 1211 1037">Requirements</th> <th data-bbox="1216 968 1446 1037">Responsive or Not Responsive</th> </tr> </thead> <tbody> <tr> <td data-bbox="428 1043 537 1113">MR1</td> <td data-bbox="542 1043 1211 1113">Must Submit a copy of certificate of Registration/Incorporation</td> <td data-bbox="1216 1043 1446 1113"></td> </tr> <tr> <td data-bbox="428 1119 537 1188">MR2</td> <td data-bbox="542 1119 1211 1188">Must Submit a copy of a valid Tax Compliance certificate</td> <td data-bbox="1216 1119 1446 1188"></td> </tr> <tr> <td data-bbox="428 1194 537 1264">MR3</td> <td data-bbox="542 1194 1211 1264">Must Fill the Price Schedule in the format provided</td> <td data-bbox="1216 1194 1446 1264"></td> </tr> <tr> <td data-bbox="428 1270 537 1339">MR4</td> <td data-bbox="542 1270 1211 1339">Must Fill the Form of Tender in the Format provided</td> <td data-bbox="1216 1270 1446 1339"></td> </tr> <tr> <td data-bbox="428 1346 537 1377">MR5</td> <td data-bbox="542 1346 1211 1377">Must submit a Bid security of Kes.200,000</td> <td data-bbox="1216 1346 1446 1377"></td> </tr> <tr> <td data-bbox="428 1383 537 1453">MR6</td> <td data-bbox="542 1383 1211 1453">Must submit a dully filled up self-declaration form in format provided</td> <td data-bbox="1216 1383 1446 1453"></td> </tr> <tr> <td data-bbox="428 1459 537 1528">MR7</td> <td data-bbox="542 1459 1211 1528">Must submit a dully filled up Confidential Business Questionnaire in the format provided</td> <td data-bbox="1216 1459 1446 1528"></td> </tr> <tr> <td data-bbox="428 1535 537 1604">MR8</td> <td data-bbox="542 1535 1211 1604">The Tenders Shall remain valid for 150 days from the date of tender opening</td> <td data-bbox="1216 1535 1446 1604"></td> </tr> <tr> <td data-bbox="428 1610 537 1659">MR9</td> <td data-bbox="542 1610 1211 1659">Must submit a valid copy of Energy Regulatory Commission (ERC) Certificate</td> <td data-bbox="1216 1610 1446 1659"></td> </tr> <tr> <td data-bbox="428 1665 537 1734">MR 10</td> <td data-bbox="542 1665 1211 1734">Must submit proof of presence in at least 90% in the forty seven (47) Counties i.e 42 Counties</td> <td data-bbox="1216 1665 1446 1734"></td> </tr> <tr> <td data-bbox="428 1740 537 1843">MR 11</td> <td data-bbox="542 1740 1211 1843">Must submit proof of presence of two outlets within the 42 counties which are not more than 100 KM apart.</td> <td data-bbox="1216 1740 1446 1843"></td> </tr> </tbody> </table>		No.	Requirements	Responsive or Not Responsive	MR1	Must Submit a copy of certificate of Registration/Incorporation		MR2	Must Submit a copy of a valid Tax Compliance certificate		MR3	Must Fill the Price Schedule in the format provided		MR4	Must Fill the Form of Tender in the Format provided		MR5	Must submit a Bid security of Kes.200,000		MR6	Must submit a dully filled up self-declaration form in format provided		MR7	Must submit a dully filled up Confidential Business Questionnaire in the format provided		MR8	The Tenders Shall remain valid for 150 days from the date of tender opening		MR9	Must submit a valid copy of Energy Regulatory Commission (ERC) Certificate		MR 10	Must submit proof of presence in at least 90% in the forty seven (47) Counties i.e 42 Counties		MR 11	Must submit proof of presence of two outlets within the 42 counties which are not more than 100 KM apart.	
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At this stage, the tenderer's submission will either be responsive in all the mandatory (MR) requirements above or non-responsive. The non-responsive submissions will be eliminated from the entire evaluation process and will not be considered further.

