



## **OPEN TENDER**

**SUPPLY, DELIVERY, INSTALLATION AND COMMISSIONING OF A TIER 3 MODULAR DATA CENTRE AND RELOCATION OF EQUIPMENT FROM CURRENT DATA CENTRE TO THE NEW DATA CENTRE AT THE TSC HEADQUARTERS**

**TSC/T/039/2021-2022**

**Teachers Service Commission  
Upper Hill, Kilimanjaro Road,  
Private Bag, 00100  
Nairobi**

**Email: [ddprocurement@tsc.go.ke](mailto:ddprocurement@tsc.go.ke)  
Website: <http://www.tsc.go.ke/www.tenders.go.ke>**

**TENDER CLOSING/OPENING DATE: TUESDAY 31<sup>ST</sup> MAY, 2022 AT 9.00 A.M.**

**MANDATORY PRE-BID CONFERENCE/SITE VISIT WEDNESDAY 25<sup>TH</sup> MAY, 2022**

**INVITATION TO TENDER**

## PROCURING ENTITY: TEACHERS SERVICE COMMISSION

### CONTRACT NAME AND DESCRIPTION: SUPPLY, DELIVERY, INSTALLATION AND COMMISSIONING OF A TIER 3 MODULAR DATA CENTRE AND RE-LOCATION OF EQUIPMENT FROM CURRENT DATA CENTRE TO THE NEW DATA CENTRE THE TSC HEADQUARTER.

1. The Teachers Service Commission invites sealed tenders for the for **SUPPLY, DELIVERY, INSTALLATION AND COMMISSIONING OF A TIER 3 MODULAR DATA CENTRE AND RE-LOCATION OF EQUIPMENT FROM CURRENT DATA CENTRE TO THE NEW DATA CENTRE.**
2. Tendering will be conducted under open competitive method Open Tender using a standardized tender document. The tender is **OPEN TO ALL QUALIFIED AND INTERESTED TENDERERS GENERAL CITIZEN CONTRACTORS.**
3. Qualified and interested tenderers may obtain further information and inspect the Tender Documents during office hours 8.00 am to 4.00 pm at the Teachers Service Commission Procurement office located at Second Floor Podium Wing.
4. Complete tender document may be obtained by interested candidates upon payment of a non-refundable fee of Kshs. 1,000 payable to the Teachers Service Commission at National Bank of Kenya Account No. 01001000905000, Harambee Avenue Branch or Bankers Cheque and present the bank slip to TSC Cash office for official receipt. Tender documents may be obtained electronically from the Website [www.tsc.go.ke](http://www.tsc.go.ke) or [www.tenders.go.ke](http://www.tenders.go.ke) free of charge.
5. Tender documents may be viewed and downloaded free from the website [www.tsc.go.ke](http://www.tsc.go.ke) or [www.tenders.go.ke](http://www.tenders.go.ke) Tenderers who download the tender document must forward their particulars immediately to [ddprocurement@tsc.go.ke](mailto:ddprocurement@tsc.go.ke) to facilitate any further clarification or addendum.
6. All Tenders must be accompanied by a Tender Security of **Kshs. 200,000 (*Kenya Shillings Two Hundred Thousand only*)** in form of a bank guarantee from a reputable bank regulated by CBK or an Insurance firm approved by Public Procurement Regulatory Authority ([www.ppra.go.ke](http://www.ppra.go.ke)) valid for 180 days from the date of tender opening.
7. The Tenderer shall chronologically serialize all pages of the tender documents submitted from the first page to the last page of the document.
8. There will be Mandatory Site Visit / Pre-bid Conference on **Wednesday 25<sup>th</sup> May, 2022 at 10.00 a.m.**
9. Completed tenders must be delivered to the Tender Box Located at Teachers Service Commission Podium Wing Ground floor on or before **TUESDAY 31<sup>ST</sup> MAY, 2022 at 9.00am.**
10. ***Electronic Tenders will not be permitted.***
11. Tenders will be publicly opened immediately on **TUESDAY 31<sup>ST</sup> MAY, 2022 at 9.00am** at Teachers Service Commission Ground Floor Podium wing in the presence of the Tenderers' designated representatives who choose to attend. Due to Covid – 19 Protocols, only one representative from each bidder/tenderer will be allowed to attend the tender opening ceremony.
12. **Late tenders will be rejected and bidders will not be allowed to drop them.**

13. The tender prices quoted shall be net inclusive of all government taxes and delivery cost and must be in Kenya Shillings only.
14. The price quoted shall remain valid for one year (365 days) from the closing date of the tender **TUESDAY 31<sup>ST</sup> MAY 2022 at 9.00 a.m.**
15. The tender shall be valid for a period of 150 days from the date of date of tender submission.
16. The addresses referred to above are:

A. **Address for obtaining further information and for purchasing tender documents**

**Attention: Head of Supply Chain Management Services**

Teachers Service Commission

P.O. BOX Private Bag, 00100

Upper Hill, Kilimanjaro Road - Nairobi.

Supply Chain Management Office Located at Second Floor Podium Wing

Tel: 0208079033/ 0202892301

Email [ddprocurement@tsc.go.ke](mailto:ddprocurement@tsc.go.ke)

B. **Address for Submission of Tenders.**

**Attention: Head of Supply Chain Management Services**

Commission Secretary/Chief Executive

Teachers Service Commission

P.O. BOX Private Bag, 00100

**Nairobi.**

Tenders must be deposited at the Tender Box Located at Teachers Service Commission Ground Floor Podium Wing or Hand delivered to Teachers Service Commission Procurement office located at second floor Podium Wing)

C. **Address for Opening of Tenders.**

Teachers Service Commission

Upper Hill, Kilimanjaro Road,

TSC Building-Podium Wing, Ground Floor

**COMMISSION SECRETARY/CHIEF EXECUTIVE  
TEACHERS SERVICE COMMISSION**

## TABLE OF CONTENTS

<b>INVITATION TO TENDER</b> .....	2
<b>PART 1 - TENDERING PROCEDURES</b>	
<b>SECTION I – INSTRUCTIONS TO TENDERERS</b> .....	10
<b>A. General</b> .....	10
1. Scope of Tender .....	10
2. Definitions .....	10
3. Fraud and Corruption.....	10
4. Eligible Tenderers.....	11
5. Qualification of the Tenderer.....	12
<b>B. Contents of Tendering Document</b> .....	12
6. Sections of Tendering Document .....	12
7. Site Visit.....	13
8. Pre-Tender Meeting and a pre-arranged pretender visit of the site of the works .....	13
9. Clarification of Tender Documents.....	13
10. Amendment of Tendering Document .....	14
<b>C. Preparation of Tenders</b> .....	14
11. Cost of Tendering .....	14
12. Language of Tender.....	14
13. Documents Comprising the Tender.....	14
14. Form of Tender and Activity Schedule.....	15
15. Alternative Tenders .....	15
16. Tender Prices and Discounts.....	15
17. Currencies of Tender and Payment.....	15
18. Documents Establishing Conformity of Services.....	16
19. Documents Establishing the Eligibility and Qualifications of the Tenderer .....	16
20. Period of Validity of Tenders .....	17
21. Tender Security.....	47
22. Format and Signing of Tender .....	18
<b>D. Submission and Opening of Tenders</b> .....	18
23. Sealing and Marking of Tenders.....	18
24. Deadline for Submission of Tenders .....	19
25. Late Tenders.....	19
26. Withdrawal, Substitution and Modification of Tenders .....	19
27. Tender Opening .....	19
<b>E. Evaluation and Comparison of Tenders</b> .....	20
28. Confidentiality .....	20
29. Clarification of Tenders.....	20
30. Deviations, Reservations, and Omissions .....	20
31. Determination of Responsiveness .....	21
32. Arithmetical Errors .....	21
33. Conversion to Single Currency .....	21
34. Margin of Preference .....	21
35. Evaluation of Tenders.....	22

36.	Comparison of Tenders .....	22
37.	Abnormally Low Tenders and Abnormally High Tenders.....	22
38.	Unbalanced and/or Front-Loaded Tenders.....	23
39.	Qualification of the Tenderer.....	23
40.	Procuring Entity's Right to Accept Any Tender, and to Reject Any or All Tenders.....	23
<b>F.</b>	<b>Award of Contract.....</b>	<b>23</b>
41.	Award Criteria .....	23
42.	Notice of Intention to enter into a Contract.....	24
43.	Standstill Period.....	24
44.	Debriefing by the Procuring Entity.....	24
45.	Letter of Award.....	24
46.	Signing of Contract.....	24
47.	Performance Security .....	24
48.	Publication of Procurement Contract .....	25
49.	Adjudicator .....	25
50.	Procurement Related Complaints .....	25
	<b>SECTION II - TENDER DATASHEET (TDS).....</b>	<b>26</b>
	<b>SECTION III - EVALUATION AND QUALIFICATION CRITERIA .....</b>	<b>38</b>
1.	General Provision .....	38
2.	Preliminary examination for Determination of Responsiveness .....	38
3.	Tender Evaluation (ITT 34) .....	38
4.	Multiple Contracts .....	41
5.	Alternative Tenders (ITT 14).....	41
6.	MARGIN OF PREFERENCE.....	41
7.	Post qualification and Contract award (ITT 39), more specifically.....	41
	<b>SECTION IV –TENDERING FORMS .....</b>	<b>43</b>
<b>1.</b>	<b>FORM OF TENDER.....</b>	<b>44</b>
a)	TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE .....	47
b)	CERTIFICATE OF INDEPENDENT TENDER DETERMINATION .....	50
c)	SELF- DECLARATION FORM.....	51
d)	APPENDIX 1 - FRAUD AND CORRUPTION.....	54
2.	TENDERER INFORMATION FORM .....	56
3.	TENDERER'S JV MEMBERS INFORMATION FORM.....	57
4.	MANUFACTURER'S AUTHORIZATION FORM .....	58
	<b>OTHER FORMS .....</b>	<b>59</b>
5.	FORM OF TENDER SECURITY – DEMAND BANK GUARANTEE.....	59
6.	FORM OF TENDER SECURITY (INSURANCE GUARANTEE) .....	60
7.	FORM OF TENDER - SECURING DECLARATION .....	61
	<b>QUALIFICATION FORMS.....</b>	<b>62</b>
8.	FOREIGN TENDERERS 40% RULE .....	62
9.	FORM EQU: EQUIPMENT .....	63
10.	FORM PER -1 .....	64
11.	FORM PER-2 .....	65
	<b>TENDERERS QUALIFICATION WITHOUT PREQUALIFICATION.....</b>	<b>67</b>
12.	FORM ELI -1.1 .....	67

13.	FORM ELI -1.2 .....	68
14.	FORM CON- 2 .....	69
15.	FORM FIN - 3.1 - Financial Situation and Performance .....	71
16.	FORM FIN - 3.2 - Average Annual Construction Turnover .....	73
17.	FORM FIN - 3.3 - Financial Resources .....	74
18.	FORM FIN - 3.4 - Current Contract Commitments / Works in Progress .....	74
19.	FORM EXP - 4.1- General Relevant Work Experience .....	75
20.	FORM EXP - 4.2(a) - Specific Work and Management Experience .....	76
21.	FORM EXP - 4.2(b) - Work Experience in Key Activities .....	77
<b>PART II – PROCURING ENTITY'S REQUIREMENTS.....</b>		<b>78</b>
<b>Section V – Schedule of Requirements .....</b>		<b>79</b>
<b>Section VI – Price Schedule Form.....</b>		<b>80</b>
<b>PART III – CONDITIONS OF CONTRACT AND CONTRACT FORM .....</b>		<b>82</b>
<b>Section VII - General Conditions of Contract.....</b>		<b>83</b>
<b>General Provisions.....</b>		<b>83</b>
<b>1.</b>	<b>Definitions.....</b>	<b>83</b>
	Applicable Law.....	84
	Language .....	84
	Notices .....	84
	Location.....	84
	Authorized Representatives .....	84
	Inspection and Audit by the PPRA.....	84
	Taxes and Duties.....	84
<b>2.</b>	<b>Commencement, Completion, Modification, and Termination of Contract.....</b>	<b>84</b>
	Effectiveness of Contract.....	84
	Commencement of Services .....	84
<b>Program.....</b>		<b>84</b>
	Starting Date .....	84
	Intended Completion Date.....	85
	Modification.....	85
	Value Engineering.....	85
<b>Force Majeure.....</b>		<b>85</b>
	Definition .....	85
	No Breach of Contract .....	85
	Extension of Time .....	85
	Payments.....	85
<b>Termination.....</b>		<b>86</b>
	By the Procuring Entity .....	86
	By the Service Provider.....	86
	Payment upon Termination .....	86

<b>3. Obligations of the Service Provider .....</b>	<b>86</b>
General.....	86
Conflict of Interests .....	86
Service Provider Not to Benefit from Commissions and Discounts. ....	86
Service Provider and Affiliates Not to be Otherwise Interested in Project. ....	87
Prohibition of Conflicting Activities. ....	87
<b>Confidentiality .....</b>	<b>87</b>
The Service .....	87
Service Provider's Actions Requiring Procuring Entity's Prior Approval .....	87
Reporting Obligations.....	87
Documents Prepared by the Service Provider to Be the Property of the Procuring Entity .....	87
<b>Liquidated Damages .....</b>	<b>88</b>
Payments of Liquidated Damages .....	88
Correction for Over-payment .....	88
Lack of performance penalty .....	88
Performance Security .....	88
Fraud and Corruption.....	88
Sustainable Procurement .....	88
<b>4. Service Provider's Personnel.....</b>	<b>88</b>
Description of Personnel .....	88
Removal and/or Replacement of Personnel.....	88
<b>5. Obligations of the Procuring Entity .....</b>	<b>89</b>
Assistance and Exemptions .....	89
Change in the Applicable Law .....	89
Services and Facilities .....	89
<b>6. Payments to the Service Provider .....</b>	<b>89</b>
Lump-Sum Remuneration .....	89
Contract Price .....	89
Payment for Additional Services, and Performance Incentive Compensation.....	89
Terms and Conditions of Payment.....	89
Interest on Delayed Payments .....	90
Price Adjustment. ....	90
Day works.....	90
<b>7. Quality Control .....</b>	<b>90</b>
Identifying Defects .....	90
Correction of Defects, and Lack of Performance Penalty .....	90
<b>8. Settlement of Disputes .....</b>	<b>91</b>
Contractor's Claims .....	91
Matters that may be referred to arbitration. ....	92
Amicable Settlement.....	92
Arbitration .....	92
Arbitration with proceedings .....	92
Failure to Comply with Arbitrator's Decision .....	93

<b>9. The Adjudicator.....</b>	<b>93</b>
<b>SECTION VIII - SPECIAL CONDITIONS OF CONTRACT .....</b>	<b>94</b>
<b>Appendices.....</b>	<b>103</b>
Appendix A - Description of the Services .....	103
Appendix B - Schedule of Payments and Reporting Requirements .....	103
Appendix C - Subcontractors.....	103
Appendix D - Breakdown of Contract Price.....	103
Appendix E - Services and Facilities Provided by the Procuring Entity .....	103
<b>SECTION IX –CONTRACT FORMS.....</b>	<b>104</b>
1. FORM NO. 1 - PERFORMANCE SECURITY – (Unconditional Demand Bank Guarantee).....	105
2. FORM No. 2 - PERFORMANCE SECURITY OPTION 2– (Performance Bond) .....	106
3. FORM NO. 3 - ADVANCE PAYMENT SECURITY [Demand Bank Guarantee].....	108
4. FORM No. 4 - BENEFICIAL OWNERSHIP DISCLOSURE FORM .....	109
5. NOTIFICATION OF INTENTION TO AWARD .....	111
6. LETTER OF AWARD .....	114
7. FORM OF CONTRACT .....	115
8. REQUEST FOR REVIEW .....	117



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# **PART 1 - TENDERING PROCEDURES**

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## SECTION I - INSTRUCTIONS TO TENDERERS

### A. General

#### 1. Scope of Tender

- 1.1 This tendering document is for the delivery of Maintenance Services, as specified in Section V, Procuring Entity's Requirements. The name, identification and number of lots (contracts) of this ITT procurement are specified in the **TDS**.

