
**Supply of Single phase and Three
Phase Prepaid Meters:**

Issued on: 24th April 2015

**ICB No: KP1/12A-2/PT/2/15/A40 LOT
No. 11**

**Employer: Kenya Power & Lighting
Company Limited**

Country: Kenya

Preface

This Bidding Document for Procurement of Goods has been prepared by the Kenya Power and Lighting Company and is based on the Standard Bidding Document for Procurement of Goods issued by the African Development Bank, dated June 2010.

The Standard Bidding Document for Procurement of Goods reflects the structure and the provisions of the Master Document for Procurement of Goods, prepared by Multilateral Development Banks and International Financing Institutions, except where specific considerations within the African Development Bank have required a change.

Standard Bidding Document

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PART 1 – Bidding Procedures

Section I. Instructions to Bidders

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Section I. Instructions to Bidders

A. General

- 1. Scope of Bid**
 - 1.1 The Purchaser indicated in Section II, Bid Data Sheet (BDS) issues this Bidding Document for the procurement of Goods and related services as specified in Section VI, Requirements. The name, identification, and number of lots are provided in the BDS.
 - 1.2 Unless otherwise stated, throughout this Bidding Document definitions and interpretations shall be as prescribed in Section VII, General Conditions.
- 2. Source of Funds**
 - 2.1 The Borrower or Recipient (hereinafter called “Borrower”) indicated in the BDS has applied for or received financing (hereinafter called “funds”) from the African Development Bank (hereinafter called “the Bank”) toward the cost of the project named in the BDS. The Borrower intends to apply a portion of the funds to eligible payments under the contract(s) for which this Bidding Document is issued.
 - 2.2 Payments by the Bank will be made only at the request of the Borrower and upon approval by the Bank in accordance with the terms and conditions of the financing agreement between the Borrower and the Bank (hereinafter called the Loan Agreement), and will be subject in all respects to the terms and conditions of that Loan Agreement. No party other than the Borrower shall derive any rights from the Loan Agreement or have any claim to the funds.
- 3. *Fraud and Corruption***
 - 3.1 It is the Bank’s policy to require that Borrowers (including beneficiaries of Bank Financing), Bidders, Suppliers, contractors, and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standard of ethics during the procurement and execution of Bank-financed contracts¹. In pursuance of this policy, the Bank:
 - (a) defines, for the purposes of this provision, the terms set forth below as follows:

¹ *In this context, any action to influence the procurement process or contract execution for undue advantage is improper.*

- (i) “Corrupt Practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party²;
- (ii) “fraudulent practice” is any act or omission, including a misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party³ to obtain financial or other benefit or to avoid an obligation;
- (iii) “Collusive Practice” is an arrangement between two or more parties⁴, designed to achieve an improper purpose, including to influence improperly the actions of another party; and
- (iv) “Coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party⁵;
- (v) “Obstructive practice” is
 - (v.1) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
 - (v.2) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under paragraph 3.1(e) below.
- (b) will reject a proposal for award if it determines that the Bidder recommended for award, or any of its personnel, or

² For the purpose of this sub-paragraph, “another party” refers to a public official acting in relation to the procurement process or contract execution. In this context, “public official” includes Bank staff and employees of other organizations taking or reviewing procurement decisions.

³ For the purpose of this sub-paragraph, “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

⁴ For the purpose of this sub-paragraph, “parties” refers to participants in the procurement process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish bid prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.

⁵ For the purpose of this sub-paragraph, “party” refers to a participant in the procurement process or contract execution.

- its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the Contract in question;
- (c) will declare misprocurement and cancel the portion of the Financing allocated to a contract if it determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of such Financing engaged in corrupt, fraudulent, collusive, coercive or obstructive practices during the procurement or the implementation of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;
- (d) will sanction a firm or individual, at any time, in accordance with the prevailing Bank's sanctions procedures⁶, including by publicly declaring such firm or individual ineligible either indefinitely or for a stated period of time, (i) to be awarded a Bank-financed contract; (ii) to be a nominated⁷ sub-contractor, consultant, supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and
- (e) will require that a clause be included in Bidding Documents and in contracts financed by the Bank, requiring bidders, suppliers and contractors, and their sub-contractors, agents, personnel, consultants, service providers, or suppliers, to permit the Bank to inspect all accounts, and records and other documents relating to the submission of bids and contract performance and to have them audited by auditors appointed by the Bank.

3.2 Furthermore, Bidders shall be aware of the provisions stated in

⁶ A firm or an individual may be declared ineligible to be awarded a Bank financed contract: (i) upon completion of the Bank's sanctions proceedings as per its sanctions procedures, including, inter alia, cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks, or otherwise decided by the Bank; and through the application of the Proposal for the Implementation of a Sanctions Process within the African Development Bank Group; and (ii) as a result of temporary suspension or early temporary suspension in connection with an on-going sanction proceeding. See footnote 18 and paragraph 9 of Appendix 1 of the Rules and Procedures for Procurement of Goods and Works.

⁷ A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding documents) is one which has either been: (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirement for the particular bid; or (ii) appointed by the Borrower."

Section VII, General Conditions.

4. Eligible Bidders

- 4.1 A Bidder may be a natural person, private entity, government-owned entity—subject to ITB 4.5—or any combination of such entities supported by a letter of intent to enter into an agreement or under an existing agreement in the form of a joint venture, consortium, or association (JVCA). In the case of a joint venture, consortium, or association:
- a) unless otherwise specified in the BDS, all partners shall be jointly and severally liable, and
 - b) the JVCA shall nominate a Representative who shall have the authority to conduct all businesses for and on behalf of any and all the partners of the JVCA during the bidding process and, in the event the JVCA is awarded the Contract, during contract execution.
- 4.2 A Bidder, and all parties constituting the Bidder, shall have the nationality of an eligible country, in accordance with the Bank's Rules and Procedures for Procurement of Goods and Works, and as listed in Section V, Eligible Countries. A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including Related Services.
- 4.3 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:
- (a) they have controlling partners in common; or
 - (b) they receive or have received any direct or indirect subsidy from any of them; or
 - (c) they have the same legal representative for purposes of this bid; or
 - (d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder, or influence the decisions of the Purchaser regarding this bidding process; or
 - (e) a Bidder participates in more than one bid in this bidding

- process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which it is involved. However, this does not limit the inclusion of the same subcontractor, not otherwise participating as a Bidder, in more than one bid; or
- (f) a Bidder participated as a consultant in the preparation of Section VI, Requirements that are the subject of the bid; or
 - (g) a Bidder or any of its affiliates has been hired, or is proposed to be hired, by the Purchaser or the Borrower for the supervision of the contract.
- 4.4 A Bidder that is under a declaration of ineligibility by the Bank in accordance with **ITB 3**, at the date of the deadline for bid submission or thereafter, shall be disqualified.
- 4.5 Government-owned entities in the Borrower's country shall be eligible only if they can establish that they (i) are legally and financially autonomous, (ii) operate under the principles of commercial law, and (iii) are not dependent agencies of the Purchaser or the Borrower.
- 4.6 Bidders shall not be under execution of a Bid-Securing Declaration in the Purchaser's Country.
- 4.7 Bidders shall provide such evidence of their continued eligibility satisfactory to the Purchaser, as the Purchaser shall reasonably request.
- 4.8 Firms from an eligible country shall be excluded if:
- (a) as a matter of law or official regulation, the Borrower's country prohibits commercial relations with that country; or
 - (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's country prohibits any import of Goods from that country or any payments to persons or entities in that country.
- 4.9 In case a prequalification process has been conducted prior to the bidding process, this bidding is open only to prequalified Bidders.
- 4.10 A firm sanctioned by the Bank in accordance with the above ITB Clause 3.1 (d), or in accordance with the Bank's policies on anti-

corruption and fraud and Bank's sanctions procedures⁸, shall be ineligible to be awarded a Bank-financed contract, or to benefit from a Bank-financed contract, financially or in any other manner, during the period of time determined by the Bank.

- 5. Eligible Goods and Related Services**
- 5.1 All goods and related services to be supplied under the Contract and financed by the Bank, shall have as their country of origin an eligible country of the Bank in accordance with the Bank's Rules and Procedures for Procurement of Goods and Works, and as listed in Section V, Eligible Countries.
- 5.2 For purposes of this Clause, the term "Goods" includes commodities, raw material, machinery, equipment, and industrial plants; and "Related Services" includes services such as insurance, transportation, installation, commissioning, training, and initial maintenance.
- 5.3 The term "country of origin" means the country where the Goods have been mined, grown, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its imported components.
- 5.4 The nationality of the firm that produces, assembles, distributes, or sells the Goods shall not determine their origin.

B. Contents of Bidding Document

- 6. Sections of Bidding Document**
- 6.1 The Bidding Document consists of Parts 1, 2, and 3, which include all the Sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITB 8.

PART 1 Bidding Procedures

- Section I. Instructions to Bidders (ITB)
- Section II. Bid Data Sheet (BDS)
- Section III. Evaluation and Qualification Criteria
- Section IV. Bidding Forms
- Section V. Eligible Countries

PART 2 Purchaser's Requirements

- Section VI. Requirements

PART 3 Conditions of Contract and Contract Forms

⁸ See the Proposal for the Implementation of a Sanctions Process within the African Development Bank Group and the Bank's Whistleblowing and Complaints Handling Policy. The Bank's sanctions procedures are publicly disclosed on the Bank's external website."

- Section VII. General Conditions (GC)
- Section VIII. Particular Conditions (PC)
- Section IX. Contract Forms

6.2 The Invitation for Bids issued by the Purchaser is not part of the Bidding Document.

6.3 The Bidder shall obtain the Bidding Document from the source stated by the Purchaser in the Invitation for Bids; otherwise the Purchaser is not responsible for the completeness of the Bidding Document.

6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Document. Failure to furnish all information or documentation required by the Bidding Document may result in the rejection of the bid.

7. Clarification of Bidding Document, Site Visit, Pre-Bid Meeting

7.1 A prospective Bidder requiring any clarification of the Bidding Document shall contact the Purchaser in writing at the Purchaser's address indicated in the BDS or raise his enquiries during the pre-bid meeting if provided for in accordance with ITB 7.4. The Purchaser will respond to any request for clarification, provided that such request is received prior to the deadline for submission of bids, within the number of days specified in the BDS. The Purchaser's response shall be in writing with copies to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. Should the Purchaser deem it necessary to amend the Bidding Document as a result of a request for clarification, it shall do so following the procedure under ITB 8 and ITB 22.2.

7.2 Where applicable, the Bidder is advised to visit and examine the project site and obtain for itself on its own responsibility all information that may be necessary for preparing the bid and entering into a contract for the provision of the Requirements. The costs of visiting the site shall be at the Bidder's own expense.

7.3 Pursuant to ITB 7.2, where the Bidder and any of its personnel or agents have been granted permission by the Purchaser to enter upon its premises and lands for the purpose of such visit, the Bidder, its personnel, and agents will release and indemnify the Purchaser and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the visit.

- 7.4 The Bidder's designated representative is invited to attend a pre-bid meeting, if provided for in the BDS. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage. If so provided for in the BDS, the Purchaser will organize a site visit.
- 7.5 The Bidder is requested, as far as possible, to submit any questions in writing, to reach the Purchaser not later than one week before the meeting.
- 7.6 Minutes of the pre-bid meeting, including the text of the questions raised without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3. Any modification to the Bidding Document that may become necessary as a result of the pre-bid meeting shall be made by the Purchaser exclusively through the issue of an Addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting.
- 7.7 Non-attendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

8. Amendment of Bidding Document

- 8.1 At any time prior to the deadline for submission of bids, the Purchaser may amend the Bidding Document by issuing addenda.
- 8.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document from the Purchaser in accordance with ITB 6.3.
- 8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Purchaser may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB 22.2

C. Preparation of Bids

9. Cost of Bidding

- 9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Purchaser shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

10. Language of Bid

- 10.1 The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Purchaser, shall be written in the language specified in the BDS. Supporting documents and printed literature that are part of the Bid may be

in another language provided they are accompanied by an accurate translation of the relevant passages in that language, in which case, for purposes of interpretation of the Bid, such translation shall govern.

**11. Documents
Comprising the
Bid**

11.1 The Bid shall comprise the following:

- (a) Letter of Bid ;
- (b) Completed Schedules as provided in Section IV, Bidding Forms;
- (c) Bid Security or Bid-Securing Declaration, in accordance with ITB 19;
- (d) at the Bidder's option, alternative proposals, if permissible, in accordance with ITB 13;
- (e) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2;
- (f) documentary evidence establishing the eligibility of the Goods and Related Services offered by the Bidder, in accordance with ITB 17.1 ;
- (g) documentary evidence establishing the Bidder's qualifications in accordance with the requirements of Section III, Evaluation and Qualification Criteria, using the relevant forms furnished in Section IV, Bidding Forms;
- (h) documentary evidence as specified in the BDS, establishing the conformity of the goods and related services offered by the Bidder with the Bidding Document, using the relevant forms furnished in Section IV, Bidding Forms;
- (i) in the case of a bid submitted by a JVCA, JVCA agreement, or letter of intent to enter into a JVCA including a draft agreement, indicating at least the parts of the Requirements to be executed by the respective partners;
- (j) any other document required in the BDS.

- 12. Letter of Bid and Price Schedules**
- 12.1 The Bidder shall submit the Letter of Bid using the form furnished in Section IV, Bidding Forms. This form must be completed without any alterations to its format, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.
- 13. Alternative Bids**
- 13.1 Unless otherwise indicated in the BDS, alternative proposals shall not be considered. If alternative proposals are permitted, their method of evaluation shall be as stipulated in Section III, Evaluation and Qualification Criteria.
- 13.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the BDS, as well as the method of evaluating different times for completion.
- 13.3 Except as provided under ITB 13.4 below, Bidders wishing to offer technical alternatives to the requirements of the bidding document must first price the Purchaser's requirements as described in the bidding document and shall further provide all information necessary for a complete evaluation of the alternative by the Purchaser, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Purchaser].
- 13.4 When specified in the BDS, Bidders are permitted to submit alternative technical solutions for specified parts of the requirements, and such parts shall be identified in the BDS, as will the method for their evaluation, and described in Section VI, Requirements.
- 14. Bid Prices and Discounts**
- 14.1 The prices and discounts quoted by the Bidder in the Letter of Bid and in the Price Schedules shall conform to the requirements specified in ITB 14.2.
- 14.2 Unless otherwise provided in the BDS and the General Conditions (GC), the prices quoted by the Bidder shall be fixed.
- 14.3 The price to be quoted in the Letter of Bid shall be the total price of the Bid excluding any discounts offered.
- 14.4 The Bidder shall quote any unconditional discounts and the methodology for their application in the Letter of Bid.
- 14.5 The terms *EXW*, *CIF*, *CIP*, and other similar terms shall be

governed by the rules prescribed in the current edition of Incoterms, published by The International Chamber of Commerce as specified in the BDS.

14.6 Prices shall be quoted as required in each Price Schedule included in Section IV, Bidding Forms. The disaggregation of price components is required solely for the purpose of facilitating the comparison of bids by the Purchaser. This shall not in any way limit the Purchaser's right to contract on any of the terms offered. In quoting prices, the Bidder shall be free to use transportation through carriers registered in any eligible country, in accordance with the Bank's Rules and Procedures for Procurement of Goods and Works, and as listed in Section V, Eligible Countries. Similarly, the Bidder may obtain insurance services from any eligible country, in accordance with the Bank's Rules and Procedures for Procurement of Goods and Works, and as listed in Section V, Eligible Countries. Prices shall be entered in the following manner:

- (a) for Goods offered from within the Purchaser's Country:
 - (i) the prices of the Goods, quoted as per Incoterms specified in the BDS;
 - (ii) sales tax and all other taxes applicable in the Purchaser's Country and payable on the Goods if the Contract is awarded to the Bidder; and
 - (iii) the total price for the item.
- (b) for Goods offered from outside the Purchaser's Country:
 - (i) the prices of the Goods, quoted as per Incoterms specified in the BDS;
 - (ii) all custom duties, sales tax, and other taxes applicable in the Purchaser's Country and payable on the Goods if the contract is awarded to the Bidder; and
 - (iii) the total price for the item.
- (c) for Related Services:
 - (i) the price of the Related Services inclusive of all customs duties, sales tax, and other taxes paid or payable in the Purchaser's country, if the Contract is awarded to the Bidder.

14.7 Prices quoted by the Bidder shall be fixed during the Bidder's performance of the Contract and not subject to variation on any

account, unless otherwise specified in the BDS. A bid submitted with an adjustable price quotation shall be treated as nonresponsive and shall be rejected, pursuant to ITB 28. However, if in accordance with the BDS, prices quoted by the Bidder shall be subject to adjustment during the performance of the Contract, a bid submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.

14.8 If so indicated pursuant to ITB 1.1, bids are being invited for individual contracts (lots) or for any combination of contracts (packages). Unless otherwise indicated in the BDS, prices quoted shall correspond to 100% of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Bidders wishing to offer any price reduction for the award of more than one Contract shall specify the applicable price reductions in accordance with ITB 14.4, provided the bids for all lots are submitted and opened at the same time.

15. Currencies of Bid and Payment

15.1 The currency(ies) of the bid and the currency(ies) for payment shall be as specified in the BDS.

16. Documents Establishing the Qualifications of the Bidder

16.1 To establish its qualifications to perform the Contract in accordance with Section III, Evaluation and Qualification Criteria, the Bidder shall provide the information requested in Section IV, Bidding Forms.

16.2 If so required in the BDS, a Bidder shall submit the Manufacturer's Authorization, using the form included in Section IV, Bidding Forms where the Bidder does not manufacture or produce the Goods it offers to supply.

16.3 If so required in the BDS, a Bidder shall submit evidence that it will be represented by an Agent in the country, equipped and able to carry out the Supplier's maintenance, repair and spare parts-stocking obligations prescribed in the Conditions of Contract and Requirements where a Bidder does not conduct business within the Purchaser's Country.

17. Documents Establishing the Eligibility of the Goods and Related Services

17.1 To establish the eligibility of the Goods and Related Services in accordance with **ITB 5**, Bidders shall complete the forms, included in Section IV, Bidding Forms.

18. Period of Validity of Bids

18.1 Bids shall remain valid for the period specified in the BDS after the bid submission deadline date prescribed by the Purchaser. A

bid valid for a shorter period shall be rejected by the Purchaser as non-responsive.

18.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Purchaser may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a bid security is requested in accordance with **ITB 19**, the Bidder granting the request shall also extend the bid security for twenty-eight (28) days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid, except as provided in **ITB 18.3**.

18.3 In the case of fixed price contracts, if the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial bid validity, the Contract price shall be adjusted as specified in the request for extension. Bid evaluation shall be based on the Bid Price without taking into consideration the above correction.

19. Bid Security

19.1 The Bidder shall furnish as part of its bid, at the option of the Purchaser, and as stipulated in the BDS, the original of either a Bid-Securing Declaration or a bid security using the relevant form included in Section IV, Bidding Forms. In the case of a bid security, the bid security amount and currency shall be as specified in the BDS.

19.2 A Bid-Securing Declaration shall use the form included in Section IV, Bidding Forms.

19.3 If a bid security is specified pursuant to ITB 19.1, the bid security shall be a demand guarantee in any of the following forms at the Bidder's option:

- (a) an unconditional guarantee issued by a bank or surety;
- (b) an irrevocable letter of credit;

From a reputable source from an eligible country. If the unconditional guarantee is issued by an insurance company or a bonding company located outside the Purchaser's Country, the issuer shall have a correspondent financial institution located in the Purchaser's Country to make it enforceable. In the case of a bank guarantee, the bid security shall be submitted either using the Bid Security Form included in Section IV, Bidding Forms or in another substantially similar format approved by the

Purchaser prior to bid submission. In either case, the form must include the complete name of the Bidder. The bid security shall be valid for twenty-eight days (28) beyond the original validity period of the bid, or beyond any period of extension if requested under ITB 18.2.

- 19.4 Pursuant to the option stipulated at ITB 19.1, any bid not accompanied by a substantially responsive bid security or Bid-Securing Declaration shall be rejected by the Purchaser as non-responsive.
- 19.5 If a bid security is specified pursuant to ITB 19.1, the bid security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's furnishing of the performance security pursuant to ITB 38.
- 19.6 The bid security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required performance security.
- 19.7 The bid security may be forfeited or the Bid-Securing Declaration executed:
- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder in the Letter of Bid or
 - (b) if the successful Bidder fails to:
 - (i) sign the Contract in accordance with ITB 37; or
 - (ii) furnish a performance security in accordance with ITB 38.
- 19.8 The Bid Security or the Bid Securing Declaration of a JVCA shall be in the name of the JVCA that submits the bid. If the JVCA has not been legally constituted into a legally enforceable JVCA at the time of bidding, the Bid Security or the Bid Securing Declaration shall be in the names of all future partners

as named in the letter of intent referred to in ITB 4.1.

19.9 If a Bid-Securing Declaration is executed in accordance with ITB 19.7, the Purchaser will declare the Bidder ineligible to be awarded a contract by the Purchaser for the period of time stated in the Form of Bid-Securing Declaration.

20. Format and Signing of Bid

20.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB 11 and clearly mark it "ORIGINAL." In addition, the Bidder shall submit copies of the bid, in the number specified in the BDS and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.

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

20.3 A bid submitted by a JVCA shall comply with the following requirements:

- (a) Unless not required in accordance with ITB 4.1 (a), be signed so as to be legally binding on all partners; and
- (b) Include the Representative's authorization referred to in ITB 4.1 (b), consisting of a power of attorney signed by those legally authorized to sign on behalf of the JVCA.

20.4 Any amendments, interlineations, erasures, or overwriting shall be valid only if they are signed or initialled by the person signing the bid.

D. Submission and Opening of Bids

21. Submission, Sealing and Marking of Bids

21.1 Bidders may always submit their bids by mail or by hand. If so specified in the BDS, bidders shall have the option of submitting their bids electronically. Procedures for submission, sealing and marking are as follows:

- (a) Bidders submitting bids by mail or by hand shall enclose the original and copies of the Bid in separate sealed envelopes. If so permitted in accordance with ITB 13, alternative proposals, and copies thereof, shall also be placed in separate envelopes. The envelopes shall be duly marked as “ORIGINAL,” “ALTERNATIVE,” “ORIGINAL COPY,” and “ALTERNATIVE COPY” These envelopes shall then be enclosed in one single package. The rest of the procedure shall be in accordance with ITB 21.2 and 21.3.
- (b) Bidders submitting bids electronically shall follow the electronic bid submission procedures specified in the BDS.

21.2 The inner and outer envelopes shall:

- (a) bear the name and address of the Bidder;
- (b) be addressed to the Purchaser in accordance with ITB 22.1;
- (c) bear the specific identification of this bidding process pursuant to ITB 1.1; and
- (d) bear a warning not to open before the time and date for bid opening

21.3 If envelopes and packages are not sealed and marked as required, the Purchaser will assume no responsibility for the misplacement or premature opening of the bid.

22. Deadline for Submission of Bids

22.1 Bids must be received by the Purchaser at the address and no later than the date and time indicated in the BDS.

22.2 The Purchaser may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Document in accordance with ITB 8, in which case all rights and obligations of the Purchaser and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

23. Late Bids

23.1 The Purchaser shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB 22. Any bid received by the Purchaser after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.

24. Withdrawal, Substitution, and Modification of Bids

24.1 A Bidder may withdraw, substitute, or modify its bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 20.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the bid must accompany the respective written

notice. All notices must be:

- (a) prepared and submitted in accordance with ITB 20 and ITB 21 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked “Withdrawal,” “Substitution,” “Modification;” and
- (b) received by the Purchaser prior to the deadline prescribed for submission of bids, in accordance with ITB 22.

24.2 Bids requested to be withdrawn in accordance with ITB 24.1 shall be returned unopened to the Bidders.

24.3 No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Letter of Bid or any extension thereof.

25. Bid Opening

25.1 The Purchaser shall conduct the bid opening in public, in the presence of Bidders` designated representatives and anyone who choose to attend, and at the address, date and time specified in the BDS. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 21.1, shall be as specified in the BDS.

25.2 First, envelopes marked “Withdrawal” shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked “Substitution” shall be opened and read out and exchanged with the corresponding bid being substituted, and the substituted bid shall not be opened, but returned to the Bidder. No bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at bid opening. Envelopes marked “Modification” shall be opened and read out with the corresponding bid. No bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at bid opening. Only bids that are opened and read out at bid opening shall be considered further.

25.3 The Purchaser shall open all other envelopes one at a time and read out: the name of the Bidder, the Bid Price(s), any discounts and their application methodology, alternative bids, the presence or absence of a bid security or Bid-Securing Declaration; and any

other details as the Purchaser may consider appropriate. Only discounts and alternative bids read out at bid opening shall be considered for evaluation. No bid shall be rejected at bid opening except for late bids, in accordance with ITB 23.1.

- 25.4 The Purchaser shall prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per lot if applicable, including any discounts and alternative proposals; and the presence or absence of a bid security or a Bid-Securing Declaration. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders who submitted bids in time, and posted online when electronic bidding is permitted.

E. Examination of Bids

- 26. Confidentiality**
- 26.1 Information relating to the evaluation of bids shall not be disclosed to Bidders or any other persons not officially concerned with such process until information on Contract award is communicated to all Bidders.
- 26.2 Any attempt by a Bidder to influence improperly the Purchaser in the evaluation of the bids or Contract award decisions may result in the rejection of its bid.
- 26.3 Notwithstanding ITB 26.1, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Purchaser on any matter related to the bidding process, it should do so in writing.
- 27. Clarification of Bids**
- 27.1 To assist in the examination, evaluation, and comparison of the bids, and qualification of the Bidders, the Purchaser may, at its discretion, ask any Bidder for a clarification of its bid, allowing a reasonable time for response. Any clarification submitted by a Bidder that is not in response to a request by the Purchaser shall not be considered. The Purchaser's request for clarification and the response shall be in writing. No change in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Purchaser in the evaluation of the bids, in accordance with ITB 29.

- 27.2 If a Bidder does not provide clarifications of its bid by the date and time set in the Purchaser's request for clarification, its bid may be rejected.
- 28. Determination of Responsiveness**
- 28.1 The Purchaser's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in **ITB 11**.
- 28.2 A substantially responsive bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission.
- (a) "Deviation" is a departure from the requirements specified in the Bidding Document;
- (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Document; and
- (c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Document.
- 28.3 A material deviation, reservation, or omission is one that,
- (a) if accepted, would:
- (i) affect in any substantial way the scope, quality, or performance of the Requirements as specified in Section VI; or
- (ii) limit in any substantial way, inconsistent with the Bidding Document, the Purchaser's rights or the Bidder's obligations under the proposed Contract; or
- (b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids.
- 28.4 The Purchaser shall examine the technical aspects of the bid in particular, to confirm that all requirements of Section VI have been met without any material deviation, reservation, or omission.
- 28.5 If a bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Purchaser and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.
- 28.6 Provided that a bid is substantially responsive, the Purchaser may waive any quantifiable nonconformity in the bid that does not

constitute a material deviation, reservation or omission.