**b) Technical Scores (T.S.)**

This section (Technical Evaluation) will carry a total of 100 marks

No.	Evaluation Attribute	Tenderer's Response	Weighting Score	Max. Score
T.S.1	Number of years in provision of Petroleum products business.		<ul style="list-style-type: none"> <li>• 1 year and above (20 marks )</li> <li>• Below 1 Year (5marks )</li> </ul>	20
T.S.2	Provide a list of clients and reference letters and inspection and acceptance certificates to which the company has done similar services.		<ul style="list-style-type: none"> <li>• 3 or more Clients with references (20 marks)</li> <li>• Others prorated at: <math display="block">\frac{\text{Number of Clients} \times 20}{3}</math></li> </ul>	20
T.S.3	Please indicate how you intend to carry out the services (work plan/ methodology)		<p>A detailed proposed methodology/operational plan for undertaking the assignment (10 marks)</p> <p>If no work plan (0 mark)</p>	20
T.S.4	Physical Facilities <ul style="list-style-type: none"> <li>• Provide details of physical address and contacts – attach evidence</li> </ul>		<ul style="list-style-type: none"> <li>• Details of physical address and contacts with copy of title or lease documents or latest utility bill – 10 marks</li> <li>• Not provided – 0 mark</li> </ul>	10
T.S.5	Firm will be required to provide the required Fuel cards with sufficient security features.		<p>Provide:</p> <ul style="list-style-type: none"> <li>• A brief description of the Fuel cards to be used</li> </ul>	30
				100 marks

		<b>Only bidders who score 75 Marks and above in the technical and capability scores will be subjected to financial evaluation. Those who score below 75 will be eliminated.</b>
2.23		The weights given to the Technical and Financial Proposals are:  <b>Weighting score</b>  <b>Technical Score 100%</b>
2.24		Particulars of post – qualification if applicable.  <b>EACC may inspect the premises and /or check the accuracy of any or all information provided by the bidder before awarding the contract.</b>
2.32.4		<b>Award Criteria</b> Award will be made to the most technically responsive bidder With the highest technical score and above the set passmark.

## SECTION III - GENERAL CONDITIONS OF CONTRACT

### 3.1 Definitions

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

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

### 3.2 Application

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

### 3.3 Country of Origin

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

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

### 3.4 Standards

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

### 3.5 Use of Contract Documents and Information

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

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

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

### **3.6 Patent Rights**

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

### **3.7 Performance Security**

3.7.1 Within thirty (30) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the performance security in the amount specified in Special Conditions of Contract.

3.7.2 The proceeds of the performance security shall be payable to the Procuring entity as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.

3.7.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Procuring entity and shall be in the form of a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in Kenya or abroad, acceptable to the Procuring entity, in the form provided in the tender documents.

3.7.4 The performance security will be discharged by the Procuring entity and returned to the Candidate not later than thirty (30) days following the date of completion of the Tenderer's performance obligations under the Contract, including any warranty obligations, under the Contract

### **3.8 Inspection and Tests**

3.8.1 The Procuring entity or its representative shall have the right to inspect and/or to test the goods to confirm their conformity to the Contract specifications. The Procuring entity shall notify the tenderer in writing in a timely manner, of the identity of any representatives retained for these purposes.

3.8.2 The inspections and tests may be conducted in the premises of the tenderer or its subcontractor(s), at point of delivery, and/or at the Goods' final destination. If conducted on the premises of the tenderer or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring entity.

3.8.3 Should any inspected or tested goods fail to conform to the Specifications, the Procuring entity may reject the equipment, and the tenderer shall either replace the rejected equipment or make alterations necessary to make specification requirements free of costs to the Procuring entity.

3.8.4 The Procuring entity's right to inspect, test and where necessary, reject the goods after the Goods' arrival shall in no way be limited or waived by reason of the equipment having previously been inspected, tested and passed by the Procuring entity or its representative prior to the equipment delivery.

3.8.5 Nothing in paragraph 3.8 shall in any way release the tenderer from any warranty or other obligations under this Contract.

### 3.9 **Packing**

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

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

### 3.10 **Delivery and Documents**

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

### 3.11 **Insurance**

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

### 3.12 **Payment**

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

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

### 3.13 **Prices**

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

3.31.2 3.31.2 Contract price variations shall not be allowed for contracts not exceeding one year (12 months)

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

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



### **3.14 Assignment**

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

### **3.15 Subcontracts**

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

### **3.16 Termination for default**

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

3.15 if the tenderer fails to deliver any or all of the goods within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring entity

3.16 if the tenderer fails to perform any other obligation(s) under the Contract

3.17 if the tenderer, in the judgment of the Procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the Contract

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

### **3.17 Liquidated Damages**

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

### **3.18 Resolution of Disputes**

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

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

### **3.19 Language and Law**

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

### **3.20 Force Majeure**

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

**SECTION IV ~ SPECIAL CONDITIONS OF CONTRACT**

- 4.1. Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, between the GCC and the SCC, the provisions of the SCC herein shall prevail over these in the GCC.
- 4.2. Special conditions of contract as relates to the GCC

REFERENCE OF GCC	SPECIAL CONDITIONS OF CONTRACT
3.7.1	<p><i>Indicate particulars of performance security</i></p> <p><b><i>10% of the tender sum</i></b></p> <p><b><i>From the following forms</i></b>                      a bank guarantee;                      such insurance company guarantee as may be approved by the PPRA;                      a letter of credit; or                      Guarantee by a deposit taking microfinance institution, Sacco society, the Youth Enterprise Development Fund or the Women Enterprise Fund.</p>
3.12.1	<p><i>Indicate terms of payment</i></p> <p><b><i>Payments will be made on monthly basis on e-payment platform within 30 days upon receipt of verified invoice.</i></b>  <b><i>An interim invoice will be submitted for verification, before the monthly invoice is submitted for payment.</i></b></p>
3.18.1	<p><i>Indicate resolutions of disputes</i></p> <p><b><i>Arbitration as provided in the laws of Kenya</i></b></p>

**SECTION V - PRICE SCHEDULE OF SERVICES**

**Specifications for Supply of Fuel and Associated Products/Services.**

**Period: 1<sup>st</sup> July, 2018 to 30<sup>th</sup> June, 2019.**

<b>White Products</b>					
	<b>Product</b>	<b>Fuel Cards (Qty)</b>	<b>Total Quantity Per Month</b>	<b>Pump Price</b>	<b>Bulk purchase discount %</b>
1	<b>Premium</b>	62+1(Open)	Varies depending on operational needs	As set by ERC from time to time or prevailing price as dictated by market forces	
2	<b>Diesel</b>	46+2(Open)	Varies depending on operational needs	As set by ERC on monthly basis at the moment	
3	<b>Lubricants</b>	-	Demand is dependent on vehicle needs while in field work.	-	
4	<b>Pit Shop Services</b>	-	As may be required from time to time on emergency basis for vehicles due for service but on field work or under special circumstances as may be directed by the fleet and logistics officer or any other responsible person.		
5.	<b>Car Wash Services</b>	-	As dictated by need for vehicle cleanliness while in the field or away from work station. Also under special circumstances as may be directed by Fleet and logistics officer.		
6	<b>Puncture Repair Services</b>	-	Demand dictated by unexpected		

			eventuality of tyre puncture.		
7	<b>Purchase of Tyres and Tubes</b>	-	On a limited scale as may be directed occasionally by the Fleet and Logistics Officer for vehicles in the field (away from work station) or emergency need.		
8	<b>Car Care Services</b>	-	Occasionally such services including but not limited to vehicle dash board polish, air freshener and services falling within this category may be required as directed by the Fleet and Logistics Officer.		
9	<b>LPG Supplies</b>	As and when required	Supply of 13 kg gas as and when required by the various Commission offices		

Signature and stamp of tenderer \_\_\_\_\_

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

SECTION VI - TECHNICAL PROPOSAL

6.1 TECHNICAL PROPOSAL SUBMISSION FORM

[\_\_\_\_\_ Date]

To: \_\_\_\_\_ [Name and address of Client]

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for \_\_\_\_\_  
\_\_\_\_\_ [Title of consulting services] in accordance with your  
Request for Proposal dated \_\_\_\_\_ [Date] and our Proposal. We are hereby  
submitting our Proposal, which includes this Technical Proposal, [and a Financial Proposal  
sealed under a separate envelope- where applicable].

We understand you are not bound to accept any Proposal that you receive.

We remain,

Yours sincerely,

\_\_\_\_\_ [Authorized Signature]:

\_\_\_\_\_ [Name and Title of Signatory]

:

\_\_\_\_\_ [Name of Firm]

:

\_\_\_\_\_ [Address:]

## 6.2 FIRM'S REFERENCES

### Relevant Services Carried Out in the Last Five Years That Best Illustrate Qualifications

Using the format below, provide information on each assignment for which your firm either individually, as a corporate entity or in association, was legally contracted.

Assignment Name:	Country
Location within Country:	Professional Staff provided by Your Firm/Entity(profiles):
Name of Client:	Clients contact person for the assignment.
Address:	No of Staff-Months; Duration of Assignment:
Start Date (Month/Year): Completion DateApprox. (Month/Year	Value of Services (Kshs)
Name of Associated Consultants. If any:	No of Months of Professional Staff provided by Associated Consultants:
Name of Senior Staff (Project Director/Coordinator, Team Leader) Involved and Functions Performed:	
Narrative Description of project:	
Description of Actual Services Provided by Your Staff:	

Firm's Name: \_\_\_\_\_

Name and title of signatory; \_\_\_\_\_

*(May be amended as necessary)*

### **6.3 DESCRIPTION OF THE METHODOLOGY AND WORK PLAN FOR PERFORMING THE ASSIGNMENT**

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**SECTION VII FINANCIAL PROPOSAL**

7.1 FINANCIAL PROPOSAL SUBMISSION FORM

\_\_\_\_\_ [ Date]

To: \_\_\_\_\_  
 \_\_\_\_\_  
*[Name and address of Client]*

Ladies/Gentlemen:

We, the undersigned, offer to provide the Petroleum products and related services for EACC in accordance with your Request for Proposal dated ( \_\_\_\_\_ ) [Date] and our Proposal. Our attached Financial Proposal is as indicated below

White Products					
	Product	Fuel Cards (Qty)	Total Quantity Per Month	Pump Price/Unit price	Bulk purchase discount %
1	Premium	62+I(Open)	Varies depending on operational needs	As set by ERC from time to time or prevailing price as dictated by market forces	
2	Diesel	46+2(Open)	Varies depending on operational needs	As set by ERC on monthly basis at the moment	
3	Lubricants	-	Demand is dependent on vehicle needs while in field work.	-	
4	Pit Shop Services	-	As may be required from time to time on emergency basis for vehicles due for service but on field work or under special circumstances as may be directed the fleet and logistics officer or any other responsible person.		
5.	Car Wash Services	-	As dictated by need for vehicle cleanliness while in the field or away from work station. Also under special circumstances as may be directed by		

			Fleet and logistics officer.		
6	<b>Puncture Repair Services</b>	-	Demand dictated by unexpected eventuality of tyre puncture.		
7	<b>Purchase of Tyres and Tubes</b>	-	On a limited scale as may be directed occasionally by the Fleet and Logistics Officer for vehicles in the field (away from work station) or emergency need.		
8	<b>Car Care Services</b>	-	Occasionally such services including but not limited to vehicle dash board polish, air freshener and services falling within this category may be required as directed by the Fleet and Logistics Officer.		
9	<b>LPG Supplies</b>	As and when required	Supply of 13 kg gas as and when required by the various Commission offices		

Signature and stamp of tenderer \_\_\_\_\_

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

*[Amount in words and figures]* inclusive of the taxes.

We remain,

Yours sincerely,

\_\_\_\_\_ *[Authorized Signature]*  
 : \_\_\_\_\_ *[Name and Title of Signatory]:*  
 \_\_\_\_\_ *[Name of Firm]*  
 \_\_\_\_\_ *[Address]*

FORM OF TENDER

TENDER NO. EACC/39/2017-2018

Date: 24/05/2018

To: THE SECRETARY/CEO  
Ethics and Anti-Corruption Commission,  
P. O. Box 61130 - 00200  
NAIROBI

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda Nos. .... *[Insert numbers]*, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to supply deliver, install and commission the **SUPPLY OF PETROLEUM PRODUCTS AND ITS RELATED SERVICES** in conformity with the said tender documents for the sum of ..... *(total tender amount in words and figures)* or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.
2. We undertake, if our Tender is accepted, to deliver install and commission the equipment in accordance with the delivery schedule specified in the Schedule of Requirements.
3. If our Tender is accepted, we will obtain the guarantee of a bank in a sum of equivalent to N/A percent of the Contract Price for the due performance of the Contract, in the form prescribed by EACC.
4. We agree to a bid by this Tender for a period of 120 days from the date fixed for tender opening of the Instructions to tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
5. This Tender, together with your written acceptance thereof and your notification of award, shall constitute a Contract, between us. Subject to signing of the Contract by the parties.
6. We understand that you are not bound to accept the lowest or any tender you may receive.

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

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[In the capacity of]

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

## CONFIDENTIAL BUSINESS QUESTIONNAIRE

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

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

### Part 1 General

Business Name .....

Location of Business Premises .....

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

Postal address .....Tel No. ....Fax Email .....

Nature of Business .....

Registration Certificate No.....

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

Name of your bankers.....

Branch .....

### Part 2 (a) – Sole Proprietor

Your name in full.....Age.....

Nationality.....Country of Origin.....

Citizenship details .....

### Part 2 (b) – Partnership

Given details of partners as follows

Name	Nationality	Citizenship details	Shares
1. ....	.....	.....	.....
2. ....	.....	.....	.....
3. ....	.....	.....	.....
4. ....	.....	.....	.....

### Part 2 (c) – Registered Company

Private or Public

State the nominal and issued capital of company

Nominal Kshs.

Issued Kshs.

Given details of all directors as follows

Name	Nationality	Citizenship details	Shares
1. ....	.....	.....	.....
2. ....	.....	.....	.....
3. ....	.....	.....	.....
4. ....	.....	.....	.....

Date.....Signature of Candidate.....

**TENDER SECURITY FORM**

Whereas .....[name of the tenderer]

(hereinafter called "the tenderer")has submitted its tender dated.....[date of submission of tender ] for the provision of .....[name and/or description of the services]

(hereinafter called "the Tenderer").....

KNOW ALL PEOPLE by these presents that WE.....

Of.....having registered office at

[name of procuring entity](hereinafter called "the Bank")are bound unto.....

[name of procuring entity](hereinafter called "the procuring entity") in the sum of .....

for which payment well and truly to be made to the said Procuring entity, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this \_\_\_\_\_ day of 20\_\_\_\_\_.

THE CONDITIONS of this obligation are:

- 1. If the tenderer withdraws its Tender during the period of tender validity specified by the tenderer on the Tender Form; or
- 2. If the tenderer, having been notified of the acceptance of its Tender by the Procuring entity during the period of tender validity:

- (a) fails or refuses to execute the Contract Form, if required; or
- (b) fails or refuses to furnish the performance security, in accordance with the instructions to tenderers;

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

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

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

*(Amend accordingly if provided by Insurance Company)*

### 7.3 CONTRACT FORM

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

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

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

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

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

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

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

*(Amend accordingly if provided by Insurance Company)*

**7.4 PERFORMANCE SECURITY FORM**

To .....  
*[Name of procuring entity]*

WHEREAS ..... *[Name of tenderer]* (Hereinafter called “the tenderer”) has undertaken, in pursuance of Contract No. \_\_\_\_\_ *[Reference number of the contract]* dated \_\_\_\_\_ 20 \_\_\_\_\_ to \_\_\_\_\_ supply ..... *[Description of goods]* (Hereinafter called “the Contract”).

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

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

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

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

Signed and seal of the Guarantors

\_\_\_\_\_  
*[Name of bank or financial institution]*

\_\_\_\_\_  
*[Address]*

\_\_\_\_\_  
*[Date]*



**7.5 BANK GUARANTEE FOR ADVANCE PAYMENT FORM**

To .....  
[Name of procuring entity]

[Name of tender] .....

Gentlemen and/or Ladies:

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

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

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

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

Yours truly,

Signature and seal of the Guarantors

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

\_\_\_\_\_  
[Address]

\_\_\_\_\_  
[Date]

**7.6 LETTER OF NOTIFICATION OF AWARD**

Address of Procuring Entity

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

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

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

**RE: TENDER NO. EACC /39/2017-2018**

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

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

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

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

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

\_\_\_\_\_

SIGNED FOR ACCOUNTING OFFICER

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

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

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (*Procuring Entity*)

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

**REQUEST FOR REVIEW**

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

- 1.
- 2.
- Etc.

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

- 1.
- 2.
- Etc

SIGNED ..... (Applicant)

Dated on.....day of ...../...20...

---

**FOR OFFICIAL USE ONLY**

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

SIGNED  
Board Secretary

**7.8 SELF-DECLARATION FORM**

**ANTI-CORRUPTION DECLARATION**

We (*insert the name of the company / supplier*)----- declares and guarantees that no offer, gift or payment, consideration or benefit of any kind, which constitutes an illegal or corrupt practice, has been or will be made to anyone by our organization or agent, either directly or indirectly, as an inducement or reward for the award or execution of this procurement.

In the event the above is contravened we accept that the following to apply —

- a) The person shall be disqualified from entering into a contract for the procurement; or
- b) If a contract has already been entered into with the person, the contract shall be voidable at the option of EACC.
- c) The voiding of a contract by the procuring entity under subsection (b) does not limit any other legal remedy That EACC may have.

Name .....Signature.....Date .....

Company Seal / Business Stamp

**ANTI-FRAUDULENT PRACTICE DECLARATION**

We (*insert the name of the company / supplier*) -----declares and guarantees that no person in our organization has or will be involved in a fraudulent practice in any procurement proceeding.

Name .....Signature.....Date .....

Company Seal / Business Stamp

**NON - DEBARMENT DECLARATION**

We (*insert the name of the company / supplier*) -----declares and guarantees that no director or any person who has any controlling interest in our organization has been debarred from participating in a procurement proceeding.

Name .....Signature.....Date .....

Company Seal / Business Stamp