#### 2. Definitions

2.1 Throughout this tendering document:

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

2.2 The successful Tenderer will be expected to complete the performance of the Services by the Intended Completion Date provided in the contract.

#### 3. Fraud and Corruption

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

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

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

3.4 Unfair Competitive Advantage – Fairness and transparency in the tender process require that the Firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the contract being tendered for. The Procuring Entity shall indicate in the **TDS** firms (if any) that provided consulting services for the contract being tendered for. The Procuring Entity shall check whether the owners or controllers of the Tenderer are same as those that provided consulting services. The Procuring Entity shall, upon request, make available to any tenderer information that would give such firm unfair competitive advantage over competing firms.

3.5 Tenderers shall permit and shall cause their agents (where declared or not), subcontractors, sub-consultants, service providers, suppliers, and their personnel, to permit the Procuring Entity to inspect all accounts, records and other documents relating to any initial selection process,

prequalification process, tender submission, proposal submission, and contract performance (in the case of award), and to have them audited by auditors appointed by the Procuring Entity.

#### 4 Eligible Tenderers

- 4.1 A Tenderer may be a firm that is a private entity, a state-owned entity or institution subject to ITT 4.6, or any combination of such entities in the form of an association or subcontracting arrangement or a Joint Venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a Form of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the Tendering process and, in the event the JV is awarded the Contract, during contract execution. The maximum number of JV members shall be specified in the **TDS**.
- 4.2 Public Officers of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.
- 4.3 A Tenderer shall not have a conflict of interest. Any Tenderer found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest for the purpose of this Tendering process, if the Tenderer:
- a) Directly or indirectly controls, is controlled by or is under common control with another Tenderer; or
  - b) Receives or has received any direct or indirect subsidy from another Tenderer; or
  - c) Has the same legal representative as another Tenderer; or
  - d) Has a relationship with another Tenderer, directly or through common third parties, that puts it in a position to influence the Tender of another Tenderer, or influence the decisions of the Procuring Entity regarding this Tendering process; or
  - e) Or any of its affiliates participated as a consultant in the preparation of the Procuring Entity's Requirements (including Activities Schedules, Performance Specifications and Drawings) for the Maintenance services that are the subject of the Tender; or
  - f) Or any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity or Procuring Entity for the Contract implementation; or
  - g) Would be providing goods, works, or maintenance services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the **TDS** ITT 2.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or
  - h) Has a close business or family relationship with a professional staff of the Procuring Entity or of the project implementing agency, who: (i) are directly or indirectly involved in the preparation of the tendering document or specifications of the contract, and/or the Tender evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the procurement process and execution of the Contract.
- 4.4 A firm that is a Tenderer (either individually or as a JV member) shall not participate in more than one Tender, except for permitted alternative Tenders. This includes participation as a subcontractor. Such participation shall result in the disqualification of all Tenders in which the firm is involved. A firm that is not a Tenderer or a JV member, may participate as a subcontractor in more than one Tender.
- 4.5 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT

- 4.9. A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or sub-consultants for any part of the Contract including related Services.
- 4.6 A Tenderer that has been sanctioned by PPRA or are under a temporary suspension or a debarment imposed by any other entity of the Government of Kenya, shall be ineligible to be prequalified for, initially selected for, tender for, propose for, or be awarded a contract during such period of sanctioning. The list of debarred firms and individuals is available at the electronic address [info@ppra.go.ke](mailto:info@ppra.go.ke) .
- 4.7 Tenderers that are state-owned enterprises or institutions in Kenya may be eligible to compete and be awarded a Contract(s) only if they can establish that they: (i) are legally and financially autonomous; (ii) operate under commercial law; and (iii) are not under supervision of the Procuring Entity.
- 4.8 A Tenderer under suspension from tendering as the result of the operation of a Tender-Securing Declaration or Proposal-Securing Declaration shall not be eligible to tender.
- 4.9 Firms and individuals may be ineligible if (a) as a matter of law or official regulations, Kenya 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, Kenya prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person, or entity in that country.
- 4.10 Foreign tenderers are required to source at least forty (40%) percent of their contract inputs (in supplies, subcontracts and labor) from national suppliers and contractors. To this end, a foreign tenderer shall provide in its tender documentary evidence that this requirement is met. Foreign tenderers not meeting this criterion will be automatically disqualified. Information required to enable the Procuring Entity determine if this condition is met shall be provided in for this purpose is be provided in “SECTION III - EVALUATION AND QUALIFICATION CRITERIA, Item 9”.
- 4.11 Pursuant to the eligibility requirements of ITT 4.10, a tender is considered a foreign tenderer, if it is registered in Kenya, has less than 51 percent ownership by nationals of Kenya and if it does not subcontract foreign contractors more than 10 percent of the contract price, excluding provisional sums. JVs are considered as foreign tenderers if the individual member firms are registered in Kenya have less 51 percent ownership by nationals of Kenya. The JV shall not subcontract to foreign firms more than 10 percent of the contract price, excluding provisional sums.
- 4.12 The Procuring Entity may require tenderers to be registered with certain authorities in Kenya. Such registration shall be defined in the **TDS**, but care must be taken to ensure such registration requirement does not discourage competition, nor exclude competent tenderers. Registration shall not be a condition for tender, but where a selected tenderer is not so registered, the tenderer shall be given opportunity to register before signature of contract.
- 4.13 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for tender, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website [www.cak.go.ke](http://www.cak.go.ke)
- 4.14 A Tenderer may be considered ineligible if he/she offers goods, works and production processes

with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement.

## **5. Qualification of the Tenderer**

5.1 All Tenderers shall provide in Section IV, Tendering Forms, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.

5.2 In the event that prequalification of Tenderers has been undertaken as stated in ITT 18.4, the provisions on qualifications of the Section III, Evaluation and Qualification Criteria shall not apply.

## **B. Contents of Tendering Document**

### **6. Sections of Tendering Document**

6.1 The tendering 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 ITT 9.

#### **PART 1: Tendering Procedures**

- i) Section I-Instructions to Tenderers (ITT)
- ii) Section II-Tender Data Sheet (TDS)
- iii) Section III-Evaluation and Qualification Criteria
  
- iv) Section IV – Tendering Forms

#### **PART 2: Procuring Entity's Requirements**

- v) Section V- Procuring Entity's Requirements

#### **PART 3: Contract**

- vi) Section VI- General Conditions of Contract (GCC)
- vii) Section VII- Special Conditions of Contract (SCC)
- viii) Section VIII- Contract Forms

6.2 The Invitation to Tender (ITT) or the notice to prequalify Tenderers, as the case may be, issued by the Procuring Entity is not part of this tendering document.

6.3 Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of the document, responses to requests for clarification, the Minutes of the pre-Tender meeting (if any), or Addenda to the tendering document in accordance with ITT 9. In case of any contradiction, documents obtained directly from the Procuring Entity shall prevail.

6.4 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tendering document and to furnish with its Tender all information or documentation as is required by the tendering document.

## **7. Site Visit**

7.1 The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine the Site of the Required Services and its surroundings and obtain all information that may be necessary for preparing the Tender and entering into a contract for the Services. The costs of visiting the Site shall be at the Tenderer's own expense.

## **8. Pre-Tender Meeting and a pre-arranged pretender visit of the site of the works**

8.1 The Procuring Entity shall specify in the **TDS** if a pre-tender conference will be held, when and where. The Procuring Entity shall also specify in the **TDS** if a pre-arranged pretender visit of

the site of the works will be held and when. The Tenderer's designated representative is invited to attend a pre-arranged pretender visit of the site of the works. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

8.2 The Tenderer is requested to submit any questions in writing, to reach the Procuring Entity not later than the period specified in the **TDS** before the meeting.

8.3 Minutes of the pre-Tender meeting and the pre-arranged pretender visit of the site of the works, if applicable, including the text of the questions asked by Tenderers and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents in accordance with ITT 6.3. Minutes shall not identify the source of the questions asked.

8.4 The Procuring Entity shall also promptly publish anonymized (no names) Minutes of the pre-Tender meeting and the pre-arranged pretender visit of the site of the works at the web page identified in the **TDS**. Any modification to the Tender Documents that may become necessary as a result of the pre-Tender meeting shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT 10 and not through the minutes of the pre-Tender meeting. Nonattendance at the pre-Tender meeting will not be a cause for disqualification of a Tenderer.

## **9. Clarification of Tender Documents**

9.1 A Tenderer requiring any clarification of the Tender Document shall contact the Procuring Entity in writing at the Procuring Entity's address specified in the **TDS** or raise its enquiries during the pre-Tender meeting and the pre-arranged pretender visit of the site of the works if provided for in accordance with ITT 8.4. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the **TDS** prior to the deadline for submission of tenders. The Procuring Entity shall forward copies of its response to all tenderers who have acquired the Tender Documents in accordance with ITT 6.3, including a description of the inquiry but without identifying its source. If so specified in the **TDS**, the Procuring Entity shall also promptly publish its response at the web page identified in the **TDS**. Should the clarification result in changes to the essential elements of the Tender Documents, the Procuring Entity shall amend the Tender Documents appropriately following the procedure under ITT 10.

## **10. Amendment of Tendering Document**

10.1 At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the Tendering document by issuing addenda.

10.2 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tendering document from the Procuring Entity in accordance with ITT 6.3. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's webpage in accordance with ITT 8.1.

10.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity shall extend, as necessary, the deadline for submission of Tenders, in accordance with ITT 24.2 below.

## **C. Preparation of Tenders**

### **11. Cost of Tendering**

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



## 12 Language of Tender

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

## 13 Documents Comprising the Tender

13.1 The Tender shall comprise the following:

- a) **Form of Tender** prepared in accordance with ITT 14;
- b) **Schedules:** Schedules or Requirements and priced Activity Schedule completed in accordance with ITT 14 and ITT 16;
- c) **Tender Security or Tender-Securing Declaration** in accordance with ITT 21.1;
- d) **Alternative Tender:** if permissible in accordance with ITT 15;
- e) **Authorization:** written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 22.3;
- f) **Qualifications:** documentary evidence in accordance with ITT 19 establishing the Tenderer's qualifications to perform the Contract if its Tender is accepted;
- g) **Tenderer's Eligibility:** documentary evidence in accordance with ITT 19 establishing the Tenderer's eligibility to Tender;
- h) **Conformity:** documentary evidence in accordance with ITT 18, that the Services conform to the tendering document; and
- i) Any other document required **in the TDS.**

13.2 In addition to the requirements under ITT 12.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a Form of intent to execute a Joint Venture Agreement in the event of a successful Tender shall be signed by all members and submitted with the Tender, together with a copy of the proposed Agreement. The Tenderer shall chronologically serialize pages of all tender documents submitted. The Tenderer shall furnish in the Form of Tender information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Tender.

## 14 Form of Tender and Activity Schedule

14.1 The Form of Tender and priced Activity Schedule shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITT 21.3. All blank spaces shall be filled in with the information requested.

## 15 Alternative Tenders

15.1 Unless otherwise indicated in the TDS, alternative Tenders shall not be considered. If alternatives are permitted, only the technical alternatives, if any, of the Most Advantageous Tenderer shall be considered by the Procuring Entity.

15.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the TDS and the method of evaluating different time schedules will be described in Section III, Evaluation and Qualification Criteria.

15.3 When specified in the TDS, Tenderers are permitted to submit alternative technical solutions for specified parts of the Services, and such parts will be identified in the TDS, as will the method for their evaluating, and described in Section VII, Procuring Entity's Requirements.

## **16. Tender Prices and Discounts**

- 16.1 The prices and discounts (including any price reduction) quoted by the Tenderer in the Form of Tender and in the Activity Schedule(s) shall conform to the requirements specified below.
- 16.2 All lots (contracts) and items must be listed and priced separately in the Activity Schedule(s).
- 16.3 The Contract shall be for the Services, as described in Appendix A to the Contract and in the Specifications (or Terms of Reference), based on the priced Activity Schedule, submitted by the Tenderer.
- 16.4 The Tenderer shall quote any discounts and indicate the methodology for their application in the Form of Tender in accordance with ITT 13.1.
- 16.5 The Tenderer shall fill in rates and prices for all items of the Services described in the in Specifications (or Terms of Reference), and listed in the Activity Schedule in Section VII, Procuring Entity's Requirements. Items for which no rate or price is entered by the Tenderer will not be paid for by the Procuring Entity when executed and shall be deemed covered by the other rates and prices in the Activity Schedule.
- 16.6 All duties, taxes, and other levies payable by the Service Provider under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of Tenders, shall be included in the total Tender price submitted by the Tenderer.
- 16.7 If provided for in the TDS, the rates and prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract in accordance with and the provisions of Clause 6.6 of the General Conditions of Contract and/or Special Conditions of Contract. The Tenderer shall submit with the Tender all the information required under the Special Conditions of Contract and of the General Conditions of Contract.
- 16.8 For the purpose of determining the remuneration due for additional Services, a breakdown of the lump-sum price shall be provided by the Tenderer in the form of Appendices D and E to the Contract.

## **17. Currencies of Tender and Payment**

- 17 The currency of the Tender and the currency of payments shall be Kenya Shillings.

## **18. Documents Establishing Conformity of Services**

- 18.1 To establish the conformity of the Maintenance services to the tendering document, the Tenderer shall furnish as part of its Tender the documentary evidence that Services provided conform to the technical specifications and standards specified in Section VII, Procuring Entity's Requirements.
- 18.2 Standards for provision of the Maintenance services are intended to be descriptive only and not restrictive. The Tenderer may offer other standards of quality provided that it demonstrates, to the Procuring Entity's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Section VII, Procuring Entity's Requirements.

## **19. Documents Establishing the Eligibility and Qualifications of the Tenderer**

- 19.1 Tenderers shall complete the Form of Tender and all the Tendering Forms included in Section IV to establish their eligibility in accordance with ITT 4.
- 19.2 The documentary evidence of the Tenderer's qualifications to perform the Contract if its Tender is accepted shall establish to the Procuring Entity's satisfaction that the Tenderer meets each of the



qualification criterion specified in Section III, Evaluation and Qualification Criteria.

- 19.3 In the event that prequalification of Tenderers has been undertaken as stated in the **TDS**, only Tenders from prequalified Tenderers shall be considered for award of Contract. The prequalified Tenderers should submit with their Tenders any information updating their original prequalification applications or, alternatively, confirm in their Tenders that the originally submitted prequalification information remains essentially correct as of the date of Tender submission.
- 19.4 Tenderers shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a Service provider or group of service providers qualifies for a margin of preference. Further the information will enable the Procuring Entity identify any actual or potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between tenderers, and there by help to prevent any corrupt influence in relation to the procurement process or contract management.
- 19.5 The purpose of the information described in ITT 18.1 above overrides any claims to confidentiality which a tenderer may have. There can be no circumstances in which it would be justified for a tenderer to keep information relating to its ownership and control confidential where it is tendering to undertake public sector work and receive public sector funds. Thus, confidentiality will not be accepted by the Procuring Entity as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership and control.
- 19.6 The Tenderer shall provide further documentary proof, information or authorizations that the Procuring Entity may request in relation to ownership and control which information on any changes to the information which was provided by the tenderer under ITT 6.3. The obligations to require this information shall continue for the duration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.
- 19.7 All information provided by the tenderer pursuant to these requirements must be complete, current and accurate as at the date of provision to the Procuring Entity. In submitting the information required pursuant to these requirements, the Tenderer shall warrant that the information submitted is complete, current and accurate as at the date of submission to the Procuring Entity.
- 19.8 If a tenderer fails to submit the information required by these requirements, its tenderer will be rejected. Similarly, if the Procuring Entity is unable, after taking reasonable steps, to verify to a reasonable degree the information submitted by a tenderer pursuant to these requirements, then the tender will be rejected.
- 19.9 If information submitted by a tenderer pursuant to these requirements, or obtained by the Procuring Entity (whether through its own enquiries, through notification by the public or otherwise), shows any conflict of interest which could materially and improperly benefit the tenderer in relation to the procurement or contract management process, then:
- i) If the procurement process is still ongoing, the tenderer will be disqualified from the procurement process,
  - ii) If the contract has been awarded to that tenderer, the contract award will be set aside,
  - iii) The tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other person have committed any criminal offence.
- 19.10 If a tenderer submits information pursuant to these requirements that is incomplete, inaccurate or out-of-date, or attempts to obstruct the verification process, then the consequences ITT 6.7 will ensue unless the tenderer can show to the reasonable satisfaction of the Procuring Entity that any such act was not material, or was due to genuine error which was not attributable to the intentional act, negligence or recklessness of the tenderer.
- 19.11 A Kenyan tenderer shall provide evidence of having fulfilled his/her tax obligations by producing a valid tax compliance certificate or tax exemption certificate issued by the Kenya Revenue Authority.

