



# THE TECHNICAL UNIVERSITY OF KENYA

TENDER DOCUMENT

FOR

## ***TENDER FOR SUPPLY AND DELIVERY OF FUEL, LUBRICANTS AND FUEL CARD SERVICES***

**TUK/T/10/2018-19**

***ALL TENDERERS ARE ADVISED TO READ CAREFULLY THIS TENDER  
DOCUMENT IN ITS ENTIRETY BEFORE MAKING ANY BID***

*Information contained in this document is provided strictly to assist prospective bidders in their bid preparation. Any other use or disclosure to a third party is restricted and requires prior permission from The Technical University of Kenya*

*The Technical University of Kenya*

***P.O.BOX 502428-00200,***

***NAIROBI-KENYA.***

***TEL:+254(020) 338232/338755/219690***

**MAY, 2019**

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**SECTION I - INVITATION TO TENDER**

**TENDER NOTICE**

The Technical University of Kenya (TU-K) now invites tenders from interested, eligible and capable firms as follows:-

<b>TENDER REFERENCE NUMBER</b>	<b>TENDER NAME</b>	<b>ELIGIBILITY</b>	<b>TENDER SECURITY AMOUNT</b>	<b>COST PER SET OF TENDER DOCUMENT (Kshs)</b>
TUK/T/10/2018/2019	supply and delivery of fuel, lubricants and fuel card services	Open	1% Tender sum	Kshs.1000.00 free if downloaded from TUK website

Interested eligible tenderers may obtain further information and inspect the tender documents from the office of the Director Supply Chain Operations, N-Block, the Technical University of Kenya (TU-K) Headquarters, Haile Selassie Avenue, P. O Box 52428 – 00200, **Nairobi-Kenya**. Tel. +254 20343672, 2249974, 2251300: Fax +254 20 2219689 during normal working hours i.e. Monday to Friday between 8.00a.m to 1.00pm and 2.00pm to 5.00p.m **with effect from Friday May 10<sup>th</sup>, 2019** and at the TUK website <http://www.tukenya.ac.ke>. A complete set of tender documents may be obtained at a cost of Kshs.1000/= per set payable at the cashier's office situated on the ground floor of Administration Block of the Technical University of Kenya. All tender documents downloaded through the website should be duly registered at the office of the Director Supply Chain Operations.

Completed tender documents enclosed in plain sealed envelopes, marked "**Tender Reference No.....**," & "**Category description**"..... should be deposited in the Tender Box situated on the first floor, Administration Block of The Technical University of Kenya Headquarters or be addressed and posted to:-

**The Vice Chancellor**  
**The Technical University of Kenya**  
**P.O. Box 52428 – 00200**  
**Nairobi.**  
<http://www.tukenya.ac.ke>

so as to reach on or before Tuesday May 20, 2019, at 10.00 a.m. The closing/opening process will be conducted immediately thereafter in the presence of firms' representatives who choose to attend at the conference room situated on the 1<sup>st</sup> floor, Administration Block, the Technical University of Kenya.

**Late bids will be returned unopened.**

**THE VICE CHANCELLOR**

**SECTION II - INSTRUCTIONS TO TENDERERS**

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**SECTION II****- INSTRUCTIONS TO TENDERERS****2.1 Eligible Tenderers**

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

**2.2 Eligible Goods**

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

**2.3 Cost of Tendering**

- 2.3.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the Procuring Entity, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

2.3.2 The price to be charged for the tender document shall not exceed Kshs.2,000/=

## 2.4. The Tender Document

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

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

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

## 2.5 Clarification of Documents

2.5.1 A prospective tenderer requiring any clarification of the tender document may notify the Procuring Entity in writing or by post at the entity's address indicated in the Invitation to Tender. The Procuring Entity will respond in writing to any request for clarification of the tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of tenders, prescribed by the Procuring Entity. Written copies of the Procuring Entity's response (including an explanation of the question 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 three (3) days of receiving the request to enable the tenderer to make timely submission of its tender.

## 2.6 **Amendment of Documents**

- 2.6.1 At any time prior to the deadline for submission of tenders, the Procuring entity, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by amendment.
- 2.6.2 All prospective tenderers that have received the tender documents will be notified of the amendment in writing or by post and will be binding on them.
- 2.6.3 In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, the Procuring Entity, at its discretion, may extend the deadline for the submission of tenders.

## 2.7 **Language of Tender**

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

## 2.8 **Documents Comprising of Tender**

- 2.8.1 The tender prepared by the tenderers shall comprise the following components
- (a) a Tender Form and a Price Schedule completed in accordance with paragraph 2.9, 2.10 and 2.11 below
  - (b) documentary evidence established in accordance with paragraph 2.1.2 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
  - (c) documentary evidence established in accordance with paragraph 2.2.1 that the goods and ancillary services to be supplied by the tenderer are eligible goods and services and conform to the tender documents; and

- (d) tender security furnished in accordance with paragraph 2.14

## 2.9 Tender Forms

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

## 2.10 Tender Prices

- 2.10.1 The tenderer shall indicate on the appropriate Price Schedule the unit prices and total tender price of the goods it proposes to supply under the contract
- 2.10.2 Prices indicated on the Price Schedule shall include all costs including taxes, insurances and delivery to the premises of the entity.
- 2.10.3 Prices quoted by the tenderer shall be fixed during the Tenderer'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 90 days from the date of opening of the tender.

## 2.11 Tender Currencies

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

## 2.12 Tenderers Eligibility and Qualifications

- 2.12.1 Pursuant to paragraph 2.1. The tenderer shall furnish, as part of its

Tender, documents establishing the tenderer's eligibility to tender and

Its qualifications to perform the contract if its tender is accepted.

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

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

- 2.13.1 Pursuant to paragraph 2.2 of this section, the tenderer shall furnish, as part of its tender documents establishing the eligibility and conformity to the tender documents of all goods which the tenderer proposes to supply under the contract
- 2.13.2 The documentary evidence of the eligibility of the goods shall consist of a statement in the Price Schedule of the country of origin of the goods and services offered which shall be confirmed by a certificate of origin issued at the time of shipment.
- 2.13.3 The documentary evidence of conformity of the goods to the tender documents may be in the form of literature, drawings, 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 one (1) year, following commencement of the use of the goods by the Procuring Entity; and
  - (c) a clause-by-clause commentary on the Procuring entity's technical specifications demonstrating substantial responsiveness of the goods and service to those specifications, or a statement of deviations and exceptions to the provisions of the technical specifications.
- 2.13.4 For purposes of the documentary evidence to be furnished pursuant to paragraph 2.13.3(c) above, the tenderer shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by the Procurement Entity in its technical specifications, are intended to be descriptive only and not restrictive. The tenderer may substitute alternative standards, brand names, and/or catalogue numbers in its tender, provided that it demonstrates to the Procurement Entity's satisfaction that the substitutions ensure substantial equivalence to those designated in the technical specifications.

## 2.14 Tender Security

- 2.14.1 The tenderer shall furnish, as part of its tender, a tender security for the amount specified in the Appendix to Invitation to Tenderers.
- 2.14.2 The tender security shall be in the amount of 0.5 – 2 per cent of the tender price.
- 2.14.3 The tender security is required to protect the Procuring Entity against the risk of the 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 An unsuccessful tenderer's tender security will be discharged or returned as promptly as possible as but not later than thirty (30) days after the expiration of the period of tender validity prescribed by the Procuring entity.
- 2.14.7 The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 2.27 and furnishing the performance security, pursuant to paragraph 2.28
- 2.14.8 The tender security may be forfeited:
- (a) if a tenderer withdraws its tender during the period of tender validity specified by the procuring entity on the Tender Form; or
  - (b) in the case of a successful tenderer, if the tenderer fails:
    - (i) to sign the contract in accordance with paragraph 2.27
    - Or
    - (ii) to furnish performance security in accordance with paragraph 2.28

## 2.15 Validity of Tenders

2.15.1 Tenders shall remain valid for 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.

## 2.16 Format and Signing of Tender

2.16.1 The Procuring Entity shall prepare one copy of the tender.

2.16.2 The original of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. The latter authorization shall be indicated by written power-of-attorney accompanying the tender. All pages of the tender, except for unamended printed literature, shall be initialed by the person or persons signing the tender.

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

## 2.17 Sealing and Marking of Tenders

2.17.1 The Tenderer shall seal the seal the envelope.

2.17.2 The envelopes shall:

(a) Be addressed to the Procuring Entity at the address given in the Invitation to Tender:

(b) Bear, tender number and name in the Invitation for Tenders and the words, **“DO NOT OPEN BEFORE,” May 20<sup>th</sup>, 2019 at 10.00a.m.**

2.17.3 The envelope 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 envelope is not sealed and marked as required by paragraph 2.17.2, the Procuring Entity will assume no responsibility for the tender's misplacement or premature opening.

## 2.18 Deadline for Submission of Tenders

Tenders must be received by the Procuring entity at the address specified under paragraph 2.17.2 not later than **Thursday 23<sup>rd</sup>, 2019 at 10.00a.m.**

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 tenderers previously subject to the deadline will therefore be subject to the deadline as extended

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

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

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

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

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

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

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

## **2.20 Opening of Tenders**

The Procuring entity will open all tenders in the presence of the tenderers' representatives who choose to attend, on **Thursday 23<sup>rd</sup>, 2019 at 10.00a.m** and in the location specified in the Invitation to Tender.

The tenderers' representatives who will be presence 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.

2.20.2 The Procuring Entity will prepare minutes of the tender opening.

## **2.21 Clarification of Tenders**

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

## **2.22 Preliminary Examination**

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

## **2.23 Conversion to Single Currency**

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

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

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

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

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

## **2.25 Preference**

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

## **2.26 Contacting the Procuring Entity**

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

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

## **2.27 Award of Contract**

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

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

2.27.2 The determination will take into account the tenderer financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 2.12.3 as well as such other information as the Procuring entity deems necessary and appropriate.

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

### **(b) Award Criteria**

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

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

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

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

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

**2.28 Notification of Award**

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

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

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

**2.29 Signing of Contract**

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

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

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

**2.30 Performance Security**

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

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

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

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

- (i) “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution; and
- (ii) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring Entity, and includes collusive practice among 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.

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

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

### **Appendix to Instructions to Tenderers**

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

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



5. Clauses to be included in this part must be consistent with the public procurement law and the regulations.

### Appendix to Instructions to Tenderers

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

INSTRUCTIONS TO TENDERERS REFERENCE	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
2.1.1	<i>All Tenderers are eligible as it is a public tender</i>
2.14.1	<i>Tender Security shall be Kshs 1% of tender sum</i>
	<i>Terms and Conditions of Payment: 30 - 45 days credit period</i>
2.18.1	<i>Closing Date of the Tender shall be <b>Thursday 23<sup>rd</sup>, 2019 at 10.00a.m.</b></i>
2.27.2	<i>Award will be on the basis of overall lowest evaluated and most responsive bidder.</i>

**SECTION III: GENERAL CONDITIONS OF CONTRACT****Table of Clauses**

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**SECTION III- GENERAL CONDITIONS OF CONTRACT****3.1 Definitions****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 alternations necessary to make specification requirements free of costs to the Procuring entity.
- 3.8.4 The Procuring entity's right to inspect, test and where necessary, reject the goods after the Goods' arrival shall in no way be limited or waived by reason of the equipment having previously been inspected, tested and passed by the Procuring entity or its representative prior to the equipment delivery.
- 3.8.5 Nothing in paragraph 3.8 shall in any way release the tenderer from any warranty or other obligations under this Contract.

### 3.9 **Packing**

- 3.9.1 The tenderer shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract.
- 3.9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract

### **3.10 Delivery and Documents**

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

### **3.11 Insurance**

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

### **3.12 Payment**

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

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

### **3.13 Prices**

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

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

3.13.3 Where contract price variation is allowed, the variation shall not exceed 25% of the original contract price.

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

### **3.14. Assignment**

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

### **3.15 Subcontracts**

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

### **3.16 Termination for default**

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

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

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

### **3.17 Liquidated Damages**

3.17.1. If the tenderer fails to deliver any or all of the goods within the period(s) specified in the contract, the procuring entity shall, without prejudice to its other remedies under the contract, deduct from the contract prices liquidated damages sum equivalent to 1% 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 it's delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

## SECTION IV - SPECIAL CONDITIONS OF CONTRACT

### Notes on Special Conditions of Contract

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

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

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

## SECTION IV - SPECIAL CONDITIONS OF CONTRACT

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

REFERENCE OF GCC	SPECIAL CONDITIONS OF CONTRACT
3.7.1	<i>Tender Security is 1% of the tender sum</i>
3.12.1	<i>Terms of payment: 30-45 days credit period</i>
3.13.1 & 3.13.2	<i>There Shall be no Price Variations within the period of the contract</i>
2.27.4	<i>Award of contract will be on the basis of overall lowest evaluated most responsive bidder. A framework contract will be entered into for a period of two years renewable after satisfactory performance</i>
3.18.1	<i>Resolutions of disputes shall be through an agreed national or international forum, and/or international arbitration.</i>

### SECTION IV – SCHEDULE OF REQUIREMENTS

S/No	Item Description	Unit/Package
1.	Super petrol	Ltr.
2	Low sulphur diesel	Ltr.
3	Multi-grade petrol engine oils	4 Ltr. can
4	SAE 20w/50	4 Ltr. can
	15w/50	4 Ltr. can
5	Multi-purpose grease	Kg.
6	Extreme pressure (EP) gearbox oils	20 Ltr. container
7	Red grease	Kg.
8	High melting point grease	Kg.
9	Extreme pressure oil (EP) 140 – for rear axle	20 Ltr. container
10	Brake fluid	Ltr.
11	100% synthetic oil (engine)	4 Ltr. can
12	Automatic Transmission Fluid (ATF)	4 Ltr. can
13	Semi-synthetic oil (petrol engine)	4 Ltr. can
14	Multi-grade diesel engine oil	4 Ltr. can
15	Fully synthetic diesel engine oil	4 Ltr. can
16	Long- drain diesel engine oil	4 Ltr. can
17	ATF for CVT transmission	4 Ltr. can
18	Long drain engine coolant	Ltr.

### MOTOR VEHICLES FUEL TANK CAPACITIES

S/No.	Vehicle Reg. No.	Make	Fuel Tank Capacity (Ltrs.)
1	KBQ 485D	Toyota Corrolla	60
2	KBQ 484D	Toyota Corrolla	60
3	KBN 240E	VW Jetta	60
4	KBN 233E	VW Jetta	60
5	KBJ 186U	Land Rover	80
6	KBJ 466U	VW Passat	91
7	KBB 194S	Isuzu Bus	400
8	KBL 291G	Toyota Avanza	45



9	KAY 289V	Toyota Prado	140
10	KAY 417V	Toyota Avensis	60
11	KAV 273E	Toyota Hiace	75
12	KAV 060E	Peugeot Saloon	70
13	KAR 262L	Isuzu Bus	400
14	KAR 678L	Toyota Pick up	75
15	KAL 367U	Isuzu Minibus	100
16	KAL 279U	Peugeot Saloon	60
17	KAJ 555S	Isuzu Minibus	100
18	KAJ 910S	Isuzu Lorry	100
19	KAC 125G	Isuzu Minibus	100
20	KAY 978V	Yamaha	10
22	KBM 074B	Piaggio	6
23	KCA 670F	Isuzu double cabin	80
24	KCK 739U	Nissan van	75

#### OTHER INFORMATION

- Indicate cost of:
  - (i) fuel per litre
  - (ii) liquid lubricant per 4 litres
  - (iii) grease per kg

#### SECTION V – PRICE SCHEDULE OF REQUIREMENTS

S/No	Description	Unit/Pack	Cost per Unit/Pack VAT Inclusive (Kshs)
1.	Super petrol	Ltr	
2	Low sulphur diesel	Ltr	
3	Multi-grade petrol engine oils	4 Ltr. can	
4	SAE 20w/50 15w/50	4 Ltr. can 4 Ltr. can	
5	Multi-purpose grease	Kg	
6	Extreme pressure (EP) gearbox oils	20 Ltr. container	
7	Red grease	Kg	
8	High melting point grease	Kg	
9	Extreme pressure oil (EP) 140 – for rear axle	20 Ltr. container	
10	Brake fluid	Ltrs.	

11	100% synthetic oil (engine)	4 Ltr. can	
12	Automatic Transmission Fluid (ATF)	4 Ltr. can	
13	Semi-synthetic oil (petrol engine)	4 Ltr. can	
14	Multi-grade diesel engine oil	4 Ltr. can	
15	Fully synthetic diesel engine oil	4 Ltr. can	
16	Long- drain diesel engine oil	4 Ltr. can	
17	ATF for CVT transmission	4 Ltr. can	
18	Long drain engine coolant	Ltr	
<b>TOTAL COST</b>			

### OTHERS

s/na	Description	No.	Max score
<b>1.</b>	Number of outlets in Nairobi (indicate no. of outlets)	<b>10-20</b>	<b>2</b>
		<b>21-40</b>	<b>4</b>
		<b>41 and above</b>	<b>8</b>
<b>2.</b>	Number of retail outlets in greater Nairobi (Nairobi, Kiambu, Machakos, Kajiado) – Indicate No. of outlets.	<b>20-40</b>	<b>2</b>
		<b>41-60</b>	<b>4</b>
		<b>61 and above</b>	<b>6</b>
<b>3.</b>	Total number of retail outlets in Kenya (Indicate no. of outlets)	<b>30-60</b>	<b>4</b>
		<b>61-100</b>	<b>6</b>
		<b>101 and above</b>	<b>10</b>
<b>4.</b>	Number of retail outlets in Kenya by county (indicate no. of outlets per county)	<b>12-20</b>	<b>4</b>
		<b>21-40</b>	<b>6</b>
		<b>41 and above</b>	<b>10</b>
<b>5.</b>	credit facility	<b>30 days</b>	<b>5</b>
		<b>45 days</b>	<b>10</b>
<b>6.</b>	Fully operational fuel card systems	<b>MANDATORY</b>	
<b>7.</b>	Value added services – SPECIFY/MAY ATTACH FLIER.	<b>2 points per service</b>	<b>8</b>
<b>8.</b>	Product value addition - SPECIFY/MAY ATTACH FLIER.	<b>3 points per product</b>	<b>12</b>

### NOTE: Award will be determined by:

- Lowest prices
- No. of retail outlets
- Best network retail distribution countrywide.
- Highest overall score.

**Bidder's Signature** ----- **Official Stamp** -----

**Date -----**

Date:

Tender Number and Name:

**To:**

*The Technical University of Kenya*

***P.O.BOX 502428-00200,***

***NAIROBI-KENYA.***

***[TEL:+254\(020\) 338232/338755/219690](tel:+254(020)338232/338755/219690)***

Dear Sirs and Madams,

Having read, examined and understood the Tender Document including all Addenda, receipt of which we hereby acknowledge, we, the undersigned Tenderer, offer to provide .....*(insert services description)* for the sum of.....*(total tender price in words and figures)* or such other sums as may be ascertained in accordance with the schedule of prices inserted by me/ us above.

Name of Tenderer

\_\_\_\_\_

Name and Capacity of authorised person signing the Tender

\_\_\_\_\_

Signature of authorised person signing the Tender

\_\_\_\_\_

Stamp of Tenderer

\_\_\_\_\_

## SECTION VI - SUMMARY OF EVALUATION PROCESS

Evaluation of duly submitted tenders will be conducted along the following four main stages:-

- a. MANDATORY REQUIREMENTS EVALUATION CRITERIA (must provide all the mandatory requirements)
- b. TECHNICAL REQUIREMENTS EVALUATION CRITERIA and Visitation( site) evaluation
- c. FINANCIAL EVALUATION
- d. COMBINED SCORE EVALUATION

**6.1 MANDATORY REQUIREMENTS:** *The mandatory information below MUST be provided. Any failure to provide ANY of the information under Mandatory requirements will lead to disqualification from further evaluation.*

No.	MANDATORY EVALUATION CRITERIA	Yes/No
1	Tender Security – Bank Guarantee or from an Insurance Company (All from acceptable and approved locally based Kenyan institutions)	
2	Copy of Company or Firm’s Registration Certificate	
3	Copy of Valid Tax Compliance Certificate	
4	Copy of Receipt for purchase of tender document (Free download)	
5	Audited Financial Accounts for the last two years 2016/2017 and 2017/2018 duly signed by your Auditing firm and Stamped.	
6	Fully operational Fuel Card system	

**NOTE: THE ABOVE MANDATORY REQUIREMENTS MUST BE PROVIDED**

*Being a contract involving fuel and lubricants, the financial and technical scores will be converted to 100%.*

**6.2 PART II - TECHNICAL EVALUATION**

<b>S/NO.</b>	<b>TECHNICAL EVALUATION CRITERIA</b>	<b>MARKS ALLOCATED</b>
1	Written confirmation on Terms Of Payment Of 30 - 45 Days Credit Period on the Firms Letterhead	<b>8</b>
2	Duly completed Form of Tender stamped and signed  & Schedule of requirements duly filled indicating items offered and their prices. The bid submitted conforms to the required Specifications of the items and the Unit of issue as provided in the tender document(Provide the unit of issue and specifications of the item you are quoting for)	<b>8</b>
3	Duly completed Declaration Form stamped and signed	<b>6</b>
4	Confidential Business Questionnaire (CBQ) duly filled stamped and signed	<b>6</b>
5	Three Recommendation Letters and Three Copies of LPOs or Contracts from different Corporate organizations where you have supplied a similar products.	<b>12</b>
6	Number of outlets in Nairobi (indicate no. of outlets)	<b>14</b>
7	Number of retail outlets in greater Nairobi (Nairobi, Kiambu, Machakos, Kajiado) – Indicate No. of outlets.	<b>12</b>
8	Total number of retail outlets in Kenya (Indicate no. of outlets)	<b>20</b>
9	Number of retail outlets in Kenya by county (indicate no. of outlets per county)	<b>20</b>
10	credit facility	<b>15</b>
11	Value added services – SPECIFY/MAY ATTACH FLIER.	<b>8</b>
12	Product value addition - SPECIFY/MAY ATTACH FLIER.	<b>12</b>

### 6.3 PART III – FINANCIAL EVALUATION

This will include the following: -

- A) CONFIRMATION OF AND CONSIDERING PRICE SCHEDULE DULY COMPLETED AND SIGNED
- B) CHECKING THAT THE TENDERER HAS QUOTED PRICES BASED ON VAT INCLUSIVE.
- c) CORRECTION OF ARITHMETICAL ERRORS,

*After all the above have been confirmed,*

- D) CONDUCTING A FINANCIAL COMPARISON.

S/No	Description	Unit/ Package	Max. score
1.	Super petrol	Ltr	12
2	Low sulphur diesel	Ltr	12
3	Multi-grade petrol engine oils	4 Ltr. can	4
4	SAE 20w/50	4 Ltr. can	4
	15w/50	4 Ltr. can	4
5	Multi-purpose grease	Kg	3
6	Extreme pressure (EP) gearbox oils	20 Ltr. container	2
7	Red grease	Kg	2
8	High melting point grease	Kg	2
9	Extreme pressure oil (EP) 140 – for rear axle	20 Ltr. container	2
10	Brake fluid	Ltr.	2
11	100% synthetic oil (engine)	4 Ltr. can	4
12	Automatic Transmission Fluid (ATF)	4 Ltr. can	3
13	Semi-synthetic oil (petrol engine)	4 Ltr. can	3
14	Multi-grade diesel engine oil	4 Ltr. can	4
15	Fully synthetic diesel engine oil	4 Ltr. can	4

16	Long- drain diesel engine oil	4 Ltr. can	4
17	ATF for CVT transmission	4 Ltr. can	3
18	Long drain engine coolant	Ltr	2
	TOTAL SCORE		

**NOTE: From the above table, highest Scores will be awarded according to the lowest financial bid per item.**

#### **E) COMBINED SCORE**

The Successful Tenderer shall be the one with the highest combined score.

#### **NOTES: -**

1. For purposes of evaluation, the exchange rate to be used for currency conversion shall be the selling exchange rate ruling on the date of tender closing provided by the Central Bank of Kenya. (Visit the Central Bank of Kenya website).
2. Total tender value means the Tenderer's total tender price inclusive of Value Added Tax (V.A.T) for the goods it offers to supply.





**SECTION VIII-CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM**

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

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

*Part 1 – General:*

Business ..... Name

Location ..... of ..... business ..... premises.

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

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

Nature ..... of ..... Business

Registration ..... Certificate ..... No.

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

Name of your bankers ..... Branch

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

	Name	Nationality	Citizenship Details	Shares
1	.....	.....	.....	.....
2.	.....	.....	.....	.....
3.	.....	.....	.....	.....
4.	.....	.....	.....	.....
5	.....	.....	.....	.....

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

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

ORIGINAL

**SECTION IX-TENDER SECURITY FORM**

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

(hereinafter called “the tenderer”) has submitted its tender dated ..... [*date of submission of tender*] for the supply, delivery installation and commissioning of ..... [*name and/or description of the equipment*]

(hereinafter called “the Tender”) ..... KNOW ALL PEOPLE by these presents that WE ..... of ..... having our registered office at ..... (hereinafter called “the Bank”), are bound unto ..... [*name of Procuring entity*] (hereinafter called “the Procuring entity”) in the sum of ..... for which payment well and truly to be made to the said Procuring entity, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this ..... day of ..... 20 .. .

THE CONDITIONS of this obligation are:-

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

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

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

[*Signature of the bank*]

*(Amend accordingly if provided by Insurance Company)*

**SECTION X- PERFORMANCE SECURITY FORM**

**To: The Vice Chancellor  
The Technical University of Kenya  
P. O Box 52428 – 000200  
NAIROBI.**

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]

**SECTION XI-BANK GUARANTEE FOR ADVANCE PAYMENT FORM**

**To: The Vice Chancellor  
The Technical University of Kenya  
P. O Box 52428 – 000200  
NAIROBI.**

[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]*

ORIGINAL

**SECTION XII- DECLARATION FORM**

Date \_\_\_\_\_

**To:**

The Technical University of Kenya

**P.O.BOX 502428-00200,**

**Nairobi-Kenya.**

**TEL:+254(020) 338232/338755/219690**

Ladies and Gentlemen,

The Tenderer i.e. (full name and complete physical and postal address) \_\_\_\_\_

\_\_\_\_\_ declare the following: -

- a) That I/ We have not been debarred from participating in public procurement by any body, institution or person.
- b) That I/ We have not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement anywhere.
- c) That I/We or any director of the firm or company is not a person within the meaning of paragraph 3.2 of ITT (Eligible Tenderers) of the Instruction to Bidders.
- e) That I/ We are not associated with any other Tenderer participating in this Tender.
- f) That I/We do hereby confirm that all the information given in this tender is accurate, factual and true to the best of our knowledge.

Yours sincerely,

\_\_\_\_\_

Name of Tenderer

\_\_\_\_\_

Signature of duly authorised person signing the Tender

\_\_\_\_\_

Name and Capacity of duly authorised person signing the Tender

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Stamp or Seal of Tenderer

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Stamp or Seal of Tenderer

ORIGINAL



**SECTION III-DRAFT LETTER OF NOTIFICATION OF AWARD**

**To:** *(Name and full address of the Successful Tenderer)*..... **Date:**.....

Dear Sirs/ Madams,

**RE: NOTIFICATION OF AWARD OF TENDER NO. ....**

We refer to your Tender dated..... and are pleased to inform you that following evaluation, your Tender has been accepted as follows: -

.....  
.....

This notification does not constitute a contract. The formal Contract Agreement, which is enclosed herewith shall be entered into upon expiry of fourteen (14) days from the date hereof but not later than thirty (30) days after expiry of tender validity pursuant to the provisions of the Public Procurement and Disposal Act, 2005 *(or as may be amended from time to time or replaced)*.

Kindly sign, and seal the Contract Agreement. Further, initial and stamp on all pages of the documents forming the Contract that are forwarded to you with this letter. Thereafter return the signed and sealed Contract together with the documents to us within fourteen (14) days of the date hereof for our further action.

We take this opportunity to remind you to again note and strictly comply with the provisions as regards the Tender Security, Signing of Contract and Performance Security as stated in the Instructions to Tenderers.

We look forward to a cordial and mutually beneficial business relationship.

Yours faithfully,

**FOR: THE TECHNICAL UNIVERSITY OF KENYA**

**DIRECTOR SUPPLY CHAIN OPERATIONS.**

Enclosures

**SECTION XIV-DRAFT LETTER OF NOTIFICATION OF REGRET**

**To:** *(Name and full address of the Unsuccessful Tenderer)*..... **Date:**

Dear Sirs/ Madams,

**RE: NOTIFICATION OF REGRET IN RESPECT OF TENDER NO. ....**

We refer to your Tender dated..... and regret to inform you that following evaluation, your Tender is unsuccessful. It is therefore not accepted. The brief reasons are as follows:-

1. ....
2. ....
3. .... etc...

The successful bidder was \_\_\_\_\_.

However, this notification does not reduce the validity period of your Tender Security. In this regard, we request you to relook at the provisions regarding the Tender Security, Signing of Contract and Performance Security as stated in the Instructions to Tenderers.

You may collect the tender security from our Procurement *Department* , *The Technical University of Kenya, Nairobi* only after expiry of twenty five (25) days from the date hereof. It is expected that by that time TUK and the successful bidder will have entered into a contract pursuant to the Public Procurement and Disposal Act, 2005 (*or as may be amended from time to time or replaced*). When collecting the Security, you will be required to produce the original of this letter.

We thank you for the interest shown in participating in this tender and wish you well in all your future endeavours.

Yours faithfully,

**FOR: THE TECHNICAL UNIVERSITY OF KENYA**

**DIRECTOR SUPPLY CHAIN OPERATIONS.**

**SECTION XV-CONTRACT AGREEMENT FORM**

**THIS AGREEMENT** made this.....day of.....20....**BETWEENTHE TECHNICAL UNIVERSITY OF KENYA** of Post Office Box Number 52428, -00200, Nairobi in the Republic aforesaid (*hereinafter referred to as the "TUK"*) of the one part,

**AND**

..... (*Supplier's full name and principal place of business*) a duly registered entity according to the laws of..... (*state country*) and of Post Office Box Number.....(*full address of Supplier*)in the Republic aforesaid, (*hereinafter referred to as the "Supplier"*) of the other part;

**WHEREAS** TUK invited tenders for certain goods, that is to say for .....(**TUK insert description of goods**) under Tender Number..... (*insert tender number*)

**AND WHEREAS** TUK has accepted the Tender by the Supplier for the goods in the sum of .....(**TUK specify the total amount in words which should include any payable taxes, duties and insurance where applicable e.g. Value Added Tax**) (*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 and the Tender Document.
2. Unless the context or express provision otherwise requires: -
  - a) reference to "this Agreement" includes its recitals, any schedules and documents mentioned hereunder and any reference to this Agreement or to any other document includes a reference to the other document as varied supplemented and or replaced in any manner from time to time.
  - b) any reference to any Act shall include any statutory extension, amendment, modification, re-amendment or replacement of such Act and any rule, regulation or order made there-under.
  - c) words importing the masculine gender only, include the feminine gender

or (as the case may be) the neutral gender.

- d) words importing the singular number only include the plural number and vice-versa and where there are two or more persons included in the expression the “*Supplier*” the covenants, agreements obligations expressed to be made or performed by the Supplier shall be deemed to be made or performed by such persons jointly and severally.
  - e) where there are two or more persons included in the expression the “*Supplier*” any act default or omission by the Supplier shall be deemed to be an act default or omission by any one or more of such persons.
3. In consideration of the payment to be made by TUK to the Supplier as hereinafter mentioned, the Supplier hereby covenants with TUK to supply the goods and remedy any defects thereon in conformity in all respects with the provisions of the Contract.
  4. TUK hereby covenants to pay the Supplier in consideration of the proper supply 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.
  5. The following documents shall constitute the Contract between TUK and the Supplier and each shall be read and construed as an integral part of the Contract: -
    - a) this Contract Agreement
    - b) the Special Conditions of Contract as per the Tender Document
    - c) the General Conditions of Contract as per the Tender Document
    - d) the Price Schedules submitted by the Supplier and agreed upon with TUK
    - e) the Technical Specifications as per TUK’s Tender Document
    - f) the Schedule of Requirements
    - g) TUK’s Notification of Award dated.....
    - h) the Tender Form signed by the Supplier
    - i) the Declaration Form signed by the Supplier/ successful Tenderer
    - j) the Warranty
  6. In the event of any ambiguity or conflict between the contract documents listed above, the order of precedence shall be the order in which the contract documents are listed in 5 above except where otherwise mutually agreed in writing.
  7. The Commencement Date shall be the working day immediately following the fulfillment of all the following: -

- a) Execution of this Contract Agreement by TUK and the Supplier.
  - b) Issuance of the Performance Bond by the Supplier and confirmation of its Authenticity by TUK.
  - c) Issuance of the Official Order by TUK to the Supplier.
  - d) Where applicable, Opening of the Letter of Credit by TUK.
8. The period of contract validity shall begin from the Commencement date and end on -
- a) sixty (60) days after the last date of the agreed delivery schedule, or,
  - b) where a Letter of Credit is adopted as a method of payment, sixty (60) days after the expiry date of the Letter of Credit or the expiry date of the last of any such opened Letter of Credit whichever is later.
- Provided that the expiry period of the Warranty shall be as prescribed and further provided that the Warranty shall survive the expiry of the contract.
9. It shall be the responsibility of the Supplier to ensure that its Performance Security is valid at all times during the period of contract validity and further is in the full amount as contracted.
10. Any amendment, change, addition, deletion or variation howsoever to this Contract shall only be valid and effective where expressed in writing and signed by both parties.
11. No failure or delay to exercise any power, right or remedy by TUK shall operate as a waiver of that right, power or remedy and no single or partial exercise of any other right, power or remedy shall operate as a complete waiver of that other right, power or remedy.
12. Notwithstanding proper completion of delivery or parts thereof, all the provisions of this Contract shall continue in full force and effect to the extent that any of them remain to be implemented or performed unless otherwise expressly agreed upon by both parties.
13. Any notice required to be given in writing to any Party herein shall be deemed to have been sufficiently served, if where delivered personally, one day after such delivery; notices by electronic mail and facsimile shall be deemed to be served one day after the date of such transmission and delivery respectively (*and proof of service shall be by way of confirmation report of such transmission and or delivery*), notices sent by post shall be deemed served seven (7) days after posting by registered post (*and proof of posting shall be proof of service*), notices sent by courier shall be deemed served two (2) days after such receipt by the courier service for Local (Kenyan) Suppliers and five (5) days for Foreign Suppliers.

14. For the purposes of Notices, the address of TUK shall be **The Vice Chancellor, the Technical University of Kenya, P. O Box 52428 – 00200, NAIROBI**. The address for the Supplier shall be the Supplier’s address as stated by it in the Confidential Business Questionnaire provided in the Tender Document.

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

**SIGNED FOR** and on **BEHALF**  
of **TUK**

\_\_\_\_\_  
COMPANY SECRETARY

**SEALED** with the **COMMON SEAL**  
of the **SUPPLIER**  
in the presence of:-

\_\_\_\_\_  
DIRECTOR

\_\_\_\_\_  
*Affix Supplier’s Seal here*

\_\_\_\_\_  
DIRECTOR’S FULL NAMES

and in the presence of:-

\_\_\_\_\_  
DIRECTOR/ COMPANY SECRETARY

\_\_\_\_\_  
DIRECTOR/ COMPANY SECRETARY’S FULL NAMES

\*OR

**SIGNED BY** and on **BEHALF**  
of the **SUPPLIER**

---

SIGNATURE OF THE SUPPLIER

---

FULL NAMES OF THE SUPPLIER

**\*NOTES TO THE SUPPLIER**

1. *Please note that the alternative is applicable IF AND ONLY IF the Supplier is not a registered company but has tendered, and, is trading as a sole proprietor or a partnership as provided in the Confidential Business Questionnaire or is registered as a business name.*
2. *In all other cases, the Supplier is required to execute the contract as first provided.*

**SECTION XVI-MANUFACTURER’S AUTHORIZATION FORM**

**(To Be Submitted On Manufacturer’s Letterhead)**

**To:**The Technical University of Kenya

**P.O.BOX 502428-00200,**

**Nairobi-Kenya.**

**TEL:+254(020) 338232/338755/219690**

**WHEREAS WE** .....(*name of the manufacturer*) who are established and reputable manufacturers of .....  
(*name and description of the goods*) having factories at .....(*full address and physical location of factory(ies) where goods to be supplied are manufactured*) do hereby confirm that .....  
(*name and address of Supplier*) is authorized by us to transact in the goods required against your Tender ..... (*insert reference number and name of the Tender*) in respect of the above goods manufactured by us.

**WE HEREBY** extend our full guarantee and warranty as per the Conditions of Contract for the goods offered for supply by the above firm against the Invitation to Tender.

DATED THIS..... DAY OF.....20.....

\_\_\_\_\_  
Signature of duly authorised person for and on behalf of the Manufacturer.

\_\_\_\_\_  
Name and Capacity of duly authorised person signing on behalf of the Manufacturer

**NOTES TO TENDERERS AND MANUFACTURERS**

*Only a competent person in the service of the Manufacturer should sign this letter of authority.*



**SECTION XVII-SUPPLIER BUSINESS PREMISE LOCATION AND MOBILE TELEPHONE CONTACT**

BUSINESS NAME:	
NAME OF BUILDING AND TOWN/CITY	
STREET OR ROAD	
MOBILE TELEPHONE CONTACT NUMBER	
AREA e.g Industrial Area, Town Center, Westlands etc	