28.7 Provided that a bid is substantially responsive, the Purchaser may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the bid. Failure of the Bidder to comply with the request may result in the rejection of its bid.

28.8 Provided that a bid is substantially responsive, the Purchaser shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of the non-conforming item or component. The adjustment shall be made using the methodology indicated in Section III, Evaluation and Qualification Criteria.

F. Bid Evaluation and Comparison

29. Correction of Arithmetical Errors

29.1 The Purchaser shall use the criteria and methodologies indicated in Section III, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted.

29.2 Provided that the bid is substantially responsive, the Purchaser shall correct arithmetical errors as indicated in Section III, Evaluation and Qualification Criteria.

29.3 If a Bidder does not accept the correction of errors, its bid shall be declared non-responsive and its Bid Security shall be forfeited or the Bid -Securing Declaration executed.

30. Conversion to Single Currency

30.1 For evaluation and comparison purposes, the currency (ies) of the bid shall be converted into a single currency as specified in Section III, Evaluation and Qualification Criteria.

31. Bid Adjustments

31.1 For evaluation and comparison purposes the Purchaser shall adjust the bid prices using the criteria and methodology specified in Section III. Evaluation and Qualification Criteria.

31.2 Unless otherwise specified in the BDS, no margin of domestic or regional preference shall apply. If a margin of preference applies, the application methodology shall be as specified in Section III, Evaluation and Qualification Criteria, and in accordance with the provisions stipulated in the Bank's Rules and Procedures for Procurement of Goods and Works.

32. Qualification

32.1 The Purchaser shall determine to its satisfaction whether the

of the Bidder

Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

32.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 16.

32.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Purchaser shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's qualifications to perform satisfactorily.

32.4 The capabilities of the manufacturers and subcontractors proposed in its Bid to be used by the lowest evaluated Bidder for identified major items of the Requirements will also be evaluated for acceptability in accordance with the criteria and methodologies defined in Section III, Evaluation and Qualification Criteria. Their participation should be confirmed with a letter of intent between the parties, as needed. Should a manufacturer or subcontractor be determined to be unacceptable, the Bid will not be rejected, but the Bidder will be required to substitute an acceptable manufacturer or subcontractor without any change to the bid price.

33. Comparison of Bids 33.1 Subject to ITB 29, 30 and 31, the Employer shall compare all substantially responsive bids to determine the lowest evaluated bid.

34. Purchaser's Right to Accept Any Bid, and to Reject Any or All Bids 34.1 The Purchaser reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all bids submitted and specifically, bid securities, shall be promptly returned to the Bidders.

G. Award of Contract

35. Award Criteria 35.1 Subject to ITB 34.1, the Purchaser shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

35.2 At the time the Contract is awarded, the Purchaser reserves the right to increase or decrease the quantity of Goods and Related

Services originally specified in Section VI, Requirements, provided this does not exceed the percentages specified in the BDS, and without any change in the unit prices or other terms and conditions of the bid and the Bidding Document.

36. Notification of Award

36.1 Prior to the expiration of the period of bid validity, the Purchaser shall notify the successful Bidder, in writing, that its bid has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the “Letter of Acceptance”) shall specify the sum that the Purchaser will pay the Supplier in consideration of the supply of the Goods and Related Services (hereinafter and in the Contract Forms called “the Contract Price”).

36.2 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.

36.3 At the same time, the Purchaser shall also notify all other Bidders of the results of the bidding process, and shall publish in UNDB online and at the Bank’s website (www.afdb.org), the results identifying the bid and lot numbers and the following information: (i) name of each Bidder who submitted a Bid; (ii) bid prices as read out at bid opening; (iii) name and evaluated prices of each Bid that was evaluated; (iv) name of bidders whose bids were rejected and the reasons for their rejection; and (v) name of the winning Bidder, and the price it offered, as well as the duration and summary scope of the contract awarded. After publication of the award, unsuccessful bidders may request in writing to the Purchaser for a debriefing seeking explanations on the grounds on which their bids were not selected. The Purchaser shall promptly respond in writing to any unsuccessful Bidder who, after Publication of contract award, requests a debriefing.

37. Signing of Contract

37.1 Promptly upon notification, the Purchaser shall send the successful Bidder the Contract Agreement.

37.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Purchaser.

37.3 Upon the successful Bidder’s furnishing of the signed Contract Agreement and Performance Security pursuant to ITB 38, the Purchaser will discharge its Bid Security, pursuant to ITB 19.

37.4 Notwithstanding ITB 37.2 above, in case signing of the Contract Agreement is prevented by any export restrictions attributable to the Purchaser, to the country of the Purchaser, or to the use of the products/goods, systems or services to be supplied, where such export restrictions arise from trade regulations from a country supplying those products/goods, systems or services, the Bidder shall not be bound by its bid, always provided, however, that the Bidder can demonstrate to the satisfaction of the Purchaser and of the Bank that signing of the Contract Agreement has not been prevented by any lack of diligence on the part of the Bidder in completing any formalities, including applying for permits, authorizations and licenses necessary for the export of the products/goods, systems or services under the terms of the Contract Agreement.

**38. Performance
Security**

38.1 Within twenty-eight (28) days of the receipt of notification of award from the Purchaser, the successful Bidder shall furnish the performance security in accordance with the conditions of contract, using for that purpose the Performance Security Form included in Section IX, Contract Forms, or another form acceptable to the Purchaser. If the performance security furnished by the successful Bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Bidder to be acceptable to the Purchaser. A foreign institution providing a bond shall have a correspondent financial institution located in the Purchaser's Country.

Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security, or execution of the Bid-Securing Declaration. In that event the Purchaser may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Purchaser to be qualified to perform the Contract satisfactorily.

Section II. Bid Data Sheet

A. General	
ITB 1.1	The number of the Invitation for Bids is: <i>KP1/12A-2/PT/2/15/A40.</i>
ITB 1.1	The Purchaser is: <i>KENYA POWER AND LIGHTING COMPANY LIMITED</i>
ITB 1.1	The name of the bidding process is: <i>PROCUREMENT OF SINGLE PHASE AND THREE PHASE PRE-PAID METERS</i> The identification number of the bidding process is: <i>KP1/12A-2/PT/2/15/A40 Lot No. 11</i>
ITB 2.1	The Borrower is: <i>GOVERNMENT OF KENYA</i>
ITB 2.1	The specific Bank financing institution is: <i>AFRICAN DEVELOPMENT FUND</i>
ITB 2.1	The name of the Project is: <i>LAST MILE CONNECTIVITY PROJECT (LMCP)</i>
ITB 4.1 (a)	<i>The individuals or firms in a joint venture, consortium or association “shall be” and severally liable.</i>
ITB 4.4	A list of debarred firms is available at http://www.afdb.org/debarred
B. Contents of Bidding Document	
ITB 7.1	For <u>clarifications purposes</u> only, the Purchaser’s address is: Attention:: Eng. Samuel Mutwiri General Manager, Infrastructure Development Street Address: PO BOX 30099, Floor/Room number: 2nd FLOOR, STIMA SACCO INVESTMENT PLAZA. City: NAIROBI Code: 00100 Country: KENYA Telephone: +254-20-3201980 Facsimile number: +254-20-3514485/3751225

	<p>Electronic mail address: smutwiri@kplc.co.ke</p> <p>Requests for clarifications should be received by the Purchaser no later than 28 days prior to the deadline for submission of Bids.</p>
ITB 7.4	<p>A Pre-Bid meeting “<i>shall</i>” take place.</p> <p>If a Pre-Bid meeting will take place, it will be at the following date, time and place:</p> <p>Date: 11th May 2015</p> <p>Time:10:00 AM East Africa Time Place: Stima Plaza, Kolobot Road, Parklands, Nairobi</p> <p>A site visit conducted by the Purchaser “<i>shall not be</i>” organized.</p>
C. Preparation of Bids	
ITB 10.1	<p>The language of the bid is: ENGLISH</p> <p>Where any document submitted is not in English language, the interpretation shall be notarised from relevant authorities.</p>
ITB 11.1 (h)	<p>The Bidder must provide the following documentary evidence to establish the conformity of the <i>goods and Related Services</i> with the Bidding Document: As Stipulated in Section III, Evaluation and Qualification Criteria & Technical Specifications</p>
ITB 11.1 (j)	<p>The Bidder shall submit with its bid the following additional documents:’</p> <ul style="list-style-type: none"> (a) Copies of Type Test Reports of the Pre-Paid Meters as specified in accordance with the requirements in the Technical Specifications. Copies of Type Test Reports shall meet the following requirements: (b) Duly filled Technical schedules as per the Technical Specifications (c) Sample (d) Technical data for Pre-paid Meters (e) Any other document as required in the Section III, Evaluation and Qualification Criteria & Technical Specifications

ITB 13.1	Alternative bids are not permitted.
ITB 13.2	Alternatives to the Time Schedule <i>“shall not be”</i> permitted. Time to complete Deliveries of the Meters shall be 30th August 2016 .
ITB 13.4	Alternative technical solutions shall be permitted for the following parts of the Goods and Related Services, as further detailed in the Specification: <i>“none”</i> are permitted. Alternative technical solutions for the following parts of the Requirements: <i>“none”</i> are permitted.
ITB 14.2	Prices <i>“shall be”</i> fixed.
ITB 14.5	The version of the <i>Incoterms</i> is: 2010
ITB 14.6(a)(i)	The <i>Incoterm</i> for quoting goods offered from within the Purchaser’s country is: DDP
ITB 14.6(b)(i)	The <i>Incoterm</i> for quoting goods offered from outside the Purchaser’s country is: CIP
ITB 14.7	The prices quoted by the Bidder <i>“shall not be”</i> subject to adjustment during the performance of the Contract.
ITB 14.8	Prices quoted for each lot shall correspond at least to 100 % of the items specified for each lot. Prices quoted for each item of a lot shall correspond at least to 100 % of the quantities specified for this item of a lot.
ITB 15.1	The currency(ies) of the bid and the payment currency(ies) shall be as described below: Alternative B (Bidders allowed to quote in local and foreign currencies): (a) The unit rates and prices shall be quoted by the Bidder in the Price Schedules for Goods and Related Services, furnished in Section IV, Bidding Forms, separately in the following currencies: (i) for those inputs to the Requirements that the Bidder expects to supply from within the Purchaser’s country, in Kshs , further referred to as “the local currency”; and (ii) for those inputs to the Requirements that the Bidder expects to supply from outside the Purchaser’s country (referred to as “the

	<p>foreign currency requirements”), in up to any three currencies of any country.</p> <p>(b) Bidders may be required by the Purchaser to justify, to the Purchaser’s satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices and shown in the Price Schedules for Goods and Related Services, furnished in Section IV, Bidding Forms, are reasonable, in which case a detailed breakdown of the foreign currency requirements shall be provided by Bidders.</p>
ITB 16.2	The Bidder “shall” submit with its bid, the Manufacturer’s Authorization for the items on the Bid
ITB 16.3	The Bidder “shall not” submit with its bid, evidence that it will be represented by an Agent in the country.
ITB 18.1	The bid validity period shall be: 120 days.
ITB 19.1	The Bidder shall furnish a bid security in the amount of USD. 120,000.00
ITB 20.1	In addition to the original of the bid, the number of copies is: 2 No hard copies and one soft copy in compact disk.
ITB 20.2	<p>The written confirmation of authorization to sign on behalf of the Bidder shall indicate: <i>[insert “</i></p> <p>(a) The name and description of the documentation required to demonstrate the authority of the signatory to sign the Bid, such as a Power of Attorney; and</p> <p>(b) In the case of Bids submitted by an existing or intended JVCA an undertaking signed by all parties (i) stating that all parties shall be jointly and severally liable, if so required in accordance with ITB 4.1(a), and (ii) nominating a Representative who shall have the authority to conduct all business for and on behalf of any and all the parties of the JVCA during the bidding process and, in the event the JVCA is awarded the Contract, during contract execution.</p>
D. Submission and Opening of Bids	
ITB 21.1	Bidders “shall not” have the option of submitting their bids electronically.
ITB 21.1 (b)	<i>N/A</i>

ITB 22.1	<p>For <u>bid submission purposes</u> only, the Purchaser's address is:</p> <p>Attention: The General Manager, Corporate Affairs and Company Secretary Kenya Power & Lighting Company Ltd.</p> <p>Street Address: Kolobot Road, Stima Plaza</p> <p>Floor/Room number: 7th Floor</p> <p>City: Nairobi</p> <p>Country: KENYA</p> <p>The deadline for bid submission is: Date: Insert Date Time: 10.00a.m</p>
ITB 25.1	<p>The bid opening shall take place at:</p> <p>Street Address: <i>Stima Plaza, Kolobot Road, Parklands</i></p> <p>Floor/Room number: <i>Auditorium</i></p> <p>City : <i>Nairobi</i></p> <p>Country: <i>Kenya</i></p> <p>Date: <i>5th June 2015</i></p> <p>Time: <i>10.00 a.m. East Africa Time</i></p>
ITB 25.1	N/A
F. Bid Evaluation and Comparison	
ITB 31.2	A margin of domestic or regional preference " <i>shall not</i> " apply.
G. Award of Contract	
ITB 35.2	<p>The maximum percentage by which quantities may be increased is: 15 %</p> <hr/> <p>The maximum percentage by which quantities may be decreased is: 15 %.</p>

Section III. Evaluation and Qualification Criteria

This Section contains all the criteria that the Purchaser shall use to evaluate bids and qualify Bidders. *In accordance with ITB 28 and ITB 32, no other factors, methods or criteria shall be used.* The Bidder shall provide all the information requested in the forms included in Section IV, Bidding Forms.

1.	Evaluation Criteria and Methodology
1.1	Alternative Proposal Not Permitted
	Technical Alternative :Not Permitted
	Alternative Time for time for completion of Deliveries ; Expected date for Deliveries is 30th August 2016 Bids offering Delivery schedules after 30th August 2016 will be disqualified.
1.2	Correction of Arithmetical Errors (In accordance with ITB 29.1)/
(a)	Where there are errors between the total of the amounts given under the column for the price breakdown and the amount given under the Total Price, the former shall prevail and the latter will be corrected accordingly
(b)	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, unless in the opinion of the Purchaser there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;
(c)	If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
(d)	If there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.
1.3	Conversion to a Single Currency (In accordance with ITB 30)
	The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency is: KES(Kenya Shillings) The source of exchange rate shall be: CENTRAL BANK OF KENYA The date for the exchange rate shall be: Closing date of submission of bids. i.e . 5th June 2015

1.4	Discounts (In accordance with ITB 14.4)
	The Purchaser will adjust the Bid Price, using the methodology prescribed by the Bidder in its Letter of Bid, to take account of the Discounts offered by the Bidder in its Letter of Bid, as read out at the Bid Opening.
1.5	Quantifiable Nonmaterial Nonconformities (In accordance with ITB 28.8)
	The adjustment shall be made using the following methodology: To determine the competitiveness of the bid, for quantifiable non material conformities, the cost to be added to the bid for purpose of comparison only, will be the average of the particular item from the responsive bids.
1.6	<i>Margin of Domestic or Regional Preference: N/A</i>
1.7	Applicable Criteria And Methodology : for Bid Evaluation and Adjustments
	Any other Criteria or Methodology; N/A
1.7	<i>[Insert the applicable criteria and methodology] N/A</i>

2. Qualification Criteria

2	<i>Qualification</i>
2.1	<i>Eligibility (TABLE)</i>
2.2	<i>Historical Contract Non-Performance (TABLE)</i>
2.3	<i>Financial Situation (TABLE)</i>
2.4	<i>Experience (TABLE)</i>

2. Qualification Tables

Qualification Criteria

Factor	2.1 Eligibility					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
2.1.1 Nationality	<i>Nationality in accordance with ITB 4.2.</i>	<i>Must meet requirement</i>	<i>Existing or intended JVCA must meet requirement</i>	<i>Must meet requirement</i>	<i>N / A</i>	<i>Form ELI –1.1 and 1.2, with attachments</i>
2.1.2 Conflict of Interest	No- conflicts of interests as described in ITB 4.3.	Must meet requirement	Existing or intended JVCA must meet requirement	Must meet requirement	N / A	Letter of Bid
2.1.3 Bank Ineligibility	Not having been declared ineligible by the Bank as described in ITB 4.4.	Must meet requirement	Existing JVCA must meet requirement	Must meet requirement	N / A	Letter of Bid

Factor	2.1 Eligibility					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
2.1.4 Government Owned Entity	Compliance with conditions of ITB 4.5	Must meet requirement	Must meet requirement	Must meet requirement	N / A	Form ELI –1.1 and 1.2, with attachments
2.1.5 Ineligibility based on a United Nations resolution or Borrower’s country law	Not having been excluded as a result of <i>the Borrower’s country laws</i> or official regulations, or by an act of compliance with UN Security Council resolution, in accordance with ITB 4.8	Must meet requirement	Existing JVCA must meet requirement	Must meet requirement	N / A	Letter of Bid

Factor	2.2 Historical Contract Non-Performance					
Sub-Factor	Criteria				Documentation Required	
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
All partners combined			Each partner	At least one partner		
2.2.1 History of non-performing contracts	<i>Non-performance of a contract did not occur within the last 5 years prior to the deadline for application submission, based on all information on fully settled disputes or litigation. A fully settled dispute or litigation is one that has been resolved in accordance with the Dispute Resolution Mechanism under the respective contract, and where all appeal instances available to the bidder have been exhausted.</i>	<i>Must meet requirement by itself or as partner to past or existing JVCA</i>	N/A	<i>Must meet requirement by itself or as partner to past or existing JVCA</i>	N/A	<i>Form CON - 2</i>

Factor	2.2 Historical Contract Non-Performance					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
2.2.2 Failure to Sign Contract	Not being under execution of a Bid-Securing Declaration pursuant to ITB 4.6 for 5 years	Must meet the requirement	N / A	Must meet the requirement itself or as partner to a JVCA	N / A	Letter of Bid
2.2.3 Pending Litigation	All pending litigation shall in total not represent more than 20 percent (%) of the Bidder's net worth and shall be treated as resolved against the Bidder.	Must meet requirement by itself or as partner to past or existing JVCA	N / A	Must meet requirement by itself or as partner to past or existing JVCA	N / A	Form CON – 2

Factor	2.3 Financial Situation					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
2.3.1 Historical Financial Performance	Submission of audited balance sheets or if not required by the law of the bidder's country, other financial statements acceptable to the Purchaser, for the last five (5) years to demonstrate the current soundness of the bidders financial position and its prospective long term profitability.	Must meet requirement	N / A	Must meet requirement	N / A	Form FIN – 3.1 with attachments
2.3.2. Average Annual Turnover	Minimum average annual turnover of USD 12,796,296 calculated as total certified payments received for contracts in progress or completed, within the last five (5) years	Must meet requirement	Must meet requirement	Must meet Twenty percent (20%) of the requirement	Must meet Eighty percent (80%) of the requirement	Form FIN –3.2

Factor	2.3 Financial Situation					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
<p>2.3.3. Financial Resources</p>	<p>The Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet: (i) the following cash-flow requirement: USD.1,279,629 and (ii) the overall cash flow requirements for this contract and its current commitments.</p>	<p>Must meet requirement</p>	<p>Must meet requirement</p>	<p>Must meet Twenty percent (20%) of the requirement</p>	<p>Must meet Eighty percent (80%) of the requirement</p>	<p>Form FIN –3.3 + Form CCC Form FIN –3.3 + Form CCC</p>

Factor	2.4 Experience					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, <i>Consortium or Association</i>			
All partners combined			Each partner	At least one partner		
2.4.1 Experience	Experience as Supplier outside the country of origin, in at least Three (3) contracts within the last Three (3) years, each with a value of at least Seven Million , Dollars (USD. 7,000,000), that have been successfully and substantially completed and that are similar to the proposed Goods and Related Services. The similarity shall be based on the physical size, complexity, methods/technology or other characteristics as described in Section IV, Bidding Forms.	Must meet requirement	Must meet requirements for all characteristics	N / A	Must meet requirement for one characteristic	Form EXP 2.4.1

Section IV. Bidding Forms

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Letter of Bid

Date: _____

ICB No.: _____

Invitation for Bid No.: _____

Alternative No.: _____

To: _____

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Document, including Addenda issued in accordance with Instructions to Bidders (**ITB**) Clause 8: _____;
- (b) We offer to supply, in conformity with the Bidding Document, the following Goods and Related Services: _____
_____;
- (c) The total price of our Bid, excluding any discounts offered in item (d) below is: _____
[amount of foreign currency in words], [amount in figures], and [amount of local currency in words], [amount in figures];
- (d) The discounts offered and the methodology for their application are: _____

_____;
- (e) Our bid shall be valid for a period of _____ days from the date fixed for the bid submission deadline in accordance with the Bidding Documents and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (f) If our bid is accepted, we commit to furnish a performance security in accordance with ITB 38 and **GC** 13, for the due performance of the Contract;
- (g) Our firm, including any subcontractors or suppliers for any part of the Contract, have nationalities from eligible countries, in accordance with **ITB** 4.2;
- (h) We, including any subcontractors or suppliers for any part of the Contract, do not have any conflict of interest in accordance with ITB 4.3;

- (i) We are not participating, as a Bidder or as a subcontractor, in more than one bid in this bidding process in accordance with **ITB 4.3**, other than alternative offers submitted in accordance with **ITB 13**
- (j) Our firm, its affiliates or subsidiaries (including any subcontractors or suppliers for any part of the contract), has not been declared ineligible by the Bank, or under a Bid-Securing Declaration in the Purchaser’s country, or under the Purchaser’s country laws or official regulations, or by an act of compliance with a decision of the United Nations Security Council, in accordance with **ITB 4.4**, **4.6** and **4.8**, respectively. We are not participating, as a Bidder or as a subcontractor, in more than one bid in this bidding process in accordance with **ITB 4.3**, other than alternative offers submitted in accordance with **ITB 13**;
- (k) We are not a government owned entity / We are a government owned entity but meet the requirements of **ITB 4.5**;
- (l) We are / are not under sanction by the World Bank, the IADB, EBRD or the AsDB for any action of corruption and fraud in accordance with **ITB 3**. [If under sanction, please provide details including date of start of sanction and duration].
- (m) The following commissions, gratuities, or fees have been paid or are to be paid with respect to the bidding process or execution of the Contract:

Name of Recipient	Address	Reason	Amount
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

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

We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will strictly observe the laws against fraud and corruption in force in the country of the Purchaser , as such laws have been listed by the Purchaser in the bidding documents for this contract. We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed.

We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.

Name _____ In the capacity of _____

Signed _____

Duly authorized to sign the bid for and on behalf of _____

Dated on _____ day of _____, _____

Price Schedule for Goods and Related Services
--

Date: _____

ICB No.: _____

Invitation for Bid No.: _____

Alternative No.: _____

Name of the Bidder: _____

1	2	3	4	5	6	7	8
<i>Item code</i>	<i>Description</i>	<i>Country of origin</i>	<i>Percent of national origin ¹</i>	<i>Quantity (No. of units)</i>	<i>Unit price ²</i>	<i>Import Duties, Sales Taxes and other Taxes, per unit ²</i>	<i>Total Price ³</i>
535176	<i>Single Phase Meter for Cable communication between MCU and CIU</i>						
535174	<i>Three Phase Meter for Cable communication between MCU and CIU</i>						
	<i>Total Bid Price</i>						

Notes:

¹ In accordance with margin of preference ITB Clause 31, if applicable² In accordance with ITB Clauses 14 and 15³ Indicate % of total amount to be paid in foreign currencies and exchange rates

Name _____ In the capacity of _____

Signed _____

Duly authorized to sign the bid for and on behalf of

Dated on _____ day of _____, _____.

Price Adjustment Formula (Sample)

Where, pursuant to **ITB** 14.7 and GC 10.1, Prices shall be adjustable during the performance of the Contract, the following method shall be used to calculate the price adjustment:

Prices payable to the Supplier, as provided for at **ITB** 14.7 and GC 10.1, shall be subject to adjustment during performance of the Contract, to reflect changes in the cost of labour and material components in accordance with the formula:

$$P_1 = P_0 \left(a + \frac{bL_1}{L_0} + \frac{cM_1}{M_0} \right) - P_0$$

$$a+b+c = 1$$

in which:

- P₁** = adjustment amount payable to the Supplier.
P₀ = Contract Price (base price).
a = fixed element representing profits and overheads included in the Contract Price and generally in the range of five (5) to fifteen (15) percent.
b = estimated percentage of labour component in the Contract Price.
c = estimated percentage of material component in the Contract Price.
L₀, L₁ = labour indices applicable to the appropriate industry in the country of origin on the base date and date for adjustment, respectively.
M₀, M₁ = material indices for the major raw material on the base date and date for adjustment, respectively, in the country of origin.

The coefficients **a**, **b**, and **c** as specified by the Purchaser are as follows:

a = *[insert value of coefficient]*

b = *[insert value of coefficient]*

c = *[insert value of coefficient]*

The Bidder shall indicate the source of the indices and the base date indices in its bid.

Base date = twenty-eight (28) days prior to the deadline for submission of the bids.

Date of adjustment = *[insert number of weeks]* weeks prior to date of shipment (representing the mid-point of the period of manufacture).

The above price adjustment formula shall be invoked by either party subject to the following further conditions:

- (a) No price adjustment shall be allowed beyond the original delivery dates unless specifically stated in the extension letter. As a rule, no price adjustment shall be allowed for periods of delay for which the Supplier is entirely responsible. The

- Purchaser will, however, be entitled to any decrease in the prices of the Goods and Related Services subject to adjustment.
- (b) If the currency in which the Contract Price P_0 is expressed is different from the currency of origin of the labour and material indices, a correction factor will be applied to avoid incorrect adjustments of the Contract Price. The correction factor shall correspond to the ratio of exchange rates between the two currencies on the base date and the date for adjustment as defined above.
 - (c) No price adjustment shall be payable on the portion of the Contract Price paid to the Supplier as advance payment.

Form of Bid Security (Bank Guarantee)

_____ [Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: _____ [Name and Address of Purchaser]

Date: _____

BID GUARANTEE No.: _____

We have been informed that _____ [name of the Bidder] (hereinafter called "the Bidder") has submitted to you its bid dated _____ (hereinafter called "the Bid") for the execution of _____ [name of contract] under Invitation for Bids No. _____ ("the IFB").

Furthermore, we understand that, according to your conditions, bids must be supported by a bid guarantee.

At the request of the Purchaser, we _____ [name of Bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ [amount in figures] (_____) [amount in words] upon receipt by us of your first demand in writing accompanied by a written statement stating that the Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder:

- (a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the *Letter of Bid*; or
- (b) having been notified of the acceptance of its Bid by the Purchaser during the period of bid validity, (i) fails or refuses to execute the Contract Form, if required, or (ii) fails or refuses to furnish the performance security, in accordance with **ITB 38**.

This guarantee will expire: (a) if the Bidder is the successful Bidder, upon our receipt of copies of the contract signed by the Bidder and the performance security issued to you upon the instruction of the Bidder; and (b) if the Bidder is not the successful Bidder, upon the earlier of (i) our receipt of a copy your notification to the Bidder of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of the Bidder's bid.

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

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

Name: [insert complete name of Signatory]

Title: [insert title]

[signature(s)]

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

Form of Bid Security (Bid Bond)

BOND NO. _____

BY THIS BOND [name of Bidder] as Principal (hereinafter called "the Principal"), and [name, legal title, and address of surety], **authorized to transact business in** [name of country of Purchaser], as Surety (hereinafter called "the Surety"), are held and firmly bound unto [name of Purchaser] as Oblige (hereinafter called "the Purchaser ") in the sum of [amount of Bond]⁹ [amount in words], for the payment of which sum, well and truly to be made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has submitted a written Bid to the Purchaser dated the ____ day of _____, 20__, for the supply Goods and Related Services of [name of Contract] (hereinafter called the "Bid").

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal:

- (a) withdraws its Bid during the period of bid validity specified in the Letter of Bid;
or
- (b) having been notified of the acceptance of its Bid by the Purchaser during the period of Bid validity; (i) fails or refuses to execute the Contract Form, if required; or (ii) fails or refuses to furnish the Performance Security in accordance with **ITB 38**;

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

The Surety hereby agrees that its obligation will remain in full force and effect up to and including the date 28 days after the date of expiration of the Bid validity as stated in the Invitation to Bid or extended by the Purchaser at any time prior to this date, notice of which extension(s) to the Surety being hereby waived.

IN TESTIMONY WHEREOF, the Principal and the Surety have caused these presents to be executed in their respective names this ____ day of _____ 20__.

Principal: _____

Surety: _____

Corporate Seal (where appropriate)

⁹ The amount of the Bond shall be denominated in the currency of the Employer's country or the equivalent amount in a freely convertible currency.

(Signature)

(Printed name and title)

(Signature)

(Printed name and title)

Form of Bid–Securing Declaration

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

Bid No.: [insert number of bidding process]

Alternative No.: [insert identification No if this is a Bid for an alternative]

To: [insert complete name of Purchaser]

We, the undersigned, declare that:

We understand that, according to your conditions, bids must be supported by a Bid-Securing Declaration.

We accept that we will automatically be suspended from being eligible for bidding in any contract with the Borrower for the period of time of [Purchaser to insert number of months or years] starting on [insert date], if we are in breach of our obligation(s) under the bid conditions, because we:

- (a) have withdrawn our Bid during the period of bid validity specified in the Form of Bid;
or*
- (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with ITB 38.*

We understand this Bid-Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of (i) our receipt of your notification to us of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of our Bid.

Signed: [insert signature of person whose name and capacity are shown] in the capacity of [insert legal capacity of person signing the Bid-Securing Declaration]

Name: [insert complete name of person signing the Bid-Securing Declaration]

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

Dated on _____ day of _____, _____ [insert date of signing]

Corporate Seal (where appropriate)

[Note: In case of a Joint Venture, the Bid-Securing Declaration must be in the name of all partners to the Joint Venture that submits the bid.]

Manufacturer's Authorization

[The Bidder shall require the Manufacturer to fill in this Form in accordance with the instructions indicated. This letter of authorization should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer. The Bidder shall include it in its bid, if so indicated in the BDS.]

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

ICB No.: [insert ICB number]

Invitation for Bid No.: [insert number of bidding process]

To: [insert complete name of Purchaser]

WHEREAS

We [insert complete name of Manufacturer], who are official manufacturers of [insert type of goods manufactured], having factories at [insert full address of Manufacturer's factories], do hereby authorize [insert complete name of Bidder] to submit a bid the purpose of which is to provide the following goods, manufactured by us [insert name and or brief description of the goods], and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 21.1 of the General Conditions, with respect to the goods offered by the above firm.

Signed: [insert signature(s) of authorized representative(s) of the Manufacturer]

Name: [insert complete name(s) of authorized representative(s) of the Manufacturer]

Title: [insert title]

Duly authorized to sign this Authorization on behalf of: [insert complete name of Manufacturer]

Dated on _____ day of _____, _____ [insert date of signing]

<h2 style="text-align: center;">Bidder's Qualification</h2>
--

To establish its qualifications to perform the contract in accordance with Section III (Evaluation and Qualification Criteria) the Bidder shall provide the information requested in the corresponding Information Sheets included hereunder.

Bidder Information Sheet

Form ELI – 1.1

Date: _____

ICB No.: _____

Invitation for Bid No.: _____

Page _____ of _____ pages

1. Bidder's Legal Name
2. In case of Joint Venture, Consortium or Association (), legal name of each partner:
3. Bidder's actual or intended Country of Constitution, Incorporation, <i>or Registration</i> :
4. Bidder's Year of Constitution, Incorporation, <i>or Registration</i> :
5. Bidder's Legal Address in Country of Constitution, Incorporation, <i>or Registration</i> :
<p>6. Bidder's Authorized Representative Information</p> <p>Name:</p> <p>Address:</p> <p>Telephone/Fax numbers:</p> <p>Email Address:</p>
<p>7. Attached are copies of original documents of: Articles of Incorporation or Registration of firm named in 1, above, in accordance with ITB Clauses 4.1 and 4.2.</p> <p><input type="checkbox"/> In case of <i>JVCA</i>, letter of intent to constitute a legally-enforceable <i>JVCA</i>, including a draft agreement, or <i>JVCA</i> agreement, in accordance with ITB Clauses 4.1.</p> <p><input type="checkbox"/> In case of government owned entity from the Purchaser's country, documents establishing legal and financial autonomy and compliance with the principles of commercial law, in accordance with ITB Clause 4.5.</p>

Partner to JVCA Information Sheet

Form ELI – 1.2

Date: _____
 ICB No.: _____
 Invitation for Bid No.: _____
 Page _____ of _____ pages

1. Bidder's Legal Name:
2. JVCA Partner's legal name:
3. JVCA Partner's Country of Constitution, Incorporation, <i>or Registration</i> :
4. JVCA Partner's Year of constitution into a legally-enforceable JVCA::
5. JVCA Partner's Legal Address in Country of Constitution, Incorporation, <i>or Registration</i> :
6. JVCA Partner's Authorized Representative Information Name: Address: Telephone/Fax numbers: Email Address:
7. Attached are copies of original documents of: <input type="checkbox"/> Articles of Constitution, Incorporation or <i>Registration</i> of firm named in 1, above, in accordance with ITB Clauses 4.1 and 4.2. <input type="checkbox"/> In case of government owned entity from the Purchaser's country, documents establishing legal and financial autonomy and compliance with the principles of commercial law, in accordance with ITB Clause 4.5.

Historical Contract Non-Performance

Form CON – 2

Bidder's Legal Name: _____ Date: _____

JVCA Partner's Legal Name: _____

ICB No.: _____

Page _____ of _____ pages

Non-Performing Contracts in accordance with Section III, Evaluation Criteria

Contract non-performance did not occur during the stipulated period, in accordance with Sub-Factor 2.2.1 of Section III, Evaluation Criteria

Contract non-performance during the stipulated period, in accordance with Sub-Factor 2.2.1 of Section III, Evaluation Criteria

Year	Outcome as Percent of Total Assets	Contract Identification	Total Contract Amount (current value, US\$ equivalent)

Pending Litigation, in accordance with Section III, Evaluation Criteria

No pending litigation in accordance with Sub-Factor 2.2.3 of Section III, Evaluation Criteria

Pending litigation in accordance with Sub-Factor 2.2.3 of Section III, Evaluation Criteria, as indicated below

Year	Outcome as Percent of Total Assets	Contract Identification	Total Contract Amount (current value, US\$ equivalent)
_____	_____	Contract Identification: Name of Purchaser: Address of Purchaser: Matter in dispute:	_____
_____	_____	Contract Identification: Name of Purchaser: Address of Purchaser: Matter in dispute:	_____

Current Contract Commitments

Form CCC

Bidders and each partner to a *JVCA* should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

Name of contract	Purchaser, contact address/tel/fax	Value of outstanding supply (current US\$ equivalent)	Estimated completion date	Average monthly invoicing over last six months (US\$/month)
1.				
2.				
3.				
4.				
5.				
etc.				

Financial Situation

Form FIN – 3.1

Historical Financial Performance

Bidder's Legal Name: _____ Date: _____

JVCA Partner Legal Name: _____ ICB No.: _____

Page _____ of _____ pages

To be completed by the Bidder and, if JVCA, by each partner

Financial information in US\$ equivalent	Historic information for previous _____ (____) years (US\$ equivalent in 000s)						
	Year 1	Year 2	Year 3	Year ...	Year n	Avg.	Avg. Ratio
Information from Balance Sheet							
Total Assets (TA)							
Total Liabilities (TL)							
Net Worth (NW)							
Current Assets (CA)							
Current Liabilities (CL)							
Information from Income Statement							
Total Revenue (TR)							
Profits Before Taxes (PBT)							

- Attached are copies of financial statements (balance sheets, including all related notes, and income statements) for the years required above complying with the following conditions:
- (a) Must reflect the financial situation of the Bidder or partner to a *JVCA*, and not sister or parent companies;
 - (b) Historic financial statements must be audited by a certified accountant;
 - (c) Historic financial statements must be complete, including all notes to the financial statements;
 - (d) Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

Average Annual Turnover

Form FIN – 3.2

Bidder's Legal Name: _____ Date: _____
 JVCA Partner Legal Name: _____ ICB No.: _____
 Page _____ of _____ pages

Annual turnover data		
Year	Amount and Currency	US\$ equivalent
	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
*Average Annual Turnover	_____	_____

*Average annual turnover calculated as total certified payments received for supply in progress or completed, divided by the number of years specified in Section III, Evaluation Criteria, Sub-Factor 2.3.2.

Financial Resources

Form FIN – 3.3

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total cash flow demands of the subject contract or contracts as indicated in Section III, Evaluation and Qualification Criteria.

Source of financing	Amount (US\$ equivalent)
1.	
2.	
3.	
4.	

Experience

Form EXP – 2.4.1

Bidder's Legal Name: _____ Date: _____

JVCA Partner's Legal Name: _____ ICB No.: _____

Page _____ of _____ pages

Similar Contract Number: ___ of ___ required.	Information	
Contract Identification	_____	
Award date	_____	
Completion date	_____	
Role in Contract	_____	
Total contract amount	_____	US\$ _____
If partner in a JVCA, specify participation in total contract amount	_____ %	US\$ _____
Purchaser's Name:	_____	
Address:	_____ _____	
Telephone/fax number:	_____	
E-mail:	_____	

Experience (cont.)

Form EXP – 2.4.1 (cont.)

Bidder's Legal Name: _____ Page _____ of _____ pages
 JVCA Partner's Legal Name: _____

Similar Contract No. __ [insert specific number] of [total number of contracts] __ required	Information
Description of the similarity in accordance with Sub-Factor 2.4.1) of Section III:	
Amount	_____
Physical size	_____
Complexity	_____
Methods/Technology	_____
Other Characteristics	_____

Section V. Eligible Countries

Eligibility for the Provision of Goods, Works and Related Services in Bank-financed Procurement

A. Provision at Paragraph 1.6 of the Bank's *Rules and Procedures for Procurement of Goods and Works*

1.6 The African Development Fund permits firms and individuals from all countries to offer goods, works and services for ADF funded projects. However, the proceeds of any Financing undertaken in the operations of the African Development Bank and the Nigeria Trust Fund shall be used for procurement of goods and works, including the related services, provided by bidders from Eligible¹⁰ Countries.¹¹ Any conditions for participation shall be limited to those that are essential to ensure the firm's capability to fulfill the contract in question. In the case of ADB and NTF, bidders from non-Member Countries offering goods, works and related services (including transportation and insurance) are not eligible even if they offer these from Eligible Member Countries. Any waiver to this rule will be in accordance with the Articles 17(1) (d) of the Agreement Establishing the African Development Bank and 4.1 of the Agreement Establishing the Nigeria Trust Fund.

B. Provision at Appendix 4 of the Bank's *Rules and Procedures for Procurement of Goods and Works*

Overview

1. The eligibility criteria for participation in the supply of goods, works and related services, to be procured through the ADB and NTF Financing, derive from the requirements of the Agreement Establishing the African Development Bank, Article 17.1.d, and the Agreement Establishing the Nigeria Trust Fund, Article 4.1. The foregoing requirements basically prescribe two types of eligibility criteria:

- (a) The eligibility of the bidder;
- (b) The eligibility of the goods, works and related services.

eely convertible currency.

¹⁰ Refer to Appendix 4 for additional information on Eligibility.

¹¹ "Eligible Countries" shall mean: (a) in the case of the African Development Bank and the Nigeria trust Fund, the Member Countries of the

Eligibility of the Bidder

2. The eligibility of the bidder shall be based on nationality, in accordance with the following rules:

- (a) Natural Persons: A natural person is eligible if he or she is a national of a Member Country of the Bank, or a State Participant of the Fund. Where a person has more than one nationality, such a person shall be eligible if the nationality indicated in his or her bid is that of a Member Country of the Bank, or a State Participant of the Fund.
- (b) Corporations: A corporation is eligible if it satisfies the following criteria:
 - 1. it is incorporated in a country that is a Member of the Bank, or State Participant of the Fund;
 - 2. it is a national of a country that is a Member of the Bank, or State Participant of the Fund, as determined by the law of its place of incorporation;
 - 3. it has its principal place of business in a country that is a Member of the Bank, or State Participant of the Fund.
- (c) Joint Ventures and Associations: An unincorporated joint venture, partnership, or association, shall be eligible if at least 60% of its individual, or corporate members, satisfy the eligibility requirement for individuals or corporations.

Eligibility of the Goods, Works and Related Services

3. In order to be eligible, the goods to be procured must have been mined, grown, or produced, in the form in which they are purchased, in an Eligible Member Country.

4. For works contracts, which may include civil works, plant construction, or turnkey contracts, the contractor must satisfy the nationality criteria of eligibility, either as a natural person, or corporation, or joint venture and association. Labour, equipment, and materials needed for carrying out the works contract, shall be supplied from Eligible Member Countries.

5. For contracts, which have been awarded on the basis of Cost, Insurance and Freight (CIF), or Carriage and Insurance Paid (CIP), bidders shall be free to arrange for ocean and other transportation, and the related insurance, from any Eligible Member Country. On the other hand, where goods are shipped on FOB basis and the Bank has agreed to finance transportation and insurance separately, which are arranged by the purchaser, under a separate contract, the Bank shall be satisfied that the services are supplied from Eligible Member Countries.

C. Eligible Countries

N/A

PART 2 – Purchaser’s Requirements

Section VI. Requirements

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1. List of Goods and Related Services

Item no.	KPLC Code	Brief description	Unit measure	of	Quantity Required
1.	535176	<i>Single Phase Meter for Cable communication between MCU and CIU</i>	Pcs		235,295
2.	535174	<i>Three Phase Meter for Cable communication between MCU and CIU</i>	Pcs		20,250

2. Delivery and Completion Schedule

The required date of arrival at the Bulk stores, Nairobi is no later than: **30.08.2016**

The required completion date is no later than: **30.08.2016**

Item no.	KPLC Code	Brief description	Unit of measure	Quantity Required	Expected delivery Date
1.	535176	<i>Single Phase Meter for Cable communication between MCU and CIU</i>	Pcs	235,295	30.08.2016
2.	535174	<i>Three Phase Meter for Cable communication between MCU and CIU</i>	Pcs	20,250	30.08.2016

PART 3 –Conditions of Contract and Contract Forms

Section VII. General Conditions

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Section VII. General Conditions

[Name of Purchaser] _____

[Name of Contract] _____

These General Conditions (GC), read in conjunction with the Particular Conditions (PC) and other documents listed therein, constitute a complete document expressing the rights and obligations of the parties.

1. **General Provisions**

1.1 **Definitions**

In the Conditions of Contract (“these Conditions”), which include Particular Conditions, and these General Conditions, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

1.1.1 **The Contract**

1.1.1.1 *“Contract” means the Contract Agreement, the Letter of Acceptance, the Letter of Bid, these Conditions, the Specification, the Schedules, and the further documents (if any) which are listed in the Contract Agreement or in the Letter of Acceptance.*

1.1.1.2 *“Contract Agreement” means the contract agreement referred to in Clause 1.6 [Contract Agreement].*

1.1.1.3 *“Letter of Acceptance” means the letter of formal acceptance, signed by the Purchaser, of the Letter of Bid, including any annexed memoranda comprising agreements between and signed by both Parties. If there is no such letter of acceptance, the expression “Letter of Acceptance” means the Contract Agreement and the date of issuing or receiving the Letter of Acceptance means the date of signing the Contract Agreement.*

1.1.1.4 *“Letter of Bid” means the document entitled letter of bid, which was completed by the Supplier and includes the signed offer to the Purchaser for the Goods.*

1.1.1.5 *“Specification” means the document entitled specification, as included in the Contract, and any additions and modifications to the specification in accordance with the Contract. Such document specifies the Goods.*

1.1.1.6 *“Drawings” means the drawings of the Goods, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Purchaser in accordance with the Contract.*

- 1.1.1.7 *“Schedules” means the document(s) entitled schedules, completed by the Supplier and submitted with the Letter of Bid, as included in the Contract. Such document may include the Bill of Quantities, data, lists, and schedules of rates and/or prices.*
- 1.1.1.8 *“Bid” means the Letter of Bid and all other documents which the Supplier submitted with the Letter of Bid, as included in the Contract.*
- 1.1.2 **Parties and Persons**
- 1.1.2.1 *“Party” means the Purchaser or the Supplier, as the context requires.*
- 1.1.2.2 *“Purchaser” means the person named as purchaser in the Particular Conditions and the legal successors in title to this person.*
- 1.1.2.3 *“Supplier” means the person(s) named as supplier in the Letter of Bid accepted by the Purchaser and the legal successors in title to this person(s).*
- 1.1.2.4 *“Subcontractor” means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Goods or the Related Services; and the legal successors in title to each of these persons.*
- 1.1.2.5 *“Bank” means the financing institution (if any) named in the PC.*
- 1.1.2.6 *“Borrower” means the person (if any) named as the borrower in the PC.*
- 1.1.3 Dates, Tests, Periods and Completion *“Base Date” mean the date 28 days prior to the latest date for submission of the Bid.*
- 1.1.3.1 *“Acceptance Test” means the tests (if any) which are specified in the Contract and which are carried out in accordance with the Specification for the purpose of issuing the “Acceptance Certificate”.*
- 1.1.3.3 *“Completion” means the fulfilment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.*
- 1.1.3.4 *“day” means a calendar day and “year” means 365 days.*
- 1.1.4 **Money and Payments**
- 1.1.4.1 *“Contract Price” means the price defined in GC Clause 10 [The Contract Price], and includes adjustments in accordance with the Contract.*
- 1.1.5 **Goods and Related Services**
- 1.1.5.1 *“Goods” means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Purchaser under the Contract.*
- 1.1.5.2 *“Related Services” means the services incidental to the supply of the Goods, such as insurance, transportation, installation, commissioning, training and initial maintenance and other such obligations of the Supplier under the Contract.*
- 1.1.6 **Other Definitions**

- 1.1.6.1 *“Purchaser ’s Country” is the country specified in the PC.*
- 1.1.6.2 *“Force Majeure” is defined in GC Clause 25 [Force Majeure].*
- 1.1.6.3 *“Laws” means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.*
- 1.1.6.4 *“Performance Security” means the security (or securities, if any) under GC Clause 13 [Performance Security].*
- 1.1.6.5 *“Project Site,” where applicable, means the place named in the PC.*
- 1.1.6.6 *“Unforeseeable” or “Unforeseen” means not reasonably foreseeable by an experienced Purchaser by the Base Date.*
- 1.1.6.7 *“Change Order” or “Change” is defined in Clause 26 [Change Orders and Contract Amendments].*

1.2 **Interpretation**

- 1.2.1 *Interpretation In the Contract, except where the context requires otherwise:*
- (a) *words indicating one gender include all genders;*
 - (b) *words indicating the singular also include the plural and words indicating the plural also include the singular;*
 - (c) *provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing;*
 - (d) *“written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record;*
 - (e) *the word “tender” is synonymous with “bid” and “tenderer” with “bidder” and the words “tender documents” with “bidding documents”.*
- 1.2.2 *The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.*
- 1.2.3 **Incoterms**
- (a) Unless inconsistent with any provisions in the Contract, the meaning of any trade term and the rights and obligations of Parties thereunder shall be as prescribed by Incoterms.
 - (b) The Incoterms, when used, shall be governed by the rules prescribed in the current edition of Incoterms, specified in the PC, and published by the International Chamber of Commerce, Paris, France

1.2.4 Entire Agreement

The Contract constitutes the entire agreement between the Purchaser and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of the Parties with respect thereto made prior to the date of Contract.

1.2.5 Amendment

No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each Party thereto.

1.2.6 Nonwaiver

- (a) Subject to **GC** Clause 1.2.5(b) below, no relaxation, forbearance, delay, or indulgence by either Party in enforcing any of the terms and conditions of the Contract or the granting of time by either Party to the other shall prejudice, affect, or restrict the rights of that Party under the Contract, neither shall any waiver by either Party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
- (b) (Any waiver of a Party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the Party granting such waiver, and must specify the right and the extent to which it is being waived.

1.2.7 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

1.2.8 "Eligible Countries" means the countries and territories eligible stipulated by the Bank's **Rules and Procedures for Procurement of Goods and Works**, and as listed in Section V, Eligible Countries.

1.3 **Communications**

1.3.1 *Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:*

- (a) *in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the **PC**; and*
- (b) *delivered, sent or transmitted to the address for the recipient's communications as stated in the **PC**. However:*

(i) *if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and*

(ii) *if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued*

1.3.2 *Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall send a copy to the other Party.*

1.4 **Law and Language**

1.4.1 *The Contract shall be governed by the law of the country or other jurisdiction stated in the PC.*

The ruling language of the Contract shall be that stated in the PC.

The language for communications shall be that stated in the PC. If no language is stated there, the language for communications shall be the ruling language of the Contract.

1.4.2 *Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified, in which case, for purposes of interpretation of the Contract, this translation shall govern.*

The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Supplier.

1.5 **Priority of Documents**

1.5.1 *The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:*

(a) *the Contract Agreement (if any),*

(b) *the Letter of Acceptance,*

(c) *the Bid,*

(d) *the Particular Conditions*

(e) *these General Conditions,*

(f) *the Specification,*

(g) *the Drawings, and*

(h) *the Schedules and any other documents forming part of the Contract.*

If an ambiguity or discrepancy is found in the documents, the Purchaser shall issue any necessary clarification or instruction.

1.6 Contract Agreement

1.6.1 *The Parties shall enter into a Contract Agreement within 28 days after the Supplier receives the Letter of Acceptance, unless the Particular Conditions establish otherwise. The Contract Agreement shall be based upon the form furnished in Section IX, Contract Forms. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Purchaser .*

1.7 Assignment

1.7.1 *Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either Party:*

- (a) *may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party, and*
- (b) *may, as security in favour of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract.*

1.8 Copyright

1.8.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Purchaser by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to the Purchaser directly or through the Supplier by any third Party, including suppliers of materials, the copyright in such materials shall remain vested in such third Party.

1.9 Supplier's Use of Purchaser's Documents

1.9.1 As between the Parties, the Purchaser shall retain the copyright and other intellectual property rights in the Specification, the Drawings and other documents made by (or on behalf of) the Purchaser. The Supplier may, at his cost, copy, use, and obtain communication of these documents for the purposes of the Contract. They shall not, without the Purchaser's consent, be copied, used or communicated to a third party by the Supplier, except as necessary for the purposes of the Contract.

1.10 Confidential Details

1.10.1 The Supplier's and the Purchaser's Personnel shall disclose all such confidential and other information as may be reasonably required in order to verify the Supplier's compliance with the Contract and allow its proper implementation.

Each of them shall treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable Laws. Each of them shall not publish or disclose any particulars of the *Goods*, prepared by the other Party without the previous agreement of the other Party. However, the *Supplier* shall be permitted to disclose any publicly available information, or information otherwise required to establish his qualifications to compete for other projects.

1.10.2 Notwithstanding the above, the *Supplier* may furnish to its Subcontractor(s) such documents, data and other information it receives from the Purchaser to the extent required for the Subcontractor(s) to perform its work under the Contract, in which event the Contractor shall obtain from such Subcontractor(s) an undertaking of confidentiality similar to that imposed on the Contractor under this Clause.

1.11 **Compliance with Laws**

1.11.1 The *Supplier* shall, in performing the Contract, comply with applicable Laws.

1.11.2 Unless otherwise stated in the Particular Conditions:

(a) the Purchaser shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the Purchaser's Country, which (i) such authorities or undertakings require the Purchaser to obtain in the Purchaser's name, and (ii) are necessary for the execution of the Contract, including those required for the performance by both the Supplier and the Purchaser of their respective obligations under the Contract;

- (b) the *Supplier* shall acquire and pay for all permits, approvals and/or licenses from all local, state or national government authorities or public service undertakings in the Purchaser's Country, which such authorities or undertakings require the *Supplier* to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Supplier's and Subcontractor's personnel and entry permits for all imported Supplier's Equipment. The *Supplier* shall acquire all other permits, approvals and/or licenses that are not the responsibility of the Purchaser under GC Clause 1.11.2(a) hereof and that are necessary for the performance of the Contract. The *Supplier* shall indemnify and hold harmless the Purchaser from and against any and all liabilities, damages, claims, fines, penalties and expenses of whatever nature arising or resulting from the violation of such laws by the Supplier or its personnel, including the Subcontractors and their personnel, but without prejudice to GC Clause 1.11.1 hereof.

1.12 **Joint and Several Liability**

- 1.12.1 If the *Supplier* is a joint venture, consortium, or association (JVCA) of two or more persons, all such persons shall be jointly and severally bound to the Purchaser for the fulfillment of the provisions of the Contract, *unless otherwise specified in the PC*, and shall designate one of such *persons* to act as a leader with authority to bind the JVCA. The composition or the constitution of the JVCA shall not be altered without the prior consent of the Purchaser.

1.13 **Inspections and Audit by the Bank**

- 1.13.1 The *Supplier* shall permit the Bank and/or persons appointed by the Bank to inspect the Site and/or the Supplier's accounts and records relating to the performance of the Contract and to have such accounts and records audited by auditors appointed by the Bank if required by the Bank.
- 1.13.2 The Supplier shall maintain all documents and records related to the Contract for a period of three (3) years after delivery of the Goods. The Supplier shall provide any documents necessary for the investigation of allegations of fraud, collusion, coercion, or corruption and require its employees or agents with knowledge of the Contract to respond to questions from the Bank.

2. **Contract Documents**

- 2.1 Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

3. **Fraud and Corruption**

- 3.1 It is the Bank's policy to require that Borrowers (including beneficiaries of Bank Financing), bidders, suppliers, contractors and their agents (whether declared or not), sub-contractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standard of ethics during the procurement and execution of Bank-financed contracts¹². In pursuance of this policy, the Bank:
- (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) "Corrupt Practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party¹³;
 - (ii) "Fraudulent Practice" is any act or omission, including a misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party¹⁴ to obtain financial or other benefit or to avoid an obligation;
 - (iii) "Collusive Practice" is an arrangement between two or more parties¹⁵, designed to achieve an improper purpose, including to influence improperly the actions of another party; and
 - (iv) "Coercive Practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party¹⁶;
 - (v) "obstructive practice" is
 - (v.1) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
 - (v.2) acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under clause 1.13 [Inspections and Audits by the Bank].

¹² In this context, any action to influence the procurement process or contract execution for undue advantage is improper.

¹³ For the purpose of this sub-paragraph, "another party" refers to a public official acting in relation to the procurement process or contract execution. In this context, "public official" includes Bank staff and employees of other organizations taking or reviewing procurement decisions.

¹⁴ For the purpose of this sub-paragraph, "party" refers to a public official; the terms "benefit" and "obligation" relate to the procurement process or contract execution; and the "act or omission" is intended to influence the procurement process or contract execution.

¹⁵ For the purpose of this sub-paragraph, "parties" refers to participants in the procurement process (including public officials) attempting either themselves, or through another person or entity not participating in the

(b) will reject a proposal for award if it determines that the bidder recommended for award, or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees, has, directly or indirectly, engaged in Corrupt, Fraudulent, Collusive, Coercive or Obstructive Practices in competing for the contract in question;

(c) will declare misprocurement and cancel the portion of the **Financing** allocated to a contract if it determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of **such Financing** engaged in corrupt, fraudulent, collusive, coercive or obstructive practices during the procurement or the implementation of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to **address such practices when they occur**, including by failing to inform the Bank in a timely manner at the time they knew of the practices;

(d) will sanction a firm or individual, at any time, in accordance with the prevailing Bank's sanctions procedures¹⁷, including by publicly declaring such firm or individual ineligible either indefinitely or for a stated period of time, (i) to be awarded a Bank-financed contracts, and (ii) to be a nominated¹⁸ sub-contractor, consultant, supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and

(e) will require that a clause be included in bidding documents and in contracts financed by the Bank, requiring bidders, suppliers and contractors, and their sub-contractors, agents, personnel, consultants, service providers, or suppliers, to permit the Bank to inspect all accounts and records and other documents relating to the submission of bids and contract performance and to have them audited by auditors appointed by the Bank.

4. **Eligibility**

procurement or selection process, to simulate competition or to establish bid prices at artificial, non-competitive levels, or are privy to each other's bid prices or other conditions.

¹⁶ *For the purpose of this sub-paragraph, "party" refers to a participant in the procurement process or contract execution.*

¹⁷ *A firm or an individual may be declared ineligible to be awarded a Bank financed contract: (i) upon completion of the Bank's sanctions proceedings as per its sanctions procedures, including, inter alia, cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks, or otherwise decided by the Bank; and through the application of the Proposal for the Implementation of a Sanctions Process within the African Development Bank Group; and (ii) as a result of temporary suspension or early temporary suspension in connection with an on-going sanction proceeding. See footnote 18 and paragraph 9 of Appendix 1 of the Rules and Procedures for Procurement of Goods and Works.*

¹⁸ *A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding documents) is one which has either been: (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirement for the particular bid; or (ii) appointed by the Borrower."*

- 4.1 *The Supplier and its Subcontractors shall have the nationality of an Eligible Country, as defined by the Bank’s **Rules and Procedures for Procurement of Goods and Works**, and as listed in Section V, Eligible Countries. A Supplier or Subcontractor shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.*
- 4.2 *All Goods and Related Services to be supplied under the Contract and financed by the Bank shall have their origin in Eligible Countries. For the purpose of this Clause, origin means the country where the Goods have been grown, mined, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components. Eligibility is defined in the Bank’s **Rules and Procedures for Procurement of Goods and Works**.*
5. **Notices**
- 5.1 Any notice given by one Party to the other pursuant to the Contract shall be in writing to the address specified in the **PC**. The term “in writing” means communicated in written form with proof of receipt.
- 5.2 A notice shall be effective when delivered or on the notice’s effective date, whichever is later.
6. **Settlement of Disputes**
- 6.1 The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any dispute arising between them under or in connection with the Contract.
- 6.2 If, after twenty-eight (28) days from the commencement of such consultation, the Parties have failed to resolve their dispute by such mutual consultation, then either Party may give notice to the other Party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration proceedings shall be conducted in accordance with the rules of procedure specified in the **PC**.
- 6.3 Notwithstanding any reference to arbitration herein,
- (a) the Parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
 - (b) the Purchaser shall pay the Supplier any monies due the Supplier.
7. **Scope of Supply**

7.1 The Goods and Related Services to be supplied shall be as specified in Section VI, Requirements.

8. **Delivery**

8.1 Subject to GC Clause 27.1, the Delivery of the Goods and Completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in Section VI, Requirements. The shipping and other documents to be furnished by the Supplier are specified in the PC. The documents specified therein shall be received by the Purchaser before arrival of the Goods and, if not received, the Supplier shall be responsible for any consequent expenses.

9. **Supplier's Responsibilities**

9.1 The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GC Clause 7, and the Delivery and Completion Schedule, as per GC Clause 8.

10. **Contract Price**

10.1 Unless otherwise prescribed in the PC, the Contract price shall be fixed throughout the duration of Contract performance.

11. **Terms of Payment**

11.1 The Contract Price shall be paid as specified in the PC.

11.2 The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GC Clause 8 and upon fulfilment of all other obligations stipulated in the Contract.

11.3 Payments shall be made promptly by the Purchaser, no later than sixty (60) days after submission of an invoice or request for payment by the Supplier, and after the Purchaser has accepted it.

11.4 The currencies in which payments shall be made to the Supplier under this Contract shall be those in which the Bid price is expressed.

11.5 In the event that the Purchaser fails to pay the Supplier any payment by its due date, or within the period set forth in the PC, the Purchaser shall pay to the Supplier interest on the amount of such delayed payment, at the rate shown in the PC, for the period of delay, until payment has been made in full, whether before or after judgment, or arbitration award.

12. **Taxes and Duties**

12.1 For Goods *manufactured* outside the Purchaser's country the Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the Purchaser's country.

- 12.2 For Goods *manufactured* within the Purchaser's country the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the Purchaser.
- 12.3 If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in the Purchaser's Country, the Purchaser shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.
13. **Performance Security**
- 13.1 If so required in the **PC**, the Supplier shall, within twenty-eight (28) days of the notification of contract award, provide a performance security for the performance of the Contract in the amount specified in the **PC**.
- 13.2 If so required, pursuant to **GC** Clause 13.1, the performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Purchaser, and shall be in one of the forms stipulated by the Purchaser in the Section IX, Contract Forms, or in another form acceptable to the Purchaser.
- 13.3 The proceeds of the performance security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.
- 13.4 The performance security shall be discharged by the Purchaser and returned to the Supplier not later than twenty-eight (28) days following the date of completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the **PC**.
14. **Subcontracting**
- 14.1 The Supplier shall notify the Purchaser in writing of all subcontracts awarded under the Contract if not already specified in the bid. Such notification, in the original Bid or later shall not relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.
- 14.2 Subcontracts shall comply with the provisions of **GC** Clauses 3 and 4.
15. **Specifications and Standards**
- 15.1 The Supplier shall ensure that the Goods and Related Services comply with technical requirements, as specified in Section VI, Requirements.
- 15.2 The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Purchaser

Codes, Standards and Drawings

- 15.3 Wherever references are made in the Contract to codes and standards, in accordance with which it shall be executed, the addition or the revised version of such codes and standards shall be those specified in Section VI, Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Purchaser and shall be treated in accordance with **GC** Clause 26.

16. **Packing and Documents**

- 16.1 The Supplier 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. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods' final destination and the absence of heavy handling facilities at all points in transit.

- 16.2 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, including additional requirements, if any, specified in the **PC**, and in any other instructions ordered by the Purchaser.

17. **Insurance**

- 17.1 Unless otherwise specified in the **PC**, the Goods supplied under the Contract shall be fully insured, in a freely convertible currency from an eligible country, against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the **PC**.

18. **Transportation**

- 18.1 Unless otherwise specified in the **PC**, responsibility for arranging transportation of the Goods shall be in accordance with the specified Incoterms.

19. **Inspections and Tests**

- 19.1 The Supplier shall at its own expense and at no cost to the Purchaser carry out all such tests and/or inspections of the Goods and Related Services as are specified in the **PC**.

- 19.2 The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the Goods' final destination, or in another place in the Purchaser's country as specified in the **PC**. Subject to **GC** Clause 19.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.
- 19.3 The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections referred to in **GC** Clause 19.2, provided that the Purchaser bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all travelling and board and lodging expenses.
- 19.4 Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Purchaser. The Supplier shall obtain from any relevant third Party or manufacturer any necessary permission or consent to enable the Purchaser or its designated representative to attend the test and/or inspection.
- 19.5 The Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impede the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.
- 19.6 The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.
- 19.7 The Purchaser may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a notice pursuant to **GC** Clause 19.4.
- 19.8 The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report pursuant to **GC** Clause 19.6, shall release the Supplier from any warranties or other obligations under the Contract.
20. **Liquidated Damages**

20.1 Except as provided under **GC** Clause 19, if the Supplier fails to deliver any or all of the Goods, by the date(s) of delivery, or perform the Related Services within the period specified in the Contract, the Purchaser may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the **PC** of the Contract Price for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in the **PC**. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to **GC** Clause 28.

21. **Warranty**

21.1 The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.

21.2 Subject to **GC** Clause 15.2, the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.

21.3 Unless otherwise specified in the **PC**, the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the **PC**, or for eighteen (18) months after the date of shipment, from the port, or place of loading in the country of origin, whichever period concludes earlier.

21.4 The Purchaser shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Supplier to inspect such defects.

21.5 Upon receipt of such notice, the Supplier shall, within the period specified in the **PC**, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.

21.6 If having been notified, the Supplier fails to remedy the defect within the period specified in the **PC**, the Purchaser may proceed to take within a reasonable period 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.

22. **Patent Indemnity**

22.1 The Supplier shall, subject to the Purchaser's compliance with GC Clause 22.2, indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

- (a) the installation of the Goods by the Supplier or the use of the Goods in the country where the Site is located; and
- (b) the sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Contract.

22.2 If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in GC Clause 22.1, the Purchaser shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

22.3 If the Supplier fails to notify the Purchaser within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf.

22.4 The Purchaser shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.

22.5 The Purchaser shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Purchaser.

23. **Limitation of Liability**

- 23.1 Except in cases of *gross* negligence or wilful misconduct:
- (a) the Supplier shall not be liable to the Purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser; and
 - (b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort, or otherwise, shall not exceed the Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Supplier to indemnify the Purchaser with respect to patent infringement.
24. **Change in Laws and Regulations**
- 24.1 If, within less than twenty-eight (28) days prior to the date of Bid Submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the place of the Purchaser's country where the Site is located (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GC Clause 10.
25. **Force Majeure**
- 25.1 The Supplier shall not be liable for forfeiture of its performance security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 25.2 For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

25.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

26 **Change Orders and Contract Amendments**

26.1 The Purchaser may at any time order the Supplier through notice in accordance GC Clause 5, to make changes within the general scope of the Contract in any one or more of the following:

- (a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
- (b) the method of shipment or packing;
- (c) the place of delivery; and
- (d) the Related Services to be provided by the Supplier.

26.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier's receipt of the Purchaser's change order.

26.3 Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the Parties and shall not exceed the prevailing rates charged to other Parties by the Supplier for similar services.

26.4 Subject to the above, no variation in, or modification of, the terms of the Contract shall be made except by written agreement signed by the Parties.

27 **Extensions of Time**

27.1 If at any time during performance of the Contract, the Supplier or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GC Clause 8, the Supplier shall promptly notify the Purchaser in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in which case the extension shall be ratified by the Parties by amendment of the Contract.

27.2 Except in case of Force Majeure, as provided under **GC** Clause 25, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to **GC** Clause 20, unless an extension of time is agreed upon, pursuant to **GC** Clause 27.1.

28. **Termination**

Termination for Default

28.1 The Purchaser, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate the Contract in whole or in part:

- (i) if the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to **GC** Clause 27;
- (ii) if the Supplier fails to perform any other obligation under the Contract; or
- (iii) if the Supplier, in the judgment of the Purchaser, has engaged in fraud and corruption, as defined in **GC** Clause 3, in competing for, or in executing the Contract.

28.2 In the event the Purchaser terminates the Contract in whole or in part, pursuant to **GC** Clause 28.1, the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

Termination for Insolvency

28.3 The Purchaser may at any time terminate the Contract by giving notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Purchaser.

Termination for Convenience

28.4 (a) The Purchaser, by notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.

- 28.5 (b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:
- (i) to have any portion completed and delivered at the Contract terms and prices; and/or
 - (ii) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

29. **Export Restrictions**

29.1 Notwithstanding any obligation under the Contract to complete all export formalities, any export restrictions attributable to the Purchaser, to the country of the Purchaser, or to the use of the goods or services to be supplied, which arise from trade regulations from a country supplying those goods, or services, and which substantially impede the Supplier from meeting its obligations under the Contract, shall release the Supplier from the obligation to provide deliveries or services, always provided, however, that the Supplier can demonstrate to the satisfactions of the Purchaser *and of the Bank* that it has completed all formalities in a timely manner, including applying for permits, authorizations, and licenses necessary for the delivery of the goods or services under the terms of the Contract.

Section VIII. Particular Conditions

GC 1.1.2.2	The Purchaser is: <i>KENYA POWER AND POWER LIGHTING COMPANY LIMITED</i>
GC 1.1.2.5	The Bank is: <i>AFRICAN DEVELOPMENT FUND</i>
GC 1.1.2.6	The Borrower is: GOVERNMENT OF KENYA
GC 1.1.6.1	The Purchaser's Country is: KENYA
GC 1.1.6.5	The Project/Delivery Site is: Kenya Power and Lighting Bulk Stores located in Nairobi Kenya
GC 1.2.3 (b)	The version of Incoterms shall be: 2010
GC 1.3 .1(a)	The Electronic Transmission System is: N/A
GC 1.3.1(b)	<p>The Purchaser's address for the purpose of communications is:</p> <p>Attention: Eng. Samuel Mutwiri General Manager, Infrastructure Development</p> <p>Street Address: PO BOX 30099, Floor/Room number: 2nd FLOOR, STIMA SACCO INVESTMENT PLAZA. City: NAIROBI Code: 00100 Country: KENYA Telephone: +254-20-3201980 Facsimile number: +254-20-3514485/3751225 Electronic mail address: smutwiri@kplc.co.ke</p> <p>The Supplier's address for the purpose of communications is: <i>[State full address, telephone, fax and e-mail]</i></p>
GC 1.4.1	<p>The governing law is that of: KENYA</p> <p>The ruling language is: ENGLISH</p>

GC 1.6.1	Deadline for entering into a Contract, after Supplier receives Letter of Acceptance: 28 days
GC 1.11.2(a)	Permits and Permissions to be obtained by the Purchaser: As per GC. 1.11.2 (a)
GC 1.11.2(b)	(a) Notices, Taxes, Duties, Permits, Licenses, Approvals to be given and/or obtained by the Supplier: As per GC. 1.11.2 (b)
GC 1.12.1	The individuals or firms in a joint venture, consortium or association “shall be” jointly and severally liable.
GC 5.1	<p>For notices, the Purchaser’s address shall be: _____</p> <p>Attention: Eng. Samuel Mutwiri General manager, Infrastructure Development PO BOX 30099, Street Address: 2nd FLOOR, STIMA SACCO INVESTMENT Floor/Room number: PLAZA. NAIROBI City: 00100 Code: KENYA Country: +254-20-3201980 Telephone: +254-20-3514485/3751225 Facsimile number: smutwiri@kplc.co.ke Electronic mail address:</p> <p>The Supplier’s address for the purpose of notices shall be: <i>[State full address, telephone, fax and electronic post]</i></p>

GC 6.2	<p>The rules of procedure for arbitration proceedings pursuant to GCC Clause 6.2 shall be as follows:</p> <p>(a) <i>Contract with foreign Supplier:</i></p> <p>Any dispute, controversy or claim arising out of or relating to this Contract, or breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.</p> <p>(b) <i>Contracts with Supplier national of the Purchaser's country:</i></p> <p>In the case of a dispute between the Purchaser and a Supplier who is a national of the Purchaser's country, the dispute shall be referred to adjudication or arbitration in accordance with the laws of the Purchaser's country.</p>
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GC 8.1

Details of Shipping and other Documents to be furnished by the Supplier are for Goods to be Imported CIP Terms.

The procuring entity desires that the Goods be on cost and freight to Nairobi, Kenya in accordance with the schedule of requirements as stipulated in the tender document.

- (a) Upon shipment, the Manufacturer shall notify the Procuring entity and Insurance by paper mail or fax the full details of the shipment including Order number, description of goods, quantity, the aircraft, the airway bill number and the date of shipment, port of discharge, etc. The Manufacturer shall courier the following documents in one copy to the Procuring entity, with a copy to the Insurance Company.
 - (i) The Supplier's invoice showing Goods description, quantity, unit price, total amount;
 - (ii) Non- negotiable airway bill/Bill of lading;
 - (iii) Packing list identifying contents of each Package;
 - (iv) Manufacturer's or supplier's warranty certificate;
 - (v) Inspection certificate issued by the nominated inspection agency and the Manufacturer's factory inspection report; and
 - (vi) Certificate of origin.
 - (vii) Insurance certificate

The above documents shall be received by the Purchaser before arrival of the Goods and, if not received, the Supplier will be responsible for any consequent expenses.

For Goods from within the Purchaser's Country;

EXW Terms

Upon delivery of Goods to the transporter, the Supplier shall notify the purchase and email or courier the document to the Purchaser:

- (i) Copies of the Supplier's invoice showing Goods description, quantity, unit price, and total amount
- (ii) Delivery note, railway or truck receipt
- (iii) Manufacturer's or Supplier's warranty certificate
- (iv) The Supplier's inspection report
- (v) Certificate of origin

The above documents shall be received by the Purchaser before arrival of the Goods and, if not received, the Supplier will be responsible for any consequent expenses.

GC 10.1	The contract price shall be fixed throughout the duration of the contract.
GC 11.1	<p>Terms of Payment:</p> <p>The method and conditions of payment to be made to the Supplier under this Contract shall be as follows:</p> <p>Payment for Goods supplied from abroad:</p> <p>Payment of foreign currency portion shall be made in the currency of the Contract Price in the following manner:</p> <ul style="list-style-type: none"> (i) Advance payment of 10% (ii) On Shipment: Eighty (80) percent of the Contract Price of the Goods shipped shall be paid through irrevocable confirmed letter of credit opened in favor of the Supplier in a bank in its country, upon submission of documents specified in GCC Clause 11.2 (iii) On Acceptance: Ten (10) percent of the Contract Price of Goods received shall be paid within thirty (30) days of receipt of the Goods upon submission of claim supported by the acceptance certificate issued by the Purchaser. <p>Payment of local currency portion shall be made in KES within thirty (30) days of presentation of claim supported by a certificate from the Purchaser declaring that the Goods have been delivered and that all other contracted Services have been performed.</p>
GC 11.5	<p>Payment Delay period;</p> <p>The payment delay period after which the Purchaser shall pay interest to the supplier shall be 60 days.</p> <p>The interest rate shall be applied will be the prevailing Central Bank of Kenya 91 days Treasury Bill rate on the date the payment became due.</p>
GC 13.1	<p>Performance Security;</p> <p>A performance security which shall be 10% of the contract value shall be required within 28 days of the notification of contract.</p>
GC 13.2	The performance security shall be in the form of a Bank Guarantee and shall be denominated in a freely convertible currency acceptable to the Purchaser

GC 13.4	Discharge of the Performance Security shall take place Thirty (30) days after expiry of the supplier's warranty obligation.
GC 19.1	The Inspections and Tests shall be: as indicated in the Technical Specifications.
GC 19.2	The Inspections and tests shall be conducted by KPLC Engineers at Manufacturer's Place. The cost of inspection and tests shall be borne by the bidder. The cost Exclude costs of travel & accommodation from Kenya to Nearest Airport to Manufacturers facility which shall be borne by KPLC.
GC 20.1	The liquidated damage shall be: 0.5% per week
GC 20.1	The maximum amount of liquidated damages shall be: 10%
GC 21.3	The period of validity of the Warranty shall be 12 months after acceptance of the goods For purposes of the Warranty, the place(s) of final destination(s) shall be: Nairobi, Kenya.
Gc 21.5	The period for repair or replacement shall be: 45days.

0(a) is hereby excluded.

[signatures of authorized representatives of the bank]

Section IX. Contract Forms

Table of Forms

1. Contract Agreement	
.....	Error! Bookmark not defined.
2. Performance Security 112
3. Bank Guarantee for Advance Payment	
.....	Error! Bookmark not defined.

The successful Bidder shall fill in this form in accordance with the instructions indicated]

THIS CONTRACT AGREEMENT is made

the [*insert: number*] day of [*insert: month*], [*insert: year*].

BETWEEN

- (1) [*insert complete name of Purchaser*], a [*insert description of type of legal entity, for example, an agency of the Ministry of of the Government of { insert name of Country of Purchaser }, or corporation incorporated under the laws of { insert name of Country of Purchaser }*] and having its principal place of business at [*insert address of Purchaser*] (hereinafter called “the Purchaser”), and
- (2) [*insert name of Supplier*], a corporation incorporated under the laws of [*insert: country of Supplier*] and having its principal place of business at [*insert: address of Supplier*] (hereinafter called “the Supplier”).

WHEREAS the Purchaser invited bids for certain Goods and ancillary services, viz., [*insert brief description of Goods and Services*] and has accepted a Bid by the Supplier for the supply of those Goods and Services in the sum of [*insert Contract Price in words and figures, expressed in the Contract currency(ies)*] (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 constitute the Contract between the Purchaser and the Supplier, and each shall be read and construed as an integral part of the Contract:
 - (a) This Contract Agreement
 - (b) Special Conditions of Contract
 - (c) General Conditions of Contract
 - (d) Technical Requirements (including Schedule of Requirements and Technical Specifications)
 - (e) The Supplier’s Bid and original Price Schedules
 - (f) The Purchaser’s Notification of Award
3. This Contract shall prevail over all other Contract documents. In the event of any discrepancy or inconsistency within the Contract documents, then the documents shall prevail in the order listed above.

4. In consideration of the payments to be made by the Purchaser to the Supplier as hereinafter mentioned, the Supplier hereby covenants with the Purchaser to provide the Goods and Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
5. The Purchaser hereby covenants to pay the Supplier in consideration of the provision of the Goods and Services 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 the laws of *[insert the name of the Contract governing law country]* on the day, month and year indicated above.

For and on behalf of the Purchaser

Signed: *[insert signature]*
in the capacity of *[insert title or other appropriate designation]*
in the presence of *[insert identification of official witness]*

For and on behalf of the Supplier

Signed: *[insert signature of authorized representative(s) of the Supplier]*
in the capacity of *[insert title or other appropriate designation]*
in the presence of *[insert identification of official witness]*

2. Performance Security

[The bank, as requested by the successful Bidder, shall fill in this form in accordance with the instructions indicated]

Date: *[insert date (as day, month, and year) of Bid Submission]*
ICB No. and title: *[insert no. and title of bidding process]*

Bank's Branch or Office: *[insert complete name of Guarantor]*

Beneficiary: *[insert complete name of Purchaser]*

PERFORMANCE GUARANTEE No.: *[insert Performance Guarantee number]*

We have been informed that *[insert complete name of Supplier]* (hereinafter called "the Supplier") has entered into Contract No. *[insert number]* dated *[insert day and month]*, *[insert year]* with you, for the supply of *[description of Goods and related Services]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a Performance Guarantee is required.

At the request of the Supplier, we hereby irrevocably undertake to pay you any sum(s) not exceeding *[insert amount(s)¹⁹ in figures and words]* upon receipt by us of your first demand in writing declaring the Supplier to be in default under the Contract, without cavil or argument, or your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This Guarantee shall expire no later than the *[insert number]* day of *[insert month]* *[insert year]*,²⁰ and any demand for payment under it must be received by us at this office on or before that date.

¹⁹ *The Bank shall insert the amount(s) specified in the SCC and denominated, as specified in the SCC, either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Purchaser.*

²⁰ *Dates established in accordance with Clause 18.4 of the General Conditions of Contract ("GCC"), taking into account any warranty obligations of the Supplier under Clause 16.2 of the GCC intended to be secured by a partial Performance Guarantee. The Purchaser should note that in the event of an extension of the time to perform the Contract, the Purchaser would need to request an extension of this Guarantee from the Bank. Such request must be in writing and must be made prior to the expiration date established in the Guarantee. In preparing this Guarantee, the Purchaser might consider adding the following text to the Form, at the end of the penultimate paragraph: "We agree to a one-time extension of this Guarantee for a period not to exceed [six months] [one year], in response to the Purchaser's written request for such extension, such request to be presented to us before the expiry of the Guarantee."*

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.

[signatures of authorized representatives of the bank and the Supplier]

Advance Payment Security

[The bank, as requested by the successful Bidder, shall fill in this form in accordance with the instructions indicated.]

Date: [insert date (*e.g.*, day, month, and year) of Bid Submission]
Bidding Process Reference: [insert number and title of bidding process]

[bank's letterhead]

Beneficiary: [insert legal name and address of Purchaser]

ADVANCE PAYMENT GUARANTEE No.: [insert Advance Payment Guarantee no.]

We have been informed that [insert name of the Supplier]. (hereinafter called "the Supplier") has entered into Contract No. [insert reference number of the Contract]. dated with you, for the *supply of Goods and Related Services* [insert name of contract and brief description of Goods and Related Services] (hereinafter called "the Contract").

Furthermore, we understand that, according to the Conditions of the Contract, an advance payment in the sum [insert currency and amount in figures]²¹(. [insert currency and amount in words].) is to be made against an advance payment guarantee.

At the request of the Purchaser, we [insert name of the Bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [insert currency and amount in figures] (. [insert currency and amount in words].) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Supplier is in breach of its obligation under the Contract because the Supplier used the advance payment for purposes other than *performing his obligations under the Contract*.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Supplier on its account number [insert Supplier's account number] at [insert name and address of the Bank].

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458 , except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.

. [Seal of Bank and Signature(s)].

²¹ The Guarantor shall insert an amount representing the amount of the advance payment denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Purchaser.

Note –

All italicized text (including footnotes) is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.

TECHNICAL SPECIFICATIONS