## **20. Period of Validity of Tenders**

- 20.1 tenders shall remain valid for the Tender Validity period specified in the TDS. The Tender Validity period starts from the date fixed for the Tender submission deadline date (as prescribed by the Procuring Entity in accordance with ITT 23.1). A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.
- 20.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 20, it shall also be extended for a corresponding period. A Tenderer may refuse the request without forfeiting its Tender Security. A Tenderer granting the request shall not be required or permitted to modify its Tender, except as provided in ITT 19.3.

## **21. Tender Security**

- 21.1 The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender security, as specified in the TDS, in original form and, in the case of a Tender Security, in the amount and currency specified in the TDS.
- 21.2 A Tender Securing Declaration shall use the form included in Section IV, Tendering Forms.
- 21.3 If a Tender Security is specified pursuant to ITT 20.1, from a reputable source, and an eligible country and shall be in any of the following forms at the Tenderer's option:
- i) cash;
  - ii) a bank guarantee;
  - iii) a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Authority; or
  - iv) a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya,
- 21.4 If a Tender Security is specified pursuant to ITT 20.1, any Tender not accompanied by a substantially responsive Tender Security shall be rejected by the Procuring Entity as non-responsive.
- 21.5 If a Tender Security is specified pursuant to ITT 20.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's signing the contract and furnishing the Performance Security pursuant to ITT 46.
- 21.6 The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required Performance Security. The Procurement Entity shall also return tender security to the tenderers where;
- a). The procurement proceedings are terminated
  - b). All tenders were determined non-responsive and
  - c). Where a bidder decline to extent the tender validity period.
- 21.7 The Tender Security may be forfeited or the Tender-Securing Declaration executed:
- a) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer in the Form of Tender, or any extension thereto provided by the Tenderer; or
  - b) if the successful Tenderer fails to:
    - i) sign the Contract in accordance with ITT 45; or
    - ii) furnish a performance security in accordance with ITT 46.
- 21.8 The Tender Security or Tender-Securing Declaration of a JV must be in the name of the JV that submits the Tender. If the JV has not been legally constituted into a legally enforceable JV at the time

of Tendering, the Tender security or Tender-Securing Declaration shall be in the names of all future members as named in the Form of intent referred to in ITT 4.1 and ITT 12.2.

21.9 If a Tender Security is not required in the **TDS**, pursuant to ITT 20.1, and

- a) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer on the Form of Tender; or
- b) if the successful Tenderer fails to:
  - i) sign the Contract in accordance with ITT 45; or
  - ii) furnish a performance security in accordance with ITT 46;

the Procuring Entity may, if provided for **in the TDS**, declare the Tenderer ineligible to be awarded a contract by the Procuring Entity for a period of time as stated **in the TDS**.

## **22. Format and Signing of Tender**

22.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 12, bound with the volume containing the Form of Tender, and clearly marked “Original.” In addition, the Tenderer shall submit copies of the Tender, in the number specified in the **TDS**, and clearly marked as “Copies.” In the event of discrepancy between them, the original shall prevail.

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

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

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

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

## **D. Submission and Opening of Tenders**

### **23. Sealing and Marking of Tenders**

23.1 Depending on the sizes or quantities or weight of the tender documents, a tenderer may use an envelope, package or container. The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to the Procuring Entity and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, the Tenderer shall place the following separate, sealed envelopes:

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

required copies of the alternative Tender.

23.2 The inner envelopes or packages or containers shall:

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

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

## **24. Deadline for Submission of Tenders**

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

25 The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the tendering document in accordance with ITT 9, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

## **25. Late Tenders**

25.1 The Procuring Entity shall not consider any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT 23. Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

## **26. Withdrawal, Substitution and Modification of Tenders**

26.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization (the power of attorney) in accordance with ITT 21.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:

26.2 prepared and submitted in accordance with ITT 21 and ITT 22 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," or "MODIFICATION;" and

26.3 received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT 23.

26.4 Tenders requested to be withdrawn in accordance with ITT 25.1 shall be returned unopened to the Tenderers.

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

## **27. Tender Opening**

27.1 Except as in the cases specified in ITT 23 and ITT 25.2, the Procuring Entity shall, at the Tender opening, publicly open and read out all Tenders received by the deadline at the date, time and place specified in the **TDS** in the presence of Tenderers' designated representatives and anyone who choose to attend. Any specific electronic Tender opening procedures required if electronic tendering is permitted in accordance with ITT 23.1, shall be as specified in the **TDS**.

27.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the

corresponding Tender shall not be opened, but returned to the Tenderer. If the withdrawal envelope does not contain a copy of the “power of attorney” confirming the signature as a person duly authorized to sign on behalf of the Tenderer, the corresponding Tender will be opened. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Tender opening.

27.3 Next, envelopes marked “SUBSTITUTION” shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening.

27.4 Next, envelopes marked “MODIFICATION” shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening.

27.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the total Tender Prices, per lot (contract) if applicable, including any discounts and alternative Tenders; the presence or absence of a Tender Security or Tender-Securing Declaration, if required; and any other details as the Procuring Entity may consider appropriate.

27.6 Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further. The Form of Tender and the priced Activity Schedule are to be initialed by representatives of the Procuring Entity attending Tender opening in the manner specified in the **TDS**.

27.7 The Procuring Entity shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT 24.1).

27.8 The Procuring Entity shall prepare a record of the Tender opening that shall include, as a minimum:

- a) The name of the Tenderer and whether there is a withdrawal, substitution, or modification;
- b) The Tender Price, per lot (contract) if applicable, including any discounts; and
- c) Any alternative Tenders;
- d) The presence or absence of a Tender Security or Tender-Securing Declaration, if one was required.

27.9 The Tenderers' representatives who are present shall be requested to sign the record. The omission of a Tenderer's signature on the record shall not invalidate the contents and effect of the record. A copy of the opening registers shall be distributed to all Tenderers upon request.

## **E. Evaluation and Comparison of Tenders**

### **28. Confidentiality**

28.1 Information relating to the evaluation of Tenders and recommendation of contract award, shall not be disclosed to Tenderers or any other persons not officially concerned with the Tendering process until information on the Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 41.

22.2 Any effort by a Tenderer to influence the Procuring Entity in the evaluation or contract award decisions may result in the rejection of its Tender.

28.3 Notwithstanding ITT 27.2, from the time of Tender opening to the time of Contract Award, if any Tenderer wishes to contact the Procuring Entity on any matter related to the Tendering process, it should do so in writing.

### **29 Clarification of Tenders**

29.1 To assist in the examination, evaluation, and comparison of Tenders, and qualification of the Tenderers, the Procuring Entity may, at the Procuring Entity's discretion, ask any Tenderer for clarification of its Tender including breakdowns of the prices in the Activity Schedule, and other



information that the Procuring Entity may require. Any clarification submitted by a Tenderer in respect to its Tender and that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the Tenders, in accordance with ITT 32.

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

### **30 Deviations, Reservations, and Omissions**

31.1 During the evaluation of Tenders, the following definitions apply:

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

### **31. Determination of Responsiveness**

31.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT 12.

31.2 A substantially responsive Tender is one that meets the requirements of the tendering document without material deviation, reservation, or omission. 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 Maintenance services specified in the Contract; or
  - ii) Limit in any substantial way, inconsistent with the tendering document, the Procuring Entity's rights or the Tenderer's obligations under the Contract; or
- b) if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.

31.2 The Procuring Entity shall examine the technical aspects of the Tender submitted in accordance with ITT 17 and ITT 18, in particular, to confirm that all requirements of Section VII, Procuring Entity's Requirements have been met without any material deviation or reservation, or omission.

31.3 If a Tender is not substantially responsive to the requirements of tendering document, it shall be rejected by the Procuring Entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission. Non-conformities, Errors and Omissions

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

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

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

### **32. Arithmetical Errors**

32.1 Corrected tender prices shall not be used in the evaluation of tenders, comparison of tender prices.

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

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

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

### **33. Conversion to Single Currency**

33.1 For evaluation and comparison purposes, conversion of the currency (ies) of to a single currency preference shall not apply.

### **34. Margin of Preference**

34.1 Margin of preference on local service providers may be allowed if it is deemed that the services require participation of foreign tenderers. If so allowed, it will be indicated in the **TDS**.

34.2 Where it is intended to reserve the contract to specific groups under Small and Medium Enterprises, or enterprise of women, youth and/or persons living with disability, who are appropriately registered as such by the authority to be specified in the **TDS**, a procuring entity shall ensure that the invitation to tender specifically indicates that only businesses/firms belonging to the specified group are eligible to tender as specified in the **TDS**. Otherwise if not so stated, the invitation will be open to all tenderers.

### **35. Evaluation of Tenders**

35.1 The Procuring Entity shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies, the Procuring Entity shall determine the Most Advantageous Tender. This is the Tender of the Tenderer that meets the qualification criteria and whose Tender has been determined to be:

- a) Substantially responsive to the tendering document; and
- b) The lowest evaluated cost.

35.2 In evaluating the Tenders, the Procuring Entity will determine for each Tender the evaluated Tender cost by adjusting the Tender price as follows:

- a) Price adjustment due to discounts offered in accordance with ITT 15.4;
- b) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT 33;
- c) price adjustment due to quantifiable nonmaterial non-conformities in accordance with ITT 31.3;
- d) The additional evaluation factors are specified in Section III, Evaluation and Qualification Criteria.

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

35.4 In the case of multiple contracts or lots, Tenderers are allowed to tender for one or more lots and the methodology to determine the lowest evaluated cost of the lot (contract) and for combinations, including any discounts offered in the Form of Tender, is specified in Section III, Evaluation and Qualification Criteria.

### **36. Comparison of Tenders**

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

### **37. Abnormally Low Tenders and Abnormally High**

#### **Tenders Abnormally Low Tenders**

37.1 An Abnormally Low Tender is one where the Tender price, in combination with other elements of the Tender, appears so low that it raises material concerns as to the capability of the Tenderer in regards to the Tenderer's ability to perform the Contract for the offered Tender Price or that genuine competition between Tenderers is compromised.

37.2 In the event of identification of a potentially Abnormally Low Tender, the Procuring Entity shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Tender document.

37.3 After evaluation of the price analyses, in the event that the Procuring Entity determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, the Procuring Entity shall reject the Tender.

#### **Abnormally High Tenders**

37.4 An abnormally high tender price is one where the tender price, in combination with other constituent elements of the Tender, appears unreasonably too high to the extent that the Procuring Entity is concerned that it (the Procuring Entity) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Tenderers is compromised.

37.5 In case of an abnormally high tenders, the Procurement Entity should (a) review the specifications, and conditions of tender, or correctness of the estimate or (b) possibility of a collusion, formation of cartels, or other form of fraudulent and corrupt activity in the tendering processor (c) perception of the firms on the credibility of the Procuring Entity. The Procuring Entity shall treat abnormally low and high tenders in accordance with procedures provided for in this tender document

37.6 If the Procuring Entity determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (often due to collusion, corruption or other manipulations), the Procuring Entity shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before retendering.

### **38. Unbalanced and/or Front-Loaded Tenders**

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

38.2 After the evaluation of the information and detailed price analyses presented by the Tenderer, the



Procuring Entity may as appropriate:

- a) Accept the Tender; or
- b) Require that the total amount of the Performance Security be increased at the expense of the Tenderer to a level not exceeding a 30% of the Contract Price; or
- c) agree on a payment mode that eliminates the inherent risk of the Procuring Entity paying too much for undelivered works; or
- d) reject the Tender.

### **39. Qualification of the Tenderer**

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

39.1 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT18. The determination shall not take into consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates, subcontractors or any other firm(s) different from the Tenderer that submitted the Tender.

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

### **40 Procuring Entity's Right to Accept Any Tender, and to Reject Any or All Tenders**

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

## **F. Award of Contract**

### **41 Award Criteria**

41.1 The Procuring Entity shall award the Contract to the successful tenderer whose tender has been determined to be the Lowest Evaluated Tender.

### **42. Notice of Intention to enter into a Contract/Notification of award**

42.1 Upon award of the contract and Prior to the expiry of the Tender Validity Period the Procuring Entity shall issue a Notification of Intention to Enter in to a Contract/Notification of award to all tenderers which shall contain, at a minimum, the following information:

- a) The name and address of the Tenderer submitting the successful tender;
- b) The Contract price of the successful tender;
- c) a statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was unsuccessful, unless the price information in (c) above already reveals the reason;
- d) the expiry date of the Stand still Period; and
- e) instructions on how to request a debriefing and/or submit a complaint during the standstill period;

### **43. Standstill Period**

43.1 The Contract shall not be signed earlier than the expiry of a Standstill Period of 14 days to allow any

dissatisfied tender to launch a complaint. Where only one Tender is submitted, the Standstill Period shall not apply.

43.2 Where a Standstill Period applies, it shall commence when the Procuring Entity has transmitted to each Tenderer the Notification of Intention to Enter into a Contract with the successful Tenderer.

#### **44. Debriefing by the Procuring Entity**

44.1 On receipt of the Procuring Entity's Notification of Intention to Enter into a Contract referred to in ITT 43, an unsuccessful tenderer may make a written request to the Procuring Entity for a debriefing on specific issues or concerns regarding their tender. The Procuring Entity shall provide the debriefing within five days of receipt of the request. .2 Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending such a debriefing meeting.

#### **45. Letter of Award**

45.1 Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 42.1, upon addressing a complaint that has been filed within the Standstill Period, the Procuring Entity shall transmit the Letter of Award to the successful Tenderer. The letter of award shall request the successful tenderer to furnish the Performance Security within 21 days of the date of the letter.

#### **46. Signing of Contract**

46.1 Upon the expiry of the fourteen days of the Notification of Intention to enter into contract and upon the parties meeting their respective statutory requirements, the Procuring Entity shall send the successful Tenderer the Contract Agreement.

46.2 Within fourteen (14) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to the Procuring Entity.

46.3 The written contract shall be entered into within the period specified in the notification of award and before expiry of the tender validity period.

#### **47. Performance Security**

47.1 Within twenty-one (21) days of the receipt of the Form of Acceptance from the Procuring Entity, the successful Tenderer, if required, shall furnish the Performance Security in accordance with the GCC 3.9, using for that purpose the Performance Security Form included in Section X, Contract Forms, or another Form acceptable to the Procuring Entity. If the Performance Security furnished by the successful Tenderer is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Tenderer to be acceptable to the Procuring Entity. A foreign institution providing a bond shall have a correspondent financial institution located in Kenya, unless the Procuring Entity has agreed in writing that a correspondent financial institution is not required.

47.2 Failure of the successful Tenderer 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 Tender Security. In that event the Procuring Entity may award the Contract to the Tenderer offering the next Most Advantageous Tender.

#### **48. Publication of Procurement Contract**

48.1 Within fourteen days after signing the contract, the Procuring Entity shall publish the awarded contract at its notice boards and websites; and on the Website of the Authority. At the minimum, the notice shall contain the following information:

- a) Name and address of the Procuring Entity;

- b) name and reference number of the contract being awarded, a summary of its scope and the selection method used;
- c) the name of the successful Tenderer, the final total contract price, the contract duration.
- d) Dates of signature, commencement and completion of contract;
- e) Names of all Tenderers that submitted Tenders, and their Tender prices as read out at Tender opening.

#### **49. Adjudicator**

49.1 The Procuring Entity proposes the person named **in the TDS** to be appointed as Adjudicator under the Contract, at an hourly fee specified **in the TDS**, plus reimbursable expenses. If the Tenderer disagrees with the proposed Adjudicator, the Tenderer should so state in the Tender. If, in the Form of Acceptance, the Procuring Entity has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Special Conditions of Contract at the request of either party.

#### **50. Procurement Related Complaints and Administrative Review**

50.1 The procedures for making a Procurement-related Complaint are specified in the **TDS**.

50.2 A request for administrative review shall be made in the form provided under contract forms.

## SECTION II - TENDER DATA SHEET (TDS)

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

TDS Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	<b>A. General</b>
TDS 1.1	<p>The reference number of the Request for Tenders (ITT) is: <b>TSC/T/039/2021-2022</b></p> <p>The Procuring Entity is: <b>TEACHERS SERVICE COMMISSION</b></p> <p>The name of the ITT is: <b>SUPPLY, DELIVERY, INSTALLATION AND COMMISSIONING OF A TIER 3 MODULAR DATA CENTRE AND RE-LOCATION OF EQUIPMENT FROM CURRENT DATA CENTRE TO THE NEW DATA CENTRE AT THE HQ.</b></p>
TDS 2 TDS 2.1  TDS 2.2	<p><b>Definitions:</b></p> <p>The terms:</p> <ul style="list-style-type: none"> <li>i) The term “in writing” means communication in written form by mail <a href="mailto:ddprocurement@tsc.go.ke">ddprocurement@tsc.go.ke</a> or Post P.O Box Private Bag Nairobi</li> <li>ii) if the contexts or esquires, “singular” means “plural” and vice versa; and</li> <li>iii) “Day” means calendar day,</li> </ul> <p>The successful Tenderer will be expected to complete the performance of the Services by time specified in the schedule of requirements</p>
TDS 3  TDS 3.1  TDS 3.2  TDS 3.3	<p><b>Fraud and Corruption</b></p> <p>Teachers Service Commission requires compliance with the provisions of the Public Procurement and Asset Disposal Act, 2015 (the Act), Section 62 “Declaration not to engage in corruption”. The tender submitted by a person shall include a declaration that the person shall not engage in any corrupt or fraudulent practice and a declaration that the person or his or her sub-contractors are not debarred from participating in public procurement proceedings.</p> <p>Teachers Service Commission requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Tenders shall be required to complete and sign the “Certificate of Independent Tender Determination” annexed to the Form of Tender.</p> <p><b>Unfair Competitive Advantage</b> - Fairness and transparency in the tender process require that the firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. The preparation of this tender was not affiliated to any tenderer hence the Teachers Service Commission has provided all the necessary information in respect to fairness, competition to all interested firms.</p> <p>No firm provided consultancy services related to this tender.</p>

TDS Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
TDS 3.4	
TDS 4  TDS 4.1  TDS 4.2  TDS 4.3	<p><b>Eligible Tenderers</b></p> <p><b>The maximum number of JV members shall be a maximum of two (2) firms.</b></p> <p>Public Officers, of the Teachers Service Commission, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse in which they have a substantial or controlling interest shall not be eligible to tender or be awarded contract. Public Officers are also not allowed to participate in any procurement proceedings.</p> <p>A Tenderer shall not have a conflict of interest. Any Tenderer found to have a conflict of interest shall be disqualified as per the provisions of ITT 4.2 &amp; 4.3</p> <p>A firm that is a Tenderer (either individually or as a JV member) shall not participate in more than one tender. Such participation shall result in the disqualification of all Tenders in which the firm is involved.</p>
TDS 5  TDS 5.1	<p><b>Qualification of the Tenderer</b></p> <p>All Tenderers shall provide in Section IV, Tendering Forms, a preliminary description of the proposed work methodology and schedule, including drawings and charts, as necessary.</p>
TDS 6  TDS 6.1           TDS 6.2  TDS 6.3	<p><b>Contents of Tendering Document</b></p> <p><b>Sections of Tendering Document</b></p> <p>The tendering 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 ITT 10.</p> <p><b>PART 1: Tendering Procedures</b></p> <ul style="list-style-type: none"> <li>i) Section I - Instructions to Tenderers (ITT)</li> <li>ii) Section II - Tender Data Sheet (TDS)</li> <li>iii) Section III - Evaluation and Qualification Criteria</li> <li>iv) Section IV - Tendering Forms</li> </ul> <p><b>PART 2: Procuring Entity's Requirements</b></p> <ul style="list-style-type: none"> <li>v) Section VI - Schedule of requirements</li> <li>vi) Section V- Price Schedules</li> </ul> <p><b>PART 3: Contract</b></p> <ul style="list-style-type: none"> <li>vii) Section VII - General Conditions of Contract (GCC)</li> <li>viii) Section VIII - Special Conditions of Contract (SCC)</li> <li>ix) Section IX - Contract Forms</li> </ul> <p>The Invitation to Tender (ITT) Notice, Tender Document and Addenda obtained or Issued directly by the Teachers Service Commission shall form part of this tendering document.</p> <p>Unless obtained directly from Teachers Service Commission, Teachers Service Commission is not responsible for the completeness of the document, responses to requests for clarification, the Minutes of the pre-Tender meeting (if any), or Addenda to the tendering document in accordance with ITT 9. In case of any contradiction, documents obtained</p>

<b>TDS Reference</b>	<b>PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS</b>
TDS 6.4	<p>directly from Teachers Service Commission shall prevail.</p> <p>The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tendering document and to furnish with its Tender all information or documentation as is required by the tendering document.</p>
TDS 7 TDS 7.1	<p><b>Site Visit</b></p> <p>The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine the Site of the Required Services and its surroundings and obtain all information that may be necessary for preparing the Tender and entering into a contract for the Services. The costs of visiting the Site shall be at the Tenderer's own expense.</p>
TDS 9. TDS 9.1 TDS 9.2 TDS 9.3	<p><b>Clarification of Tender Documents</b></p> <p>A Tenderer requiring any clarification of the Tender Document shall contact Teachers Service Commission in writing Via Email <a href="mailto:ddprocurement@tsc.go.ke">ddprocurement@tsc.go.ke</a> or Via Post Addressed to The Head of Procurement Teachers Service Commission P.O Box Private Bag 00100 Nairobi.</p> <p>Teachers Service Commission will respond in writing to any request for clarification, provided that such request is received no later than 7 calendar days before the Tender Closing Date.</p> <p>Teachers Service Commission shall forward copies of its response to all tenderers who have acquired the Tender Documents in accordance with ITT 6.3, including a description of the inquiry but without identifying its source. Teachers Service Commission shall also promptly publish its response at the <a href="http://www.tsc.go.ke">www.tsc.go.ke</a> and <a href="http://www.tenders.go.ke">www.tenders.go.ke</a>. Should the clarification result in changes to the essential elements of the Tender Documents, the Commission shall amend the Tender Documents appropriately at least in one local daily newspaper following the procedure under ITT 8.4.</p>
TDS 10 TDS 10.1 TDS 10.2 TDS 10.3	<p><b>Amendment of Tender Documents</b></p> <p>At any time prior to the deadline for submission of Tenders, Teachers Service Commission may amend the Tendering document by issuing addenda.</p> <p>Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tendering document from the Teachers Service Commission in accordance with ITT 6.3. Teachers Service Commission shall also promptly publish the addendum on the Procuring Entity's web page in accordance with ITT 8.4.</p> <p>To give prospective Tenderers reasonable time in which to consider an addendum in preparing their Tenders, Teachers Service Commission shall extend, as necessary, the deadline for submission of Tenders, in accordance with ITT 24.2 below.</p>
TDS 11 TDS 11.1	<p><b>Preparation of Tenders</b></p> <p><b>Cost of Tendering</b></p> <p>The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and Teachers Service Commission shall not be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.</p>
TDS 12 TDS 12.1	<p><b>Language of Tender</b></p> <p>The Tender as well as all correspondence and documents relating to the Tender</p>

TDS Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	exchanged by the Tenderer and Teachers Service Commission shall be written in the English language. Supporting documents and printed literature that are part of the Tender may be in another language provided they are accompanied by an accurate translation of the relevant passages into the English language, in which case, for purposes of interpretation of the Tender, such translation shall govern.
TDS 13.	<b>Documents Comprising the Tender</b>
TDS 13.1	<p>The Tender shall comprise the following:</p> <ol style="list-style-type: none"> <li>a) <b>Form of Tender</b> prepared in accordance with ITT 14;</li> <li>b) <b>Schedules:</b> Schedules or Requirements and priced Activity Schedule completed in accordance with ITT 14 and ITT 16;</li> <li>c) <b>Tender Security</b> in accordance with ITT 21.1;</li> <li>d) <b>Authorization:</b> written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 22.3;</li> <li>e) <b>Qualifications:</b> documentary evidence in accordance with ITT 19 establishing the Tenderer's qualifications to perform the Contract if its Tender is accepted;</li> <li>f) <b>Tenderer's Eligibility:</b> documentary evidence in accordance with ITT 19 establishing the Tenderer's eligibility to Tender;</li> <li>g) <b>Conformity:</b> documentary evidence in accordance with ITT 18, that the Services conform to the tendering document; and</li> <li>h) Any other document required <b>under Section iii of this tender document.</b></li> </ol>
TDS 13.2.	In addition to the requirements under ITT 13.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a Form of intent to execute a Joint Venture Agreement in the event of a successful Tender shall be signed by all members and submitted with the Tender, together with a copy of the proposed Agreement. The Tenderer shall chronologically serialize pages of all tender documents submitted. The Tenderer shall furnish in the Form of Tender information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Tender.
TDS 14	<b>Form of Tender and Activity Schedule</b>
TDS 14.1	The Form of Tender and Priced Activity Schedule shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.
TDS 15	<b>Alternative Tenders</b>
TDS 15.1	Alternative Tenders shall not be considered.
TDS 17	<b>Currencies of Tender and Payment</b>
TDS 17.1	The currency of the Tender and the currency of payments shall be Kenya Shillings.
TDS 20	<b>Period of Validity of Tenders</b>
TDS 20.1	Tenders shall remain valid for a period of 150 days from the date of tender opening A Tender valid for Teachers Service Commission shall reject a shorter period as non-responsive.
TDS 20.2	In exceptional circumstances, prior to the expiration of the Tender validity period, Teachers Service Commission may request Tenderers to extend the period of validity of their Tenders to a maximum of 30 calendar days.
TDS 21	<b>Tender Security</b>
TDS 21.3	The Tenderer shall furnish as part of its Tender, a Tender security of <b>Kshs. 200,0000 (Two</b>



TDS Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	<p><i>Hundred Thousand only</i>) in any of the following forms at the Tenderer's option:</p> <ul style="list-style-type: none"> <li>i) a bank guarantee;</li> <li>ii) a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Authority; or</li> <li>iii) a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya,</li> </ul>
TDS 21.4	<p>If a Tender Security is specified pursuant to ITT 20.1, any Tender not accompanied by a substantially responsive Tender Security shall be rejected by the Procuring Entity as non-responsive.</p>
TDS 21.5	<p>If a Tender Security is specified pursuant to ITT 20.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's signing the contract and furnishing the Performance Security pursuant to ITT 46.</p>
TDS 21.6	<p>The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required Performance Security. The Procurement Entity shall also return tender security to the tenderers where;</p> <ul style="list-style-type: none"> <li>a) The procurement proceedings are terminated</li> <li>b) All tenders were determined non-responsive and</li> <li>c) Where a bidder decline to extent the tender validity period.</li> </ul>
TDS 21.7	<p>The Tender Security may be forfeited or the Tender-Securing Declaration executed:</p> <ul style="list-style-type: none"> <li>a) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer in the Form of Tender, or any extension thereto provided by the Tenderer; or</li> <li>b) if the successful Tenderer fails to: <ul style="list-style-type: none"> <li>i) sign the Contract in accordance with ITT 45; or</li> <li>ii) furnish a performance security in accordance with ITT 46.</li> </ul> </li> </ul>
TDS 21.8	<p>The Tender Security or Tender-Securing Declaration of a JV must be in the name of the JV that submits the Tender. If the JV has not been legally constituted into a legally enforceable JV at the time of Tendering, the Tender security or Tender-Securing Declaration shall be in the names of all future members as named in the Form of intent referred to in ITT 4.1 and ITT 12.2.</p>
TDS 21.9	<p>If a Tender Security is not required in the <b>TDS</b>, pursuant to ITT 20.1, and</p> <ul style="list-style-type: none"> <li>c) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer on the Form of Tender; or</li> <li>d) if the successful Tenderer fails to: <ul style="list-style-type: none"> <li>iii) sign the Contract in accordance with ITT 45; or</li> <li>iv) furnish a performance security in accordance with ITT 46;</li> </ul> </li> </ul> <p>the Teachers Service Commission may, if provided for <b>in the TDS</b>, declare the Tenderer ineligible to be awarded a contract by the Commission for a period of time as stated <b>in the TDS</b>.</p>



TDS Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
<p>TDS 22</p> <p>TDS 22.1</p> <p>TDS 22.2</p> <p>TDS 22.3</p> <p>TDS 22.4</p> <p>TDS 22.5</p>	<p><b>Format and Signing of Tender</b></p> <p>The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 13, bound with the volume containing the Form of Tender, and clearly marked <b>“Original</b>. “In addition, the Tenderer shall submit <b>ONE COPY</b> of the Tender and clearly marked as <b>“COPY”</b> In the event of discrepancy between them, the original shall prevail.</p> <p>Tenderers shall mark as <b>“CONFIDENTIAL”</b> information in their Tenders which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.</p> <p>The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as evidenced by a power of Attorney. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender document shall be signed or initialed by the person signing the Tender.</p> <p>In case the Tenderer is a JV, the Tender shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.</p> <p>Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender</p>
<p>TDS 23</p> <p>TDS 23.1</p> <p>TDS 23.2</p>	<p><b>Submission and Opening of Tenders</b></p> <p><b>Sealing and Marking of Tenders</b></p> <p>Depending on the sizes or quantities or weight of the tender documents, a tenderer may use an envelope, package or container. The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to <b>the Secretary Teachers Service Commission P.O Box Private Bag 00100 Nairobi</b> and a warning not to open before <b>TUESDAY 31<sup>ST</sup> MAY, 2022 at 9.00 am</b>. Within the single envelope, package or container, the Tenderer shall place the following separate, sealed envelopes:</p> <ul style="list-style-type: none"> <li>a) in an envelope or package or container marked <b>“ORIGINAL”</b>, all documents comprising the Tender, as described in ITT13; and</li> <li>b) in an envelope or package or container marked <b>“COPIES”</b>, all required copies of the Tender;</li> </ul> <p>The inner envelopes or packages or containers shall</p> <ul style="list-style-type: none"> <li>a) Bear the name Teachers Service Commission Private Bag Nairobi</li> <li>b) Bear the name and address of the Tenderer; and</li> <li>c) Bear the name and Reference number of the Tender. <b>TSC/T/039/2021-2022 - SUPPLY, DELIVERY, INSTALLATION AND COMMISSIONING OF A TIER 3 MODULAR DATA CENTRE AND RE-LOCATION OF EQUIPMENT FROM CURRENT DATA CENTRE TO THE NEW DATA CENTRE.</b></li> </ul> <p>If an envelope, package, or container is not sealed and marked as required Teachers</p>

TDS Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	Service Commission will assume no responsibility for the misplacement or premature opening of the Tender. Tenders misplaced or opened prematurely will not be accepted.
TDS 24  TDS 24.1  TDS 24.2	<p><b>Deadline for Submission of Tenders</b></p> <p>Tenders must be received by Teachers Service Commission at the tender box placed Teachers Service Commission Podium Wing Ground Floor on or before <b>TUESDAY 31<sup>ST</sup> MAY, 2022 at 9.00am.</b></p> <p>Teachers Service Commission may, at its discretion, extend the deadline for the submission of Tenders by amending the tendering document in accordance with ITT9, in which case all rights and obligations of Teachers Service Commission and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended</p>
TDS 25  TDS 25.1  TDS 25.2	<p><b>Late Submission of Tenders</b></p> <p>Teachers Service Commission shall not consider any Tender that arrives after the dead line for submission <b>TUESDAY 31<sup>ST</sup> MAY, 2022 at 9.00am</b></p> <p>Any Tender received by Teachers Service Commission after the deadline for submission of Tenders shall be declared late, rejected, and returned un opened to the Tenderer</p>
TDS 26  TDS 26.1	<p><b>Withdrawal, Substitution and Modification of Tenders</b></p> <p>b) Received by the Teachers Service Commission prior on or before <b>TUESDAY 31<sup>ST</sup> MAY, 2022 at 9.00am</b> accordance with ITT 23.</p>
TDS 27  TDS 27.1  TDS 27.6  TDS 27.7  TDS 27.8  TDS 27.9	<p><b>Tender Opening</b></p> <p>Teachers Service Commission shall, at the Tender opening, publicly open and read out all Tenders received by before <b>TUESDAY 31<sup>ST</sup> MAY, 2022 at 9.00am.</b> at the Ground Floor Podium Wing in the presence of Tenderers' designated representatives and anyone who choose to attend.</p> <p>Only Tenders and discounts that are opened and read out at Tender Opening shall be considered further. The Form of Tender and the Priced Activity Schedule shall be initialed by the Tender Opening Committee of the Teachers Service Commission and the Tenderer's representative attending Tender opening exercise.</p> <p>Teachers Service Commission shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT25.1).</p> <p>Teachers Service Commission shall prepare are record of the Tender opening that shall include, as a minimum:</p> <ul style="list-style-type: none"> <li>a) The name of the Tenderer and whether there is a withdrawal, substitution, or modification;</li> <li>b) The presence or absence of a Tender-Securing Declaration,</li> <li>c) Number of pages of each tender document submitted</li> </ul> <p>The Tenderers' representatives shall be requested to sign the Tender Register. The omission of a Tenderer's signature on the register shall not invalidate the contents and effect of the record. A copy of the tender opening register shall be distributed to Tenderer upon an official request.</p>
TDS 28	<b>Evaluation and Comparison of Tenders</b>

TDS Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
TDS 28.1  TDS 28.2  TDS 28.3	<p><b>Confidentiality</b></p> <p>Information relating to the evaluation of Tenders and recommendation of contract award, shall not be disclosed to Tenderers or any other persons not officially concerned with the Tendering process until information on the Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 41.</p> <p>Any effort by a Tenderer to influence Teachers Service Commission in the evaluation or contract award decisions may result in the rejection of its Tender.</p> <p>Notwithstanding ITT 27.2, from the time of Tender opening to the time of Contract Award, if any Tenderer wishes to contact Teachers Service Commission on any matter related to the Tendering process, it should do so in writing</p>
TDS 29  TDS 29.1  TDS 29.2	<p><b>Clarification of Tenders</b></p> <p>To assist in the examination, evaluation, and comparison of Tenders, and qualification of the Tenderers, Teachers Service Commission may, at its discretion, ask any tenderer for clarification of its Tender including breakdowns of the prices in the Activity Schedule, and other information that Teachers Service Commission may require. Any clarification submitted by a Tenderer in respect to its Tender and that is not in response to a request by Teachers Service Commission shall not be considered. Teachers Service Commission may request for clarification and the response shall be delivered in writing within a maximum of three (3) calendar days. No change, including any voluntary increase or decrease, in the prices or substance of the Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Teachers Service Commission in the evaluation of the Tenders, in accordance with ITT32.</p> <p>If a Tenderer does not provide clarifications of its Tender within three (3) calendar days the Teachers Service Commission may reject the tender.</p>
TDS 31  TDS 31.1  TDS 31.2          TDS 31.3	<p><b>Determination of Responsiveness</b></p> <p>Teachers Service Commission determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT 12.</p> <p>A substantially responsive Tender is one that meets the requirements of the tendering document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:</p> <ul style="list-style-type: none"> <li>a) If accepted, would: <ul style="list-style-type: none"> <li>i. affect in any substantial way the scope, quality, or performance of the Non-Consulting Services specified in the Contract; or</li> <li>ii. limit in any substantial way, inconsistent with the tendering document, the Procuring Entity's rights or the Tenderer's obligations under the Contract; or</li> </ul> </li> <li>b) If rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.</li> </ul> <p>Teachers Service Commission shall examine the technical aspects of the Tender submitted in accordance with ITT 18 and ITT 19, in particular, to confirm that all requirements of Section VII, Teachers Service Commission Requirements have been met</p>

TDS Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
TDS 31.4	without any material deviation or reservation, or omission. If a Tender is not substantially responsive to the requirements of tendering document, it shall be rejected by Teachers Service Commission and shall not subsequently be made responsive by correction of the material deviation, reservation, or omission.
TDS 31.6	Provided that a Tender is substantially responsive, Teachers Service Commission may request that the Tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial non- conformities or omissions in the Tender related to documentation requirements. Requesting information or documentation on such non-conformities shall not be related to any aspect of the price of the Tender. Failure of the Tenderer to comply with the request may result in the rejection of its Tender.
TDS 31.7	<b><i>PRICE ADJUSTMENT SHALL NOT BE APPLICABLE/ALLOWED DURING THE CONTRACT PERIOD.</i></b>
TDS 32	<b>Arithmetical Errors</b>  The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person whatsoever.
TDS 33 TDS 33.1	<b>Conversion to Single Currency</b>  For evaluation and comparison purposes, the currency (ies) of the Tender shall be converted into Kenya Shillings using the Exchange Rate Provided by Central Bank of Kenya.
TDS 34 TDS 34.1	<b>Margin of Preference and Reservations</b>  Margin of preference on local service providers shall not be applied since this tender is reserved for Local Citizen Contractors Only.

TDS Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
<p>TDS 35</p> <p>TDS 35.1</p> <p>TDS 35.2</p> <p>TDS 35.3</p>	<p><b>Evaluation of Tenders</b></p> <p>Teachers Service Commission shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies, Teachers Service Commission shall determine the Best Evaluated Tender. This is the Tender of the Tenderer that meets the qualification criteria and whose Tender has been determined to be:</p> <ul style="list-style-type: none"> <li>a) Substantially responsive to the tendering document; and</li> <li>b) The lowest evaluated cost.</li> </ul> <p>In evaluating the Tenders, Teachers Service Commission will determine each evaluated Tender cost by adjusting the Tender price as follows:</p> <ul style="list-style-type: none"> <li>a) Price adjustment due to discounts offered in accordance with ITT 16.4;</li> <li>b) price adjustment due to quantifiable non-material or non-conformities in accordance with ITT 31.3;</li> <li>c) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT33; and</li> <li>d) Any additional evaluation factors specified in Section III, Evaluation and Qualification Criteria.</li> </ul> <p>The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be considered in Tender evaluation. Multiple contracts or lots, <b>SHALL NOT APPLY</b></p>
<p>TDS 36</p> <p>TDS 36.1</p>	<p><b>Comparison of Tenders</b></p> <p>Teachers Service Commission shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 35.2 to determine the Tender that has the lowest evaluated cost.</p>
<p>TDS 37</p> <p>TDS 37.1</p> <p>TDS 37.2</p> <p>TDS 37.3</p>	<p><b>Abnormally Low Tenders and Abnormally High Tenders</b></p> <p><b>Tenders Abnormally Low Tenders</b></p> <p>An Abnormally Low Tender is one where the Tender price, in combination with other elements of the Tender, appears so low that it raises material concerns as to the capability of the Tenderer in regards to the Tenderer's ability to perform the Contract for the offered Tender Price.</p> <p>In the event of identification of a potentially Abnormally Low Tender, Teachers Service Commission shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Tender document. <i>The Tenderer shall submit clarification within three (3) working days' failure to which the Commission may disqualify the tender.</i></p> <p>After evaluation of the price analyses, in the event that the Procuring Entity determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, Teachers Service Commission shall reject the Tender.</p>

TDS Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
TDS 37.4	<p><b>Abnormally High Tenders</b></p> <p>An abnormally high price is one where the tender price, in combination with other constituent elements of the Tender, appears unreasonably too high to the extent that the Teachers Service Commission is concerned that it may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Tenderers is compromised.</p>
TDS 37.5	<p>In case of an abnormally high price, Teachers Service Commission shall make a survey of the market prices, check if the estimated cost of the contract is correct and review the Tender Documents to check if the specifications, scope of work and conditions of contract are contributory to the abnormally high tenders. Teachers Service Commission may also seek written clarification from the tenderer on the reason for the high tender price. Teachers Service Commission shall proceed as follows:</p> <ol style="list-style-type: none"> <li>a) If the tender price is abnormally high based on wrong estimated cost of the contract, Teachers Service Commission <b>shall not accept the tender</b>.</li> <li>b) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, Teachers Service Commission shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work and conditions of contract, as the case maybe.</li> </ol>
TDS 38  TDS 38.1   TDS 38.2	<p><b>Unbalanced and/or Front-Loaded Tenders</b></p> <p>If in the Teachers Service Commission opinion, the Tender that is evaluated as the lowest evaluated price is seriously unbalanced and/or front-loaded, Teachers Service Commission may require the Tenderer to provide written clarifications. Clarifications that must be submitted within <b>three (3) calendar days</b> may include detailed price analyses to demonstrate the consistency of the tender prices with the scope of works, proposed methodology, schedule and any other requirements of the Tender document.</p> <p>After the evaluation of the information and detailed price analyses presented by the Tenderer, Teachers Service Commission may as appropriate:</p> <ol style="list-style-type: none"> <li>a) Accept the Tender; or</li> <li>b) require that the total amount of the Performance Security be increased at the expense of the Tenderer to a level not exceeding 30% of the Contract Price; or</li> <li>c) agree on a payment mode that eliminates the inherent risk of Teachers Service Commission paying too much for undelivered works; or</li> <li>d) Reject the Tender</li> </ol>
TDS 39  TDS 39.1  TDS 39.2	<p><b>Qualification of the Tenderer</b></p> <p>Teachers Service Commission shall determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender is eligible and meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.</p> <p>The determination shall be based upon an examination of the documentary evidence of the</p>



TDS Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
TDS 39.3	<p>Tenderer's qualifications submitted by the Tenderer, pursuant to ITT 18. The determination shall not take into consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates, subcontractors or any other firm(s) different from the Tenderer that submitted the Tender.</p> <p>An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event Teachers Service Commission shall proceed to the Tenderer who offers a substantially responsive Tender with the next lowest evaluated cost to make a similar determination of that Tenderer's qualifications to perform satisfactorily.</p>
TDS 40  TDS 40.1	<p><b>Procuring Entity's Right to Accept Any Tender, and to Reject Any or All Tenders</b></p> <p>Teachers Service Commission reserves the right to accept or reject any Tender, and to annul the Tendering process and reject all Tenders at any time prior to Contract Award, without there by incurring any liability to Tenderers. In case of annulment, all Tenders submitted and specifically, Tender securities, shall be promptly returned to the Tenderers.</p>
TDS 41  TDS 41.1	<p><b>Award of Contract</b></p> <p>Award Criteria</p> <p>Teachers Service Commission shall award the Contract to the successful tenderer whose tender has been determined to be the Lowest Evaluated Tender.</p>
TDS 42  TDS 42.1	<p><b>Notice of Intention to enter in to a Contract</b></p> <p>Upon award of the contract and Prior to the expiry of the Tender Validity Period Teachers Service Commission shall issue a Notification of Intention to Enter into a Contract and Notification of a ward to the successful bidder after Stands Still period of 14 working days. All unsuccessful tenderers shall also get letters of notification in which shall contain, at a minimum, the following information:</p> <ul style="list-style-type: none"> <li>a) The name and address of the Tenderer submitting the successful tender;</li> <li>b) The Contract price of the successful tender;</li> <li>c) a statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was unsuccessful, unless the price information in(c) above already reveals the reason;</li> <li>d) the expiry date of the Standstill Period; and</li> <li>e) instructions on how to request a debriefing and/or submit a complaint during the stand still period;</li> </ul>
TDS 43  TDS 43.1  TDS 43.2	<p><b>Stand still Period</b></p> <p>The Contract shall not be signed earlier than the expiry of a Standstill Period of 14 calendar days to allow any dissatisfied tender to launch a complaint. Where only one Tender is submitted, the Standstill Period shall not apply.</p> <p>Where a Standstill Period applies, it shall commence from the date the Teachers Service Commission has transmitted to each Tenderer the Notification of Intention to Enter into a Contract with the successful Tenderer.</p>

TDS Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
TDS 44  TDS 44.1  TDS 44.2	<p><b>Debriefing by the Procuring Entity</b></p> <p>On receipt of the Teachers Service Commission Notification of Intention to Enter into a Contract referred to in ITT 42, an unsuccessful tenderer may make a written request to Teachers Service Commission for a debriefing on specific issues or concerns regarding their tender. The Commission shall provide the debriefing with in five days of receipt of the request.</p> <p>Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending such a debriefing meeting</p>
TDS 45  TDS 45.1	<p><b>Letter of Award</b></p> <p>Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 43.1, upon addressing a complaint that has been filed within the Standstill Period, and Teachers Service Commission shall transmit the Letter of Award to the successful Tenderer. The letter of award shall request the successful tenderer to furnish the Performance Security within 21 days of the date of the letter.</p>
TDS 46  TDS 46.1  TDS 46.2  TDS 46.3	<p><b>Signing of Contract</b></p> <p>Upon the expiry of the fourteen days of the Notification of Intention to enter into contract and upon the parties meeting their respective statutory requirements Teachers Service Commission shall send the successful Tenderer the Contract Agreement.</p> <p>Within fourteen (14) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to Teachers Service Commission</p> <p>The written contract shall be entered into within the period specified in the notification of award and before expiry of the tender validity period</p>
TDS 47  TDS 47.1	<p><b>Performance Security</b></p> <p>The successful Tenderer shall furnish the Commission with a Performance Security equivalent to 10% of the contract price inform of a bank guarantee from a reputable bank operating in Kenya regulated by Central Bank of Kenya.</p>
TDS 48  TDS 48.1	<p><b>Publication of Procurement Contract</b></p> <p>Within fourteen days after signing the contract, Teachers Service Commission shall publish the awarded contract at its websites <a href="http://www.tsc.go.ke">www.tsc.go.ke</a> and on the Website of the Authority <a href="http://www.tenders.go.ke">www.tenders.go.ke</a> . At the minimum, the notice shall contain the following information:</p> <ol style="list-style-type: none"> <li>a) Name and address of the Teachers Service Commission;</li> <li>b) Name and reference number of the contract being awarded, a summary of its scope and the selection method used;</li> <li>c) The name of the successful Tenderer, the final total contract price, the contract duration.</li> <li>d) Dates of signature, commencement and completion of contract;</li> <li>e) Names of all Tenderers that submitted Tenders, and their Tender prices as read out at Tender opening.</li> </ol>
TDS 49  TDS 49.1	<p><b>Adjudicator</b></p> <p>Teachers Service Commission proposes the person named Chartered Institute of Arbitrator - Nairobi to be appointed as adjudicator or under the Contract, at an hourly fee</p>



TDS Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	of Kshs. 2,000 plus reimbursable expenses. If the Tenderer disagrees with this proposed appointment, the Tenderer shall so state in his Bid document. If, in the Form of Acceptance, the Commission has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Special Conditions of Contract at the request of either party.
TDS 50	<b>Procurement Related Complaints and Administrative Review</b>
TDS 50.1	The procedures for making a Procurement-related Complaint shall be done as per Section 167 of the Public Procurement and Asset Disposal Act 2015
TDS 50.2	A request for administrative review shall be made in the form provided under contract forms

### SECTION III - EVALUATION AND QUALIFICATION CRITERIA

#### 1. General Provision

Wherever a Tenderer is required to state a monetary amount, Tenderers should indicate the Kenya Shilling. This section contains the criteria that Teachers Service Commission shall use to evaluate tender and qualify tenderers. No other factors, methods or criteria shall be used other than specified in this tender document. The Tenderer shall provide all the information requested in the forms included in Section IV, Tendering Forms.

##### a) Evaluation and contract award Criteria

Teachers Service Commission shall use the criteria and methodologies listed in this Section to evaluate tenders and arrive at the Lowest Evaluated Tender. The tender that:

- i. meets the qualification criteria,
- ii. has been determined to be substantially responsive to the Tender Documents, and
- iii. is determined to have the Lowest Evaluated Tender price shall be selected for award of contract.

#### 2. Preliminary examination for Determination of Responsiveness

Teachers Service Commission will start by examining all tenders to ensure they meet in all respects of the eligibility criteria and other requirements in the ITT, and that the tender is complete *in all* aspects in meeting the requirements of “*Part 2– Teachers Service Commission Services Requirements*”, including checking for tenders with unacceptable errors, abnormally low tenders, abnormally high tenders and tenders that are front loaded. The Standard Tender Evaluation Report for Goods and Works for evaluating Tenders provides clear guidelines on how to deal with review of these requirements. Tenders that do not pass the Preliminary Examination will be considered irresponsive and will not be considered further.

### PRELIMINARY MANDATORY EVALUATION REQUIREMENTS/CRITERIA

Tenderers **MUST** provide the following mandatory requirements for preliminary evaluation, failure to provide the requirements below, will lead to the tenderer being eliminated from the tender evaluation exercise and shall be declared non-responsive:

S/NO.	REQUIREMENTS	RESPONSIVE OR NON RESPONSIVE
MR1	Valid copy of Certificate of Incorporation/ Registration	
MR2	Must Submit a copy of valid Tax Compliance certificate/Exemption Certificate from Kenya Revenue Authority.	
MR3	Copy of valid Trade License/Business permit from relevant county government	
MR4	Must provide Evidence of physical address (attach documentary evidence in form of any of the following: - lease agreement/title deed or payment for utilities e.g., water bills or electricity bills)	
MR5	Must fill, sign and stamp Form of Tender in the Format provided- The form of tender must be fully filled on the <i>Tenderer's Letterhead</i> as provided for under Section IV. <b>The form of tender shall be as per ITT 14.1</b>	
MR6	Must prepare, fill and stamp the <b>Price/Activity Schedule</b> on a company's stationery with its letterhead clearly showing the Tenderer's complete name and business address in the format provided and signed by an authorized officer appointed and mandated by the Company through the Power of Attorney to commit the organization.  The total price in the <b>Price/Activity Schedule</b> must tally with tender price in the Form of Tender. Any discrepancy between the tender price in the Price Schedule and the total price in the Form of Tender may lead to disqualification.	
MR7	Must fill all the information required, sign and stamp Confidential Business Questionnaire in format provided as provided for under Section IV.	
MR8	Must fill, sign and stamp the Certificate of Independent tender Determination in the format provided as provided under section IV.	
MR9	Must fill the Self-Declaration that form the Person/ Tenderer is not debarred in the matter of the Public Procurement and Asset Disposal Act 2015 in the format provided under Section IV	
MR10	Must fill, sign and stamp the Self-Declaration form that the Person/ Tenderer will not engage in any corrupt or fraudulent practice in the format provided under section IV.	
MR11	Must fill sign and stamp the declaration and commitment to the code of ethic form in the format provided under Section IV .	
MR12	Must provide an original Tender Security of <b>Kshs. 200,000.00</b> in form of a Bank Guarantee from a reputable financial institution regulated by Central Bank of Kenya or an Insurance Company approved by PPRA valid for 180 days in the format provided.	
MR13	Must fill, sign and stamp the Tenderer Information Form in the format provided under section IV Form 6.	
MR14	Must fill, sign and stamp tenderers Joint Venture (JV) member's information form in the format provided in case of a JV under Section IV.	
MR15	Must attach a copy of current CR12 certificate showing list of company directors issued within the last three (3) months or a copy of ID for directors in case of a Sole Proprietor or Partnership.	
MR16	Must attach the letter of authorization/dealership from the manufacture. The Manufacturer should also fill, sign and stamp the Manufacturers authorization. (Provide a link to the Manufacturers website for further confirmation or phone contacts for verification).	

S/NO.	REQUIREMENTS	RESPONSIVE OR NON RESPONSIVE
MR17	Must Attach a filled, signed and stamped mandatory site visit/pre-bid conference form in the format provided. The pre-bid form must be signed and stamped by TSC representative and the bidder. <b>The pre-bid confidence shall be held on Wednesday 25<sup>th</sup> May, 2022 at 10.00 a.m.</b>	
MR18	Must attach brochure of the proposed items to be supplied with a detailed technical specification and other relevant information.	
MR19	The tenderer must have successfully executed at least one (1) similar assignment/project (Upgrade and Access Control a Data Centre) in any reputable organization in Kenya or East Africa preferably in government institution that have been satisfactorily and substantially completed as a prime contractor, or joint venture member or sub-contractor each of minimum value Kenya shillings <b>30,000,000.00</b> equivalents. <i>Attach a copy of sign contract, LPO/LSO and a reference letter signed by the person authorized by the Power of Attorney clearly indicating the specific assignment, the contract amount and the duration of the contract.</i>	
MR20	Must attach the Power of Attorney giving the full name and a sample of the signature for the officer authorized to commit the organization. All forms and requirements of signature will only be signed by the authorized officer.	
MR21	Must provide affidavit on litigation history for last two (2) years from the date of tender opening. The affidavit must be signed by an Advocate of the High Court or from a Court of Law.	
MR22	Must submit one original and a copy of bid documents properly bound and presentable. Loose documents or documents presented in Box or spring files will NOT be accepted.	
MR23	The tender/bid documents must be serially paginated from the first to the last page. <i>Each page must be signed and stamp.</i>	
MR24	Must fill, sign and stamp Tender Security Declaration Form in the Format Provided.	
MR25	Bidders must prepare and attach a commitment letter on a stationery in its letterhead clearly showing complete name and business address that it shall Supply, Deliver, Install, Test and Commission a <b>Tier 3 Modular Data Centre and Re-Location of Equipment from Current Data Centre to The New Data Centre</b> as provided under Section V (Schedule of Requirements) and clause 5 Description of Service. <i>Attach a commitment letter on stationary letterhead signed by an authorized officer with a power of attorney addressing each cover benefit.</i>	
MR26	The tenderer must be registered by the National Construction Authority on category Two (NCA2), under Electrical Engineering Service. <i>Attach a valid NCA 2 certificate under Electrical Engineering Service.</i>	
MR27	The tenderer must be accredited by the ICT Authority of Kenya on Implementation of Data Centers <i>Attach a valid certificate/license from ICTA or CAK</i>	
MR28	Must fill, sign and stamp JV Member Information Form ( <i>If Applicable</i> )	
MR29	Must fill, sign and stamp Tenderer's Key Personnel Form (Form PER1)	
MR30	Must fill, sign and stamp Tenderer's Key Personnel Resume Declaration Form (PER2) in the format provided	
MR31	Must fill, sign and stamp Financial Capability Form (FIN 3.1) in the format	

S/NO.	REQUIREMENTS	RESPONSIVE OR NON RESPONSIVE
	provided	
MR32	Must fill, sign and stamp Financial Resources Form (FIN 3.3) in the format provided.	
MR33	Must fill, sign and stamp Current/On-going Contracts (FIN 3.4) in the format provided.	
MR34	Must fill, sign and stamp Specific Work and Management Experience Form (EXP FORM 4.2) in the format provided.	
<b>RESPONSIVENESS</b>		

**Note: Tenderers who will not meet the above requirements will be declared non-responsive and their bids will not be evaluated further. Please note that the authenticity of the above documents provided may be verified with the issuing/relevant authority and any forgery or false presentation in any one of the above shall lead to automatic disqualification and render the tenderers bid nonresponsive.**

**TSC reserves the right to carryout independent investigations to verify the accuracy of information provided without notifying the tenderer.**

#### **TECHNICAL EVALUATION REQUIREMENTS/CRITERIA**

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

The Technical Evaluation shall be done in two stages namely;

- a) Responsiveness to technical specifications and compliance to the requirements;
- b) Technical experience and capacity to perform the assignment

#### **TECHNICAL SPECIFICATION AND REQUIREMENTS EVALUATION CRITERIA 1**

Bidders are required to ensure they indicate compliance with Technical Criteria I by indicating YES/NO RESPONSIVENESS TO THE TENDER DOCUMENT. Any Bidder Who Responds with NO will be disqualified and will not be considered further. Further bidders are required to provide a brief description on the level of compliance

<b>9.1 Modular Tier III Data Centre</b>				
No.	Feature	Minimum Requirement	Bidders Response	Brief description on level of Compliance

1	Skylight	Upon receiving the fire alarm signal, the skylight controller opens the skylights by interacting with the magnetic locks, generates an audible and visual alarm signal simultaneously, and reports the alarm signal to the equipment room management system.		
2	Aisle Door	<ul style="list-style-type: none"> <li>i. Aisle containment access control and automatic sliding doors are secured to cabinets by screws to ensure that the cold aisle containment is properly sealed and separated</li> <li>ii. Aisle containment access control should be deployed to guarantee the security, the access control should support biometric, IC cards and password;</li> </ul>		
3	eLight	The light should interact with the status of the module when the module has an alarm. Critical alarm, Major alarm, Minor alarm, and Warning alarm can be distinguished and can be indicated by different light colors.		
4	Cable Tray	The module DC should provide electric and extra-low voltage (ELV) cable troughs, and support engineering-free installation and expansion in the unit of cabinet		

## 9.2 Power Distribution Unit (PDU)

No.	Feature	Minimum Requirement	Bidders Response	Brief description on level of Compliance
1	Integrated Power Distribution Unit for IT and Precision Air Conditioner	<ul style="list-style-type: none"> <li>i. The CE certificate and the CE test report with complete pages should be provided for the precision PDC.</li> <li>ii. The surge protection should be no less than level C.</li> <li>iii. The air conditioner and IT power distribution are integrated in the power distribution system to facilitate cabling and save space.</li> <li>i. Branch monitoring parameters <ul style="list-style-type: none"> <li>Rated current, actual current, load rate, switch status, and temperature of each branch</li> <li>The measurement precision of the branch voltage and current should be at least 0.5%; the measurement precision of the active and apparent power should be at least 2%, and the electric energy measurement precision should be at least 2%.</li> </ul> </li> <li>ii. The LCD screen should support audible</li> </ul>		

		and visual alarms. The Alarms can be classified into warning, major, and critical based on the severity.		
2	Power Distribution Unit for UPS Input and Output	<ul style="list-style-type: none"> <li>i. Supporting ATS input with capacity of 630A.</li> <li>ii. Supporting multi output configuration including 250A, 160A.</li> <li>iii. The dimensions (W x D x H) of the power distribution unit should be 800 mm x 850 mm x 2000 mm</li> <li>iv. The detection precision of voltage and current reach 0.5 class, the active power, inactive power reach 1 class, power consuming detection reach 1 class.</li> </ul>		

### 9.3 Uninterrupted Power Supply (UPS)

No.	Feature	Minimum Requirement	Bidders Response	Brief description on level of Compliance
1	Modular UPS Specification & Requirement	<ul style="list-style-type: none"> <li>i. The rated capacity of modular UPS system should be no less than 120 KVA. The rated capacity of power module shall be between 20Kva to 50kVA and support hot swap.</li> <li>ii. At online mode, the system efficiency of UPS should be 96% at half rated load. At ECO mode, the operating efficiency shall be no less than 99%.</li> <li>iii. The modular UPS system that the bidders provide should use concentrated bypass and the bypass module shall be hot swappable. A built-in bypass should be provided.</li> <li>iv. The modular UPS system should support self-load function to debug easily</li> <li>v. Output power factor: 1</li> <li>vi. Battery charger capacity: The charging capacity shall not be less than the 10% of single module capacity</li> </ul>		
2	Cabinet System Specification & Requirement	<ul style="list-style-type: none"> <li>i. The cabinet dimension: 600 mm x 1200 mm x 2000 mm</li> <li>ii. The cabinet complies with IEC 60297-2 and ANSI/EIA RS-310-D and is compatible with the 19" rack international standard.</li> <li>iii. The front and rear doors of the cabinet are ventilated mesh doors, and the ventilation rate is not less than 70%.</li> <li>iv. The static bearing capacity is not less than 1500 kg, and the test report issued by a third-party authority is provided.</li> </ul>		
3	Cooling System	<ul style="list-style-type: none"> <li>i. The manufacturer must be ISO 9001-, ISO 14001-, ISO 27001-, and OHSAS</li> </ul>		

	Specification & Requirement	<p>18001-certified.</p> <p>ii. The manufacturer must comply with the RoHS, REACH, and WEEE statement for the standard PAC unit to ensure that the PACs do not contain compounds harmful to humans, animals, and to protect human health and environmental safety. The RoHS, REACH, and WEEE statement by the National Certified Institution of the Original Country should be provided</p> <p>iii. The cooling system should be equipped with high efficiency and the cooling capacity can be adjusted <b>steplessly</b> between 10% and 100%. To save energy, the cooling capacity should be adjusted according to heat load. The compressor crankcase should be equipped with an electric heater to improve compressor reliability.</p> <p>iv. The cooling system indoor unit should use high efficiency, energy-saving variable speed EC fans with N+1 redundancy and hot-swapped design, each fan failure will not affect the performance.</p> <p>v. The cooling system electronic expansion valve has its own power module and driver that will close the valve normally during sudden power-down situations, which will prevent liquid flow back to the compressor and ensures system reliability.</p> <p>vi. The cooling system should support self-diagnose malfunctions. When a fault occurs, the fault diagnosis function is enabled. It excludes irrelevant causes of faults and quickly guides O&amp;M personnel through maintenance. This simplifies O&amp;M and reduces troubleshooting time.</p> <p>vii. Total cooling capacity: <math>\geq 42\text{KW}</math></p> <p>viii. Air volume: <math>\geq 8,600\text{m}^3/\text{h}</math></p>		
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#### 9.4 Management System

No.	Feature	Minimum Requirement	Bidders Response	Brief description on level of Compliance
1	Management System Specification & Requirement	<p>i. The management system should be a unified management platform, continuously monitor the power supply and distribution equipment, UPS, air conditioning, temperature and humidity, water leakage, smoke, video surveillance, and access control devices. It also needs to integrate the building management system, security system, and other specialized subsystems.</p> <p>ii. The management system should support</p>		



		<p>various alarms in colours, e-mail, SMS, or sound. Historical data and alarm events are recorded when alarms happen. All monitoring information is reported to the management platform over the standard northbound SNMP interface.</p> <p>iii. The management system should support web access and be accessible through a browser at anywhere on the network. The browser should at least be able to support Windows Internet Explorer, Chrome, Firefox, and other mainstream browsers. In addition, the system should support a phone app client, at least Android 4.0 or mainstream Android phones.</p> <p>iv. Energy efficiency management: The management system should provide energy analysis capabilities, and be able to display equipment room PUE values, DCiE values, and subsystem power consumptions for different sites in real time.</p> <p>v. Work order management: The management system should support work-order operation and maintenance management, covering order assignments, processing, feedback, and end, when a fault occurs, the system automatically dispatches a work order, and send an operation and maintenance task to a specified owner by email or SMS. The administrator can query the progress of the work order processing in the system, and appraise operation and maintenance personnel.</p> <p>vi. 3D visualization: The management system should support module layout 3D visualization on the local monitoring screen</p> <p>vii. Virus scanning: The management system software is subject to at least three types of Enterprise Edition virus scanning tool to scan, including but not limited to, Trend Micro, McAfee, Avira, Kaspersky, Symantec. Scanning reports are required to ensure system security.</p> <p>viii. The smoke and T/H sensors can be connected to the data collector over the FE and wireless communication.</p> <p>ix. Access control supports anti-theft alarm function.</p>		
<b>RESPONSIVENESS</b>				

**Only bidders who comply with all technical specification evaluation criteria I by indicating yes/no and providing brief description on the level of compliance will be evaluated further to technical evaluation II.**

#### **TECHNICAL EVALUATION CRITERIA II**

<b>NO.</b>	<b>EVALUATION ATTRIBUTE</b>	<b>CRITERIA</b>	<b>MAX SCORE %</b>	<b>SCORE</b>
<b>T1</b>	<b>Number of years in existence</b>	In existence for at least; 10 years and above – 10 Marks 6 years but less than 10 years – 5 Marks 3 years but less than 6 years – 2 Marks Less than 2 years – 1 Mark	<b>10</b>	
<b>T2</b>	<b>Financial Resources</b>	i. Provide Audited financial accounts for the past two years i.e. 2020 & 2019, duly signed by an accountant or auditor who is a member of ICPAK.  <i>The Audited Financial Statements must be accompanied by a valid practicing certificate for the year 2022 of the Auditor/Accountant</i> <b>@ 5 marks each year</b>	<b>10</b>	

NO.	EVALUATION ATTRIBUTE	CRITERIA	MAX SCORE %	SCORE
		ii. Attach a bank statement for a period of 5 months (November 2021 – March 2022) certified by the issuing bank each month @ 2 marks	10	
T3	Firm's Experience to perform the assignment	i. Provide at least 5 reputable clients of which the company has supplied similar/services items in the last 5 years- attach evidence in form of contracts or LPO/LSO @ 4 marks per client.	20	
		ii. Provide corresponding client's reference letters from the five (5) corresponding clients in i above with the names /Telephone contact/ Number of each client to enable the Teachers Service Commission carry out due diligence. @ 2 marks per client. Reference letters must be on letterheads of each firm signed by the highest authority of the company	10	
T4	Staff Qualifications and experience	<p><b>Specialist</b></p> <p>Give 3 technical specialist with relevant Degree/Diploma certificates and at least three (3) years' experience</p> <ul style="list-style-type: none"> <li>- Relevant Degree Certificate @ 4 marks</li> <li>- Relevant Diploma Certificate @ 2 marks</li> <li>- No Relevant Certificate = 0 Marks</li> </ul> <p><b>Max Total for 3 specialists = 12 Marks</b></p> <ul style="list-style-type: none"> <li>- At least 3 years' Relevant experience @ 2 marks per year. Each specialist max 6 marks.</li> <li>- No Relevant experience = 0 Marks</li> </ul> <p><b>Max Total for 3 specialists —18 Marks</b></p>	30	
T5	Delivery Period	<p>The tenderer's delivery period must be indicated as well as measures in place to ensure timely delivery of the goods should be disclosed.</p> <p>Attach a clearly Work Plan with clear timelines not exceeding five (5) months.</p>	10	
<b>TOTAL</b>			<b>100%</b>	

**NB:** *After technical evaluation and meeting all the technical conditions and requirements of the tender, those tenders that shall not have attained a minimum pass mark of 75% shall be declared Non responsive and will be eliminated from the evaluation process. Those who pass will proceed to financial evaluation.*

**3. Tender Evaluation (ITT 34) Price evaluation:**

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

The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT 18. The determination shall not take into consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates, subcontractors or any other firm(s) different from the Tenderer that submitted the Tender.

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

**4. Multiple Contracts**

Multiple contracts will not be permitted.

**5. Alternative Tenders (ITT 14)**

Alternative tenders shall not be considered by Teachers Service Commission.

**6. Margin of Preference Margin of preference shall not be applicable.**

**7. Contract award (ITT 38.1), more specifically,**

The tender that has been determined to be the lowest evaluated tenderer shall be considered for contract award, subject to meeting each of the following conditions.

- i. The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow of Kenya Shilling
- ii. Minimum average annual services turnover of Kenya Shillings **50,000,000.00**, equivalent calculated as total certified payments received for contracts in progress and/or completed within the last \_\_\_\_\_ *[insert of year]* years.
- iii. At least one (1) contract(s) of a similar nature executed within Kenya, or the East African Community or abroad, that have been satisfactorily and substantially completed as a prime contractor, or joint venture member or sub-contractor each of minimum value Kenya shillings **30,000,000.00** equivalents.
- iv. Contractor's Representative and Key Personnel, which are specified as \_\_\_\_\_
- v. Contractors key equipment listed on the table "Contractor's Equipment" below and more specifically listed as *[specify requirements for each lot as applicable]* \_\_\_\_\_
- vi. Other conditions depending on their seriousness.

**a) History of non-performing contracts:**

Tenderer and each member of JV in case the Tenderer is a JV, shall demonstrate that Non- performance of a contract did not occur because of the default of the Tenderer, or the member of a JV in the last five years. The required information shall be furnished in the appropriate form.

**b) Pending Litigation**

Financial position and prospective long-term profitability of the Single Tenderer, and in the case the Tenderer is a JV, of each member of the JV, shall remain sound according to criteria established with respect to Financial Capability under Paragraph (i) above if all pending litigation will be resolved against the Tenderer. Tenderer shall provide information on pending litigations in the appropriate form.

**c) Litigation History**

There shall be no consistent history of court/arbitral award decisions against the Tenderer, in the last Five years. All parties to the contract shall furnish the information in the appropriate form about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the years specified. A consistent history of awards against the Tenderer or any member of a JV may result in rejection of the tender.

**SECTION IV - TENDERING FORMS**

1. FORM OF TENDER
2. TENDERER INFORMATION FORM
3. TENDERER'S JV MEMBERS INFORMATION FORM
4. MANUFACTURER'S AUTHORIZATION FORM

OTHER FORMS

QUALIFICATION FORMS

**1. FORM OF TENDER**

*INSTRUCTIONS TO TENDERERS*

- i) *The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address.*
- ii) *All italicized text is to help Tenderer in preparing this form.*
- iii) *Tenderer must complete and sign and TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE, CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELF DECLARATION OF THE TENDERER, all attached to this Form of Tender.*

- (iv) *The Form of Tender shall include the following Forms duly completed and signed by the Tenderer.*
  - a) *Tenderer's Eligibility-Confidential Business Questionnaire*
  - a) *Certificate of Independent Tender Determination*
  - c) *Self-Declaration of the Tenderer.*

**Date of this Tender submission:** ..... [insert date (as day, month and year) of Tender submission]

**ITT No.:** .....[insert number of ITT process]

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

**To:** ..... [insert complete name of Procuring Entity]

- a) **No reservations:** We have examined and have no reservations to the tendering document, including Addenda issued in accordance with ITT 9;
- b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with ITT 4;
- c) **Tender-Securing Declaration:** We have not been suspended nor declared ineligible by the Procuring Entity based on execution of a Tender-Securing Declaration or Proposal-Securing Declaration in Kenya in accordance with ITT 4.7;
- d) **Conformity:** We offer to provide the Supply, Delivery, Installation and Commissioning of A Tier 3 Modular Data Centre and Re-Location of Equipment from Current Data Centre to the New Data Centre in conformity with the tendering document and the relevant documents;
- e) **Tender Price:** The total price of our Tender, including any discounts offered in item (f) below is Total price is  
.....  
.....  
.....  
.....  
.....
- f) *[insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies];*
- g) **Discounts:** The discounts offered and the methodology for their application are:
  - i) The discounts offered are: ..... [Specify in detail each discount offered.]
  - ii) The exact method of calculations to determine the net price after application of discounts is shown below: ..... [Specify in detail the method that shall be used to apply the discounts];
- h) **Tender Validity Period:** Our Tender shall be valid for the period ..... days (as amended if applicable) from the date fixed for the Tender submission deadline (specified in TDS 23.1 (as amended if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- i) **Performance Security:** If our Tender is accepted, we commit to obtain a Performance Security of 10% of the contract sum in form of a bank security from a recognized bank in Kenya regulated by Central Bank of Kenya;

- j) **One Tender Per Tenderer:** We are not submitting any other Tender (s) as an individual Tenderer, and we are not participating in any other Tender (s) as a Joint Venture member or as a subcontractor, and meet the requirements of ITT 4.3, other than alternative Tenders submitted in accordance with ITT 14;
- k) **Suspension and Debarment:** We, along with any of our subcontractors, suppliers, consultants, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the PPRA. Further, we are not ineligible under Kenya's official regulations or pursuant to a decision of the United Nations Security Council;
- l) **State-owned enterprise or institution:** .....  
*[select the appropriate option and delete the other] [We are not a state- owned enterprise or institution]/[We are a state-owned enterprise or institution but meet the requirements of ITT 4.6];*
- m) **Commissions, gratuities and fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the Tendering process or execution of the Contract: *[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity].*

Name of Recipient	Address	Reason	Amount

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

- n) *[Delete if not appropriate, or amend to suit]* We confirm that we understand the provisions relating to Standstill Period as described in this tendering document and the Procurement Regulations.
- o) **Binding Contract:** We understand that this Tender, together with your written acceptance thereof included in your Form of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- p) **Not Bound to Accept:** We understand that you are not bound to accept the lowest evaluated cost Tender, the Most Advantageous Tender or any other Tender that you may receive; and
- q) **Fraud and Corruption:** We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption.
- r) **Collusive practices:** We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the “Certificate of Independent Tender Determination” attached below.
- s) **Code of Ethical Conduct:** We undertake to adhere by the Code of Ethical Conduct for Suppliers, Contractors and Service Providers, copy available from *(specify website)* during the procurement process and the execution of any resulting contract.
- t) We, the Tenderer, have completed fully and signed the following Forms as part of our Tender:
  - a) Tenderer's Eligibility; Confidential Business Questionnaire – to establish we are not in any conflict to interest.
  - b) Certificate of Independent Tender Determination - to declare that we completed the tender without colluding with other tenderers.
  - c) Self-Declaration of the Tenderer- to declare that we will, if awarded a contract, not



engage in any form of fraud and corruption.

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

**Name of the Tenderer:**

.....  
.....[insert complete name of person signing the Tender]

**Name of the person duly authorized to sign the Tender on behalf of the Tenderer:**

.....  
..

..[insert complete name of person duly authorized to sign the Tender]

**Title of the person signing the Tender:**

.....

... [insert complete title of the person signing the Tender]

**Signature of the person named above:**

.....[insert signature of person

whose name and capacity are shown above] **Date signed**.....[insert

date of signing] **day of**.....[insert month], [insert year]

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## TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE

### Instruction to Tenderer

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

#### a) Tenderer's details

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

### General and Specific Details

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

Name in full \_\_\_\_\_ Age \_\_\_\_\_

Nationality \_\_\_\_\_ Country of Origin \_\_\_\_\_

Citizenship \_\_\_\_\_

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

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

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

i) Private or public Company \_\_\_\_\_

ii) State the nominal and issued capital of the Company: -

Nominal Kenya Shillings (Equivalent) \_\_\_\_\_

Issued Kenya Shillings (Equivalent) \_\_\_\_\_

iii) Give details of Directors as follows.

	<b>Names of Director</b>	<b>Nationality</b>	<b>Citizenship</b>	<b>% Shares owned</b>
1				
2				
3				

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

i) Are there any person/persons in.....(*Name of Procuring Entity*) who has/have an interest or relationship in this firm?

Yes/No.....

If yes, provide details as follows.

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

ii) **Conflict of interest disclosure**

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

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

**f) Certification**

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

Full Name:

\_\_\_\_\_

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

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**ii) CERTIFICATE OF INDEPENDENT TENDER DETERMINATION**

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

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

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

Name of authorized agent of Tenderer \_\_\_\_\_

(Title) \_\_\_\_\_ Signature) \_\_\_\_\_ (Date) \_\_\_\_\_

\_\_\_\_\_

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**(iii) SELF-DECLARATION FORMS**

**FORM SD 1**

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

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

1. THAT I am the Company Secretary/Chief Executive/Managing Director/Principal Officer/Director of ..... (*insert name of the Company*) who is a Bidder in respect of **Tender No.** ..... for.....(*insert tender title/description*) for..... (*insert name of the Procuring entity*) and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.
3. THAT what is deponed to herein above is true to the best of my knowledge, information and belief.

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

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**FORM SD2**

**SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE.**

I, ..... of P. O. Box.....being a resident of.....in the Republic of.....do hereby make a statement as follows: -

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of.....  
..... (*insert name of the Company*) who is a Bidder in respect of **Tender No.**..... for ..... (*insert tender title/description*) for ..... (*insert name of the Procuring entity*) and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its servants and/or agents /subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/or agents of ..... (*insert name of the Procuring entity*) which is the procuring entity.
3. THAT the aforesaid Bidder, its servants and/or agents/subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of..... (*name of the procuring entity*).
4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject tender
5. THAT what is deponed to herein above is true to the best of my knowledge information and belief.

(Title)\_\_\_\_\_ (Signature)\_\_\_\_\_ (Date)\_\_\_\_\_

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**DECLARATION AND COMMITMENT TO THE CODE OF ETHICS**

I..... (person) on behalf of (*Name of the Business/Company/Firm*)  
.....declare that I have read and fully understood the contents of the Public Procurement & Asset Disposal Act, 2015, Regulations and the Code of Ethics for persons participating in Public Procurement and Asset Disposal and my responsibilities under the Code.

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

Name of Authorized signatory.....

Sign.....

Position.....

Office address.....

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

Name of the Firm/Company.....

Date.....

*(Company Seal/ Rubber Stamp where applicable)*

Witness

Name.....

Sign.....

Date.....

Official Rubber Stamp .....

#### iv) APPENDIX 1-FRAUD AND CORRUPTION

*(Appendix 1 shall not be modified)*

##### 1. Purpose

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

##### 2. Requirements

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

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

- 1) A person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
- 2) A person referred to under subsection (1) who contravenes the provisions of that sub-section commits an offence;
- 3) Without limiting the generality of the subsection (1) and (2), the person shall be: -
  - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
  - b) if a contract has already been entered into with the person, the contract shall be voidable;
- 4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
- 5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement: -
  - a) Shall not take part in the procurement proceedings;
  - b) Shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
  - c) shall not be a subcontractor for the tenderer to whom was awarded contract, or a member of the group of tenderers to whom the contract was awarded, but the subcontract or appointed shall meet all the requirements of this Act.
- 6) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;
- 7) If a person contravenes subsection (1) with respect to a conflict of interest described in subsection (5) (a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated

and all costs incurred by the public entity shall be made good by the awarding officer. Etc.

In compliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:

- a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
  - i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
  - ii) “fraudulent practice” is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
  - iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
  - 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 party;
  - v) “obstructive practice” is:
    - deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
    - acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3 e. below.
- (b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.
- c) Rejects a proposal for award<sup>1</sup> of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or debar or recommend to appropriate authority(ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;
- e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect<sup>2</sup> all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and
- f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a “Self-Declaration Form” as included in the procurement

document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

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

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

## 2. TENDERER INFORMATION FORM

*[The Tenderer shall fill in this Form in accordance with the instructions indicated below. No alterations to its format shall be permitted and no substitutions shall be accepted.]*

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

ITT No.: \_\_\_\_\_ *[insert number of Tendering process]*

Alternative No.: \_\_\_\_\_ *[insert identification No if this is a Tender for an alternative]*

1. Tenderer's Name ..... <i>[insert Tenderer's legal name]</i>
2. In case of JV, legal name of each member: ..... <i>[insert legal name of each member in JV]</i>
3. Tenderer's actual or intended country of registration:..... <i>[insert actual or intended country of registration]</i>
4. Tenderer's year of registration: <i>[insert Tenderer's year of registration]</i> .....
5. Tenderer's Address in country of registration: ..... <i>[insert Tenderer's legal address in country of registration]</i>
6. Tenderer's Authorized Representative Information <ul style="list-style-type: none"><li>• Name:..... <i>[insert Authorized Representative's name]</i></li><li>Address:..... <i>[insert Authorized Representative's Address]</i></li><li>Telephone:..... <i>[insert Authorized Representative's telephone/fax numbers]</i></li><li>Email Address:..... <i>[insert Authorized Representative's email address]</i></li></ul>

7. Attached are copies of original documents of *[check the box(es) of the attached original documents]*
- Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 4.4.
  - In case of JV, Form of intent to form JV or JV agreement, in accordance with ITT 4.1.
  - A current tax clearance certificate or tax exemption certificate in case of Kenyan tenderers issued by the Kenya Revenue Authority in accordance with ITT 4.14.
  - In case of state-owned enterprise or institution, in accordance with ITT 4.6 documents establishing:
    - Legal and financial autonomy
    - Operation under commercial law
    - Establishing that the Tenderer is not under the supervision of the agency of the Procuring Entity
8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

**NAME**

.....

.....

.....

(Title) (Signature) (Date)

Bidder Official Stamp

**2 TENDERER'S JV MEMBERS INFORMATION FORM**

*[The Tenderer shall fill in this Form in accordance with the instructions indicated below. The following table shall be filled in for the Tenderer and for each member of a Joint Venture].*

Date..... *[insert date (as day, month and year) of Tender submission]*

ITT No.: ..... *[insert number of Tendering process]*

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

1. Tenderer's Name: ..... <i>[insert Tenderer's legal name]</i>
2. Tenderer's JV Member's name: ..... <i>[insert JV's Member legal name]</i>
3. Tenderer's JV Member's country of registration: ..... <i>[insert JV's Member country of registration]</i>
4. Tenderer's JV Member's year of registration: ..... <i>[insert JV's Member year of registration]</i>





#### 4. MANUFACTURER'S AUTHORIZATION FORM

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

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

ITT No.: .....*[insert number of ITT process]*

To: ..... *[Insert complete name of Procuring Entity]*

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 tenderer]* to submit a Tender 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 28 of the General Conditions of Contract, 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]*

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

Stamp\_\_\_\_\_

## OTHER FORMS

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

**Beneficiary:** \_\_\_\_\_

**Request for Tenders No:**

\_\_\_\_\_  
**Date:** \_\_\_\_\_

**TENDER GUARANTEE No.:** \_\_\_\_\_

**Guarantor:** \_\_\_\_\_

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

\_\_\_\_\_  
*[signature(s)]*

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

**FORMAT OF TENDER SECURITY [Option 2–Insurance Guarantee]**

**TENDER GUARANTEE No.:** \_\_\_\_\_

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

Sealed with the Common Seal of the said Guarantor this \_\_\_day of \_\_\_\_\_ 20 \_\_\_.

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

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

4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii)twenty-eight days after the end of the Tender Validity Period.
5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

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

\_\_\_\_\_  
[Witness]

\_\_\_\_\_  
[Signature of the Guarantor]

\_\_\_\_\_  
[Seal]

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

**FORM OF TENDER - SECURING DECLARATION**

*[The Tenderer shall fill in this Form in accordance with the instructions indicated.]*

Date:.....[date (as day, month and year)] ITT No.:.....[number of Tendering process] Alternative No.:.....[insert identification No if this is a Tender for an alternative] To:.....[complete name of Procuring Entity]

We, the undersigned, declare that: We understand that, according to your conditions, Tenders must be supported by a Tender-Securing Declaration.

We accept that we will automatically be suspended from being eligible for Tendering or submitting proposals in any contract with the Teachers Service Commission for the period of time of *three (3) years* starting on *31<sup>st</sup> May 2022*, if we are in breach of our obligation(s) under the Tender conditions, because we:

- a) Have withdrawn our Tender during the period of Tender validity specified in the Form of Tender; or
- b) Having been notified of the acceptance of our Tender by the Procuring Entity during the period of Tender validity, (i) fail to sign the Contract agreement; or (ii) fail or refuse to furnish the Performance Security, if required, in accordance with the ITT.

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

Name of the Tenderer\* \_\_\_\_\_

\_\_\_\_\_ Name of the person duly authorized to sign the Tender on

behalf of the Tenderer\*\* \_\_\_\_\_

\_\_\_\_\_ Title of the person signing the Tender \_\_\_\_\_

\_\_\_\_\_ Signature of the person named above \_\_\_\_\_

\_\_\_\_\_ Date signed \_\_\_\_\_ day of \_\_\_\_\_.

Bidder Official Stamp:

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

\*\* : Person signing the Tender shall have the power of attorney given by the Tenderer attached to the Tender

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

**QUALIFICATION FORMS**

**2 FOREIGN TENDERERS 40% RULE**

Pursuant to ITT 3.9, a foreign tenderer must complete this form to demonstrate that the tender fulfils this condition.

<b>ITEM</b>	<b>Description of Work Item</b>	<b>Describe location of Source</b>	<b>COST in K. shillings</b>	<b>Comments, if any</b>
<b>A</b>	<b>Local Labor</b>			
1				
2				
3				
4				
5				
<b>B</b>	<b>Sub contracts from Local sources</b>			
1				
2				
3				
4				
5				
<b>C</b>	<b>Local materials</b>			
1				
2				
3				
4				
5				
<b>D</b>	<b>Use of Local Plant and Equipment</b>			
1				
2				
3				
4				
5				
<b>E</b>	<b>Add any other items</b>			
1				
2				
3				
4				
5				
6				
	<b>TOTAL COST LOCAL CONTENT</b>		<b>XXXXX</b>	
	<b>PERCENTAGE OF CONTRACT PRICE</b>			

### 3 FORM EQU: EQUIPMENT

The Tenderer shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III, Evaluation and Qualification Criteria. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Tenderer.

Item of equipment		
Equipment information	Name of manufacturer	Model and power rating
	Capacity	Year of manufacture
Current status	Current location	
	Details of current commitments	
Source	Indicate source of the equipment <input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Leased <input type="checkbox"/> Specially manufactured	

Omit the following information for equipment owned by the Tenderer.

Owner	Name of owner	
	Address of owner	
	Telephone	Contact name and title
	Fax	Telex
Agreements	Details of rental / lease / manufacture agreements specific to the project	

**4 FORM PER-1 Tenderer's/Contractor's**

**Representative and Key Personnel Schedule**

Tenderers should provide the names and details of the suitably qualified Contractor's Representative and Key Personnel to perform the Contract. The data on their experience should be supplied using the Form PER-2 below for each candidate.

**Tenderer's/Contractor' Representative and Key Personnel.**

<b>1.</b>	<b>Title of position:</b> Contractor's Representative: .....	
	<b>Name of candidate:</b>	
	<b>Duration of appointment:</b>	..... [insert the whole period (start and end dates) for which this position will be engaged]
	<b>Time commitment: for this position:</b>	..... [insert the number of days/week/months/ that has been scheduled for this position]
	<b>Expected time schedule for this position:</b>	..... [insert the expected time schedule for this position (e.g. attach high level Gantt chart)]
<b>2.</b>	<b>Title of position:</b> [_____]	
	<b>Name of candidate:</b>	
	<b>Duration of appointment:</b>	..... [insert the whole period (start and end dates) for which this position will be engaged]
	<b>Time commitment: for this position:</b>	..... [insert the number of days/week/months/ that has been scheduled for this position]
	<b>Expected time schedule for this position:</b>	..... [insert the expected time schedule for this position (e.g. attach high level Gantt chart)]
<b>3.</b>	<b>Title of position:</b> [_____]	
	<b>Name of candidate:</b>	
	<b>Duration of appointment:</b>	..... [insert the whole period (start and end dates) for which this position will be engaged]
	<b>Time commitment: for this position:</b>	..... [insert the number of days/week/months/ that has been scheduled for this position]
	<b>Expected time schedule for this position:</b>	..... [insert the expected time schedule for this position (e.g. attach high level Gantt chart)]
<b>4.</b>	<b>Title of position:</b> [_____]	
	<b>Name of candidate:</b>	
	<b>Duration of appointment:</b>	[insert the whole period (start and end dates) for which this position will be engaged]
	<b>Time commitment: for this position:</b>	[insert the number of days/week/months/ that has been scheduled for this position]
	<b>Expected time schedule for this position:</b>	[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]
<b>5.</b>	<b>Title of position:</b> [insert title]	



<b>Name of candidate</b>	
<b>Duration of appointment:</b>	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
<b>Time commitment: for this position:</b>	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
<b>Expected time schedule for this position:</b>	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>

**5 FORM PER - 2:**

Resume and Declaration - Contractor's Representative and Key Personnel.

Name of Tenderer \_\_\_\_\_

Position [#1]: <i>[title of position from Form PER-1]</i>	
Personnel information	Name: _____ Date of birth: _____
	Address: _____ E-mail: _____
	Professional qualifications: _____
	Academic qualifications: _____
	Language proficiency: <i>[language and levels of speaking, reading and writing skills]</i>
Details	Address of Procuring Entity: _____
	Telephone: _____ Contact (manager / personnel officer): _____
	Fax: _____
	Job title: _____ Years with present Procuring Entity: _____

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

<b>Project</b>	<b>Role</b>	<b>Duration of involvement</b>	<b>Relevant experience</b>
<i>[main project details]</i>	<i>[role and responsibilities on the project]</i>	<i>[time in role]</i>	<i>[describe the experience relevant to this position]</i>

**Declaration**

I, the undersigned..... *[insert either “Contractor's Representative” or “Key Personnel” as applicable]*, certify that to the best of my knowledge and belief, the information contained in this Form PER-2 correctly describes myself, my qualifications and my experience.

I confirm that I am available as certified in the following table and throughout the expected time schedule for this position as provided in the Tender:

<b>Commitment</b>	<b>Details</b>
Commitment to duration of contract:	<i>[insert period (start and end dates) for which this Contractor’s Representative or Key Personnel is available to work on this contract]</i>
Time commitment:	<i>[insert period (start and end dates) for which this Contractor’s Representative or Key Personnel is available to work on this contract]</i>

I understand that any misrepresentation or omission in this Form may:

- a) be taken into consideration during Tender evaluation;
- b) result in my disqualification from participating in the Tender;
- c) result in my dismissal from the contract.

Name of Contractor's Representative or Key Personnel: \_\_\_\_\_ *[insert name]*

Signature: \_\_\_\_\_

Date: (day month year): \_\_\_\_\_

Countersignature of authorized representative of the Tenderer:

Signature: \_\_\_\_\_

Date: (day month year): \_\_\_\_\_

Bidder Official Stamp:

## TENDERERS QUALIFICATION WITHOUT PREQUALIFICATION

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

### 6. FORM EL I -1.1

#### Tenderer Information

##### Form

Date: \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

Tenderer's name
In case of Joint Venture (JV), name of each member:
Tenderer's actual or intended country of registration: <i>[indicate country of Constitution]</i>
Tenderer's actual or intended year of incorporation:
Tenderer's legal address [in country of registration]:
Tenderer's authorized representative information Name: _____ Address: _____ Telephone/Fax numbers: _____ E-mail address: _____
1. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 4.4 <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 4.1 <input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with ITT 4.6, documents establishing: <ul style="list-style-type: none"><li>• Legal and financial autonomy</li><li>• Operation under commercial law</li><li>• Establishing that the Tenderer is not under the supervision of the Procuring Entity</li></ul>
2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

**7. FORM ELI - 1.2**

**Tenderer's JV Information Form**

*(to be completed for each member of Tenderer's JV)*

Date: \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

Tenderer's JV name:
JV member's name:
JV member's country of registration:
JV member's year of constitution:
JV member's legal address in country of constitution:
JV member's authorized representative information Name: _____ Address: _____ Telephone/Fax numbers: _____ E-mail address: _____
1. Attached are copies of original documents of <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITT 4.4. <input type="checkbox"/> In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not under the supervision of the Procuring Entity, in accordance with ITT 4.6.
2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

**8 FORM CON -2**

Historical Contract Non-Performance, Pending Litigation and Litigation

History. Tenderer's Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member's Name \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria			
<input type="checkbox"/> Contract non-performance did not occur since 1 <sup>st</sup> January ..... [insert year] specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.1.			
<input type="checkbox"/> Contract(s) not performed since 1 <sup>st</sup> January [insert year] specified in Section III, Evaluation and Qualification Criteria, requirement 2.1			
Year	Non-performed portion of contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and Kenya Shilling equivalent)
[insert year]	[insert amount and percentage]	Contract Identification: [indicate complete contract name/ number, and any other identification] Name of Procuring Entity: [insert full name] Address of Procuring Entity: [insert street/city/country] Reason(s) for nonperformance: [indicate main reason(s)]	[insert amount]
Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria			
<input type="checkbox"/> No pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.			
<input type="checkbox"/> Pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3 as indicated below.			

Year of dispute	Amount in dispute (currency)	Contract Identification	Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)
		Contract Identification: _____ Name of Procuring Entity: _____ Address of Procuring Entity: _____ Matter in dispute: _____ Party who initiated the dispute: _____ Status of dispute: _____	

<b>Year of dispute</b>	<b>Amount in dispute (currency)</b>	<b>Contract Identification</b>	<b>Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)</b>
		Contract Identification: Name of Procuring Entity: Address of Procuring Entity: Matter in dispute: Party who initiated the dispute: Status of dispute:	
<b>Litigation History in accordance with Section III, Evaluation and Qualification Criteria</b>			
<input type="checkbox"/> No Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4. <input type="checkbox"/> Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4 as indicated below.			
<b>Year of award</b>	<b>Outcome as percentage of Net Worth</b>	<b>Contract Identification</b>	<b>Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)</b>
<i>[insert year]</i>	<i>[insert percentage]</i>	Contract Identification: <i>[indicate complete contract name, number, and any other identification]</i> Name of Procuring Entity: <i>[insert full name]</i> Address of Procuring Entity: <i>[insert street/city/country]</i> Matter in dispute: <i>[indicate main issues in dispute]</i> Party who initiated the dispute: <i>[indicate "Procuring Entity" or "Contractor"]</i> Reason(s) for Litigation and award decision <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>



**9 FORM FIN –3.1:**

**Financial Situation and Performance**

Tenderer's Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member's Name \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

**6.4.1. Financial Data**

Type of Financial information in _____ (currency)	Historic information for previous _____ years, (amount in currency, currency, exchange rate*, USD equivalent)				
	Year 1	Year 2	Year 3	Year 4	Year 5
Statement of Financial Position (Information from Balance Sheet)					
Total Assets (TA)					
Total Liabilities (TL)					
Total Equity/Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
Working Capital (WC)					
Information from Income Statement					
Total Revenue (TR)					
Profits Before Taxes (PBT)					
Cash Flow Information					
Cash Flow from Operating Activities					

**15. Sources of Finance**

Specify sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.

No.	Source of finance	Amount (Kenya Shilling equivalent)
1		
2		
3		

**Financial documents**

The Tenderer and its parties shall provide copies of financial statements for \_\_\_\_\_ years pursuant Section III, Evaluation and Qualifications Criteria, Sub-factor 3.1. The financial statements shall:

- a) reflect the financial situation of the Tenderer or in case of JV member, and not an affiliated entity (such as parent company or group member).
- b) Be independently audited or certified in accordance with local legislation.
- c) Be complete, including all notes to the financial statements.
- d) Correspond to accounting periods already completed and audited.

Attached are copies of financial statements<sup>2</sup> for the \_\_\_\_\_ years required above; and complying with the requirements

Full Name: .....

Designation; .....

Signature: ..... Date: .....

Official Rubber Stamp: .....



**16 FORM FIN –3.2:**

**Average Annual Construction Turnover**

Tenderer's Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member's Name \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

<b>Annual turnover data (construction only)</b>			
<b>Year</b>	<b>Amount Currency</b>	<b>Exchange rate</b>	<b>Kenya Shilling equivalent</b>
<i>[indicate year]</i>	<i>[insert amount and indicate currency]</i>		
Average Annual Construