

REPUBLIC OF KENYA



OFFICE OF THE AUDITOR-GENERAL

TENDER DOCUMENT

FOR

**PROVISION OF ORACLE SERVERS
SUPPORT LICENSES**

OAG/OT/03/2016-2017

NOVEMBER, 2016

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SECTION I INVITATION TO TENDER
DATE _____

TENDER REF NO: OAG/OT/03/2016-2017

TENDER NAME : PROVISION OF ORACLE SERVERS SUPPORT LICENSES

- 1.1 The Office of the Auditor- General wishes to procure oracle servers support licenses

- 1.2 The Office now invites sealed bids from eligible candidates for the Provision of Oracle Servers Support Licenses. Interested eligible candidates may obtain further information and inspect tender documents at **the Procurement Office, Office of the Auditor-General, P.O BOX 30084-00100, NAIROBI** located on **8th floor, Anniversary Towers along University way**, on week days, during normal working hours (8.00AM- 1.00PM and (2.00PM - 5.00PM local time)
- 1.3 A complete set of tender documents may be **downloaded** by interested candidates **for free from the Office of The Auditor-General's website: www.kenao.go.ke or www.supplier.treasury.go.ke**
- 1.4 Completed tender documents are to be enclosed in plain sealed envelopes marked with the specific tender name and reference number and deposited in the Tender Box located at **Office of The Auditor-General, Offices, Anniversary Towers, 8th floor** or to be addressed to **The Auditor-General, P.O. Box 30084-00100, NAIROBI** so as to be received on or before **11.00 AM, local time on 8th December, 2016**. Late bids will be rejected.
- 1.5 Prices quoted should be inclusive of all taxes and delivery costs, and must be in Kenya Shillings and shall remain valid for **120 days** from the closing date of the tender.
- 1.6 Tenders will be opened immediately thereafter in the presence of the Candidates or their representatives who choose to attend at the **Boardroom on 4th Floor, Anniversary Towers Building**.

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For: Auditor- General

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 Office of the Auditor General'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 Office of the Auditor- General (OAG) 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 Office of the Auditor - General, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

2.3.2 All firms found capable of performing the contract satisfactorily in accordance with the set prequalification criteria shall be prequalified.

2.4. **The Tender Document**

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

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

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

2.5 **Clarification of Documents**

2.5.1 A prospective tenderer requiring any clarification of the tender document may notify the Office of the Auditor General in writing via the email **procurement@oagkenya.com** 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 Office of the Auditor General. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be posted in the procuring entities web site www.kenao.go.ke so as to reach all the Prospective bidders.

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

2.6 **Amendment of Documents**

2.6.1 At any time prior to the deadline for submission of tenders, the Office of the Auditor General, 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, by post, or through our website 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 Office of the Auditor General, 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 Office of the Auditor General, shall be written in English language, provided that any printed literature furnished by the tenderer may be written in another language provided they are accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the tender, the English translation shall govern.

2.8 Documents Comprising of Tender

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

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

2.9 Tender Forms

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

2.10 Tender Prices

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

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

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

2.10.4 The validity period of the tender shall be 120 days from the date of opening of the tender.

2.11 Tender Currencies

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

2.12 Tenderers Eligibility and Qualifications

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

2.12.2 The documentary evidence of the tenderers eligibility to tender shall establish to the Office of the Auditor General'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 Office of the Auditor General's satisfaction;

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

2.13 Goods Eligibility and Conformity to Tender Documents

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

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

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

- (a) a detailed description of the essential technical and performance characteristic of the goods;
- (b) a list giving full particulars, including available source and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the goods for a period of two (2) years, following commencement of the use of the goods by the Office of the Auditor General; and
- (c) a clause-by-clause commentary on the Office of the Auditor General'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 Ksh 100,000.00

- 2.14.3 The tender security is required to protect the Office of the Auditor General 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 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 Office of the Auditor General 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 Office of the Auditor General as non-responsive, pursuant to paragraph 2.22
- 2.14.6 Unsuccessful Tenderer's tender security will be discharged or returned as promptly as possible as but not later than thirty (30) days after the expiration of the period of tender validity prescribed by the Office of the Auditor General.
- 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 Office of the Auditor General on the Tender Form; or
 - (b) in the case of a successful tenderer, if the tenderer fails:
 - (i) to sign the contract in accordance with paragraph 2.27
 - or
 - (ii) to furnish performance security in accordance with paragraph 2.28

2.15 **Validity of Tenders**

- 2.15.1 Tenders shall remain valid for 120 days or as specified in the Invitation to tender after the date of tender opening prescribed by the Office of the Auditor General, pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the Office of the Auditor General as non-responsive.

2.15.2 In exceptional circumstances, the Office of the Auditor General 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 bidder 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 unammended printed literature, shall be initialed by the person or persons signing the tender.

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

2.17 Sealing and Marking of Tenders

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

2.17.2 The inner and outer envelopes shall:

- (a) be addressed to the Office of the Auditor General at the address given in the Invitation to Tender:

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 Office of the Auditor General will assume no responsibility for the tender's misplacement or premature opening.

2.18 Deadline for Submission of Tenders

2.18.1 Tenders must be received by the Office of the Auditor General at the address specified under paragraph 2.17.2 no later than **11.00 AM, local time on 8th December, 2016.**” bear, tender number and name in the Invitation for Tenders and the words, “DO NOT OPEN BEFORE,” **11.00 AM, local time on 8th December, 2016.**”

2.18.2 The Office of the Auditor General 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 Office of the Auditor General and candidates previously subject to the deadline will therefore be subject to the deadline as extended

2.19 Modification and Withdrawal of Tenders

2.19.1 The tenderer may modify or withdraw its tender after the tender's submission, provided that written notice of the modification, including substitution or withdrawal of the tenders, is received by the Office of the Auditor General 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 Office of the Auditor General 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 Office of the Auditor General shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

2.20 Opening of Tenders

2.20.1 The Office of the Auditor General will open all tenders in the presence of tenderers' representatives who choose to attend, not later than **11.00 AM, local time on 8th December, 2016.** and in the location specified in the Invitation to Tender. The tenderers' representatives who are present shall sign a register evidencing their attendance.

2.20.2 The tenderers' names, tender modifications or withdrawals, tender prices, discounts and the presence or absence of requisite tender security and such other details as the Office of the Auditor General, at its discretion, may consider appropriate, will be announced at the opening.

2.20.3 The Office of the Auditor General 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 Office of the Auditor General 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 Office of the Auditor General in the Office of the Auditor General'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 Office of the Auditor General will examine the tenders to determine whether they are complete, whether any computational errors have been

made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order.

2.22.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantify, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security forfeited. If there is a discrepancy between words and figures the amount in words will prevail

2.22.3 The Office of the Auditor General may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or effect the relative ranking of any tenderer.

2.22.4 Prior to the detailed evaluation, pursuant to paragraph 2.23 the Office of the Auditor General 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 Office of the Auditor General'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 Office of the Auditor General and may not subsequently be made responsive by the tenderer by correction of the non conformity.

2.23 Conversion to Single Currency (All bids to be quoted in Ksh Only)

2.23.1 Where other currencies are used, the Office of the Auditor General 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 and Comparison of Tenders

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

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

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

2.25 Preference

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

2.26 Contacting the Office of the Auditor General

2.26.1 Subject to paragraph 2.21 no tenderer shall contact the Office of the Auditor General 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 Office of the Auditor General 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 Office of the Auditor General 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 Office of the Auditor General 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 Office of the Auditor General 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 Office of the Auditor General 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) Office of the Auditor General's Right to Vary quantities

2.27.5 The Office of the Auditor General 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) Office of the Auditor General's Right to accept or Reject any or All Tenders

2.27.6 The Office of the Auditor General 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 Office of the Auditor General's action

2.28 Notification of Award

2.28.1 Prior to the expiration of the period of tender validity, the Office of the Auditor General 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 Office of the Auditor General 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 Office of the Auditor General notifies the successful tenderer that its tender has been accepted, the Office of the Auditor General will send the tenderer the Contract Form provided in the tender documents, incorporating all agreements between the parties.

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

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

2.30 Performance Security

2.30.1 Within Thirty (30) days of the receipt of notification of award from the Office of the Auditor General, 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 Office of the Auditor General.

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 Office of the Auditor General may make the award to the next lowest evaluated Candidate or call for new tenders.

2.31 Corrupt or Fraudulent Practices

2.31.1 The Office of the Auditor General 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 Office of the Auditor General, 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 Office of the Auditor General of the benefits of free and open competition;

2.31.2 The Office of the Auditor General 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

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>Open tender to all eligible tenderers</i>
2.11	<i>Tender Currency: Prices shall be quoted in Kenya Shillings only</i>
2.14.1	<i>Tender security shall be Ksh 100,000 and shall remain valid up to and until 30 days after the tender validity period (150 days).</i>
2.14.4	<i>The tender security shall be denominated in Kenya Shillings Only and shall be in the form of</i> (a) a bank guarantee; (b) such insurance company guarantee as approved by the PPOA; (c) a letter of credit; or (d) Guarantee by a deposit taking microfinance institution, Sacco society, the Youth Enterprise Development Fund or the Women Enterprise Fund.
2.18.1	<i>Tenders must be received by the Office of the Auditor- General at the address and manner specified in the advert not later than 11.00 AM, local time on 8th December, 2016.’’</i>
2.22.2	<i>Arithmetic errors will not be corrected. The Tender sum read during tender opening shall remain unchanged.</i>

2.29.1

Performance security shall be 10% of the tender sum valid up to and until 30 days after the tender validity period and be in form of a bank guarantee.

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 Office of the Auditor General 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 Office of the Auditor General under the Contract.
- (d) “The Procuring Entity” means the organization purchasing the Goods under this Contract (Office of the Auditor General).
- (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 Office of the Auditor General 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 Office of the Auditor General'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 Office of the Auditor General 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 Office of the Auditor General'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 Office of the Auditor General and shall be returned (all copies) to the Office of the Auditor General on completion of the Tenderer's performance under the Contract if so required by the Office of the Auditor General

3.6 Patent Rights

3.6.1 The tenderer shall indemnify the Office of the Auditor General 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 Office of the Auditor General'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 Office of the Auditor General 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 Office of the Auditor General 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 Office of the Auditor General 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 Office of the Auditor General, in the form provided in the tender documents.
- 3.7.4 The performance security will be discharged by the Office of the Auditor General 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 Office of the Auditor General or its representative shall have the right to inspect and/or to test the goods to confirm their conformity to the Contract specifications. The Office of the Auditor General 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 Office of the Auditor General.
- 3.8.3 Should any inspected or tested goods fail to conform to the Specifications, the Office of the Auditor General 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 Office of the Auditor General.
- 3.8.4 The Office of the Auditor General'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 Office of the Auditor General 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 Office of the Auditor General 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 Office of the Auditor General as specified in the contract

3.13 Prices

3.13.1 Prices charged by the tenderer for goods delivered and services performed under the Contract shall not, with the exception of any price adjustments

authorized in Special Conditions of Contract, vary from the prices by the tenderer in its tender.

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

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

3.13.4 Price variation request shall be processed by the Office of the Auditor General 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 Office of the Auditor General's prior written consent

3.15 Subcontracts

3.15.1 The tenderer shall notify the Office of the Auditor General 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 Office of the Auditor General may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the tenderer, terminate this Contract in whole or in part

- (a) if the tenderer fails to deliver any or all of the goods within the period(s) specified in the Contract, or within any extension thereof granted by the Office of the Auditor General
- (b) if the tenderer fails to perform any other obligation(s) under the Contract

- (c) if the tenderer, in the judgment of the Office of the Auditor General has engaged in corrupt or fraudulent practices in competing for or in executing the Contract

3.16.2 In the event the Office of the Auditor General 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 Office of the Auditor General 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 Office of the Auditor General 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 Office of the Auditor General 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

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

REFERENCE OF GCC	SPECIAL CONDITIONS OF CONTRACT
3.7.1	<i>Performance security shall be 10% of the tender sum valid up to and until 30 days after the tender validity period and be in form of a bank guarantee.</i>
3.12.1	<i>Payment within a period of 30 days after the successful delivery and acceptance of the items under contract and submission of proper documentation thereof.</i>
3.18.1	Any dispute, controversy or claim between the Parties arising out of this Contract or the breach, termination or invalidity thereof, unless settled amicably under the preceding paragraph of this Article within sixty (60) days after receipt by one Party of the other Party's request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the Arbitration Laws of Kenya. <i>The place of arbitration shall be Nairobi.</i>

SECTION V - TECHNICAL SPECIFICATIONS FOR PROVISION OF ORACLE SERVERS SUPPORT LICENSES

5.1 General

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

5.1.2 Tenderers must indicate on the specifications sheets whether the equipment offered comply with each specified requirement.

5.1.3 All the dimensions and capacities of the equipment to be supplied shall not be less than those required in these specifications. Deviations from the basic requirements, if any shall be explained in detail in writing with the offer, with supporting data such as calculation sheets, etc. The Office of the Auditor General reserves the right to reject the products, if such deviations shall be found critical to the use and operation of the products.

5.1.4 The tenderers are requested to present information along with their offers as follows:

- (i) Shortest possible delivery period of each product
- (ii) Information on proper representative and/or workshop for back-up service/repair and maintenance including their names and addresses.

5.2 PARTICULARS

DETAILED SPECIFICATIONS AND DELIVERABLES FOR ORACLE SERVERS SUPPORT LICENSES

Oracle servers support Agreement

1. Authorized Oracle Dealer

The supplier must be Oracle authorized Dealer. Proof in form of document from Oracle must be supplied alongside the offer.

2. Service Track Record

This contract will apply to mission critical systems; therefore, the tender will have to show proof of prior services delivered on ORACLE mission critical systems. Document from Organizations where similar services have been delivered must be attached.

3. Back to Back Agreement

If awarded the contract, the tenderer will be required to enter into back to back agreement with Oracle. Proof of this by way of document will be required before contract is signed between the supplier and Purchaser.

4. Service

Work shall be carried out to the highest standard by skilled and qualified engineers and in conformity with maintenance manuals and best practices recommended by the manufacturer.

5. Support

The Supplier shall be required to provide references to sites they have provided similar services, and relevant certificates of their support staff clearly indicating the ones who handle Oracle hardware and software.

6. Call Response

The Supplier shall respond to any service call within an hour. Upon receipt of such notice the Supplier shall, with all reasonable speed, replace and/or repair the defective goods in their respective location(s) within the tender costs. The times of service shall be between 8.00am and 6.00pm.

7. Replacement

Having been notified, and failure to remedy the defect(s) within two working days, the Supplier shall be required to provide hardware of similar specification to the faulty one for use by Purchaser until the faulty one is repaired. The same shall apply in the event a machine is taken out of its location for repair.

After providing a replacement the Supplier will be required to remedy the defect(s) within the agreed period of time. Failure to do so, the Purchaser may proceed to take such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.

8. Parts

All material and component parts to be used shall be new, of high quality and manufactured by the Manufacturer. The Purchaser shall demand proof of the manufacturer before it is fitted to the machine. Where a part or component to be fitted requires a software driver to function properly, the media for that driver shall be supplied by the Supplier.

9. Reporting of Service Calls

The Supplier shall submit to the Purchaser all the necessary procedures and documentation involved in the whole process of servicing a call. These shall include levels, modes and points of contact, escalation, etc.

10. Preventive Maintenance

The Supplier shall be required to carry out a minimum of three (3) preventive maintenance, scheduled on agreed dates by both parties between Monday & Saturday, 8.00am and 5.00pm. The Supplier shall be required to give a notice of one working day to reschedule a maintenance exercise. The maintenance shall be based on specific needs of each hardware as agreed by both parties and shall include blowing of dust, cleaning, lubrication, adjustments, replacements of parts, etc.

11. Software Upgrades

The Supplier shall install all required Software updates and patches as recommended by the Manufacturer for the software version the Purchaser's hardware is running.

12. Termination

The Purchaser may terminate or withdraw machine(s) from the contract by providing a 30 day notice.

13. Services Requested

The table below describes the service deliverable the supplier will have to fulfil during the contract period. These services are as described in the Oracle services delivery standards.

Service Levels

Serial Number	Asset Type	Support Identifier	Product Name	HW Description	Entitlement End Date	Contract Type
AK00228366	Stand-Alone	19583878 (Kenya National Audit Office)	SPARC T5-2 server: model family	SPARC T5-2 server: model family	22-Aug-16	Hardware Only Support
1427NM50AN	Stand-Alone	19583878 (Kenya National Audit Office)	Sun Server X4-2L: model family	Sun Server X4-2L: model family	22-Aug-16	Hardware Only Support
1428NMT002	Stand-Alone	19583878 (Kenya National Audit Office)	Oracle Storage Drive Enclosure DE2-24C: model family	Oracle Storage Drive Enclosure DE2-24C: model family	22-Aug-16	Hardware Only Support
AK00228367	Stand-Alone	19583878 (Kenya National Audit Office)	SPARC T5-2 server: model family	SPARC T5-2 server: model family	22-Aug-16	Hardware Only Support
1427NM2037	Stand-Alone	19583878 (Kenya National Audit Office)	Oracle ZFS Storage ZS3-2: model family	Oracle ZFS Storage ZS3-2: model family	22-Aug-16	Hardware Only Support
AK00228516	Stand-Alone	19583878 (Kenya National Audit Office)	SPARC T5-2 server: model family	SPARC T5-2 server: model family	22-Aug-16	Hardware Only Support
1427NM50AP	Stand-Alone	19583878 (Kenya National Audit Office)	Sun Server X4-2L: model family	Sun Server X4-2L: model family	22-Aug-16	Hardware Only Support
1427NM2036	Stand-Alone	19583878 (Kenya National Audit Office)	Oracle ZFS Storage ZS3-2: model family	Oracle ZFS Storage ZS3-2: model family	22-Aug-16	Hardware Only Support
464970G+1427SY2846	Stand-Alone	19583878 (Kenya National Audit Office)	StorageTek SL150 modular tape library: model family	StorageTek SL150 modular tape library: model family	22-Aug-16	Hardware Only Support

SECTION VI - SCHEDULE OF REQUIREMENTS

Deliverables under the contract

Number	Description	Quantity and physical unit	Delivery Time
1 No.	Oracle Licenses Renewal and support Services	Service	Within Thirty days after signing of Contract

NB: The bidder should indicate the period within which he/she can deliver the goods.

Bidders Delivery time _____ weeks from the contract date.

Signature of tenderer _____

SECTION VII - PRICE SCHEDULE FOR GOODS

Name of tenderer _____ Tender Number _____ Page _____ of _____

1	2	3	4	5	6	7
Item	Description	Country of origin	Quantity	Unit price	Total Price EXW per item (cols. 4x5)	Unit price of other incidental services payable

Signature of tenderer _____

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

SECTION VIII - EVALUATION CRITERIA

This tender will be evaluated in four main parts namely:

- i. Preliminary Evaluation**
- ii. Technical Evaluation**
- iii. Financial Evaluation**

8.1 PRELIMINARY EVALUATION (Mandatory Requirement)

This stage of evaluation shall involve examination of the pre-qualification conditions as set out in the bid document.

These conditions shall include Submission of the following:

1. Completeness of the Form of Tender (**Duly filled, signed and stamped/sealed**).
2. Certificate of Incorporation/Registration,
3. Valid Tax Compliance certificate,
4. Availability, Validity, conformity and Sufficiency of the tender security (**Bid bond**)
5. Manufacturers Authorization (**Must be from Oracle**)
6. Declaration that the firm has not been debarred from participating in public procurement proceedings (**Attach sworn Affidavit**).
7. Declaration that the firm is not guilty of any violation of fair employment laws and practices (**Attach sworn Affidavit**).
8. Declaration that the firm has not been convicted of corrupt or fraudulent practices (**Attach sworn Affidavit**).
9. Declaration that the firm is not insolvent, in receivership or bankrupt (**Attach sworn Affidavit**).

NB: Those who do not meet ANY of the above evaluation criteria will be non-responsive and shall not proceed to the next stages of evaluation.

8.2 TECHNICAL EVALUATION

This part of evaluation shall evaluate bidders on compliance with the items listed in the table below:

F/No.	Description	Point Scored	Maximum Points
1.	Confidential Business Questionnaire form: <ul style="list-style-type: none"> • Completely Filled: 10 (Points) • Partially Filled: 5 (Points) • Not Filled: 0 (Points) 		10
2.	Audited Financial Report (Last Two years) <ul style="list-style-type: none"> • Turnover greater or equal to 2 times the quoted tender sum10 (Points) • Turnover greater than quoted tender sum but less than 2 times the quoted tender sum 5 (Points) • Turnover equal to the tender sum 2 (Points) • Turnover less than the tender sum: 0 (Points) <i>(NB: Turnover: This is the average turnover based on the two years)</i>		10
3.	Clients references – 3 Clients (Provide a list of clients and references to which the bidder has done similar works in the last two years). 10 points for every relevant client		30
4.	Proof of Prior Services Delivered on Oracle Mission Critical Systems in the last 3 years (Provide Documentary Evidence e.g. Copies of LPO, LSO or signed Contract of 3 Projects) <ul style="list-style-type: none"> • Projects of similar nature and of bigger value above quoted tender sum value 10 (Points) for each project • Projects of similar nature but of lower value than the tender sum 5 (Points) for each project 		30
5.	Support: The Supplier shall be required to provide references to sites they have provided similar services, and relevant certificates of their support staff clearly indicating the ones who handle Oracle hardware and software		20
	TOTAL		100

NB: Only bidders scoring a minimum of 70 shall proceed to the next stage of Evaluation.

8.3 FINANCIAL EVALUATION

This part of evaluation will entail bidders tender sums being compared and ranked. The bidder whose tender sum emerges to be lowest evaluated will be recommended for award in accordance with clause 2.27 of instruction to tenderers.

SECTION IX - STANDARD FORMS

Notes on the sample Forms

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

9.1 **FORM OF TENDER**

Date _____

Tender No. _____

To: _____

[name and address of Office of the Auditor General]

Gentlemen and/or Ladies:

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

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

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

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

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

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

Dated this _____ day of _____ 20 _____

[signature]

[in the capacity of]

Duly authorized to sign tender for an on behalf of _____

9.2 CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

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

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

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

	Part 2 (a) – Sole Proprietor			
	Your name in full			Age
	Nationality	Country of origin		
		<ul style="list-style-type: none"> • 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.			
	5.			
Date	Signature of Candidate			

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

9.3 TENDER SECURITY FORM

Whereas [*name of the tenderer*]
(hereinafter called "the tenderer") has submitted its tender dated
..... [*date of submission of tender*] for the supply, installation and
commissioning of [*name and/or description of the
equipment*] (hereinafter called "the Tender")
..... KNOW ALL PEOPLE by these
presents that WE of having our
registered office at (hereinafter called "the Bank"), are
bound unto [*name of Office of the Auditor General*] (hereinafter
called "the Office of the Auditor General") in the sum of
for which payment well and truly to be made to the said Office of the Auditor
General, 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 Office of the Auditor General 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 Office of the Auditor General up to the above amount upon receipt of its first written demand, without the Office of the Auditor General having to substantiate its demand, provided that in its demand the Office of the Auditor General 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)

9.4 CONTRACT FORM

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

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

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

9.5 PERFORMANCE SECURITY FORM

To
[name of Office of the Auditor General]

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]

9.6 BANK GUARANTEE FOR ADVANCE PAYMENT FORM

To
[name of Office of the Auditor General]

[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 Office of the Auditor General 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 Office of the Auditor General 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 Office of the Auditor General 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]

9.7 MANUFACTURER’S AUTHORIZATION FORM

To *[name of the Office of the Auditor General]*

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

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

[signature for and on behalf of manufacturer]

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

9.8 LETTER OF NOTIFICATION OF AWARD

Address of Office of the Auditor General

To: _____

RE: Tender No. _____

Tender Name _____

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

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

(FULL PARTICULARS) _____

SIGNED FOR ACCOUNTING OFFICER

FORM RB 1
REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

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

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (*Office of the Auditor General*)

Request for review of the decision of the..... (*Name of the Office of the Auditor General*) of
.....dated the...day of20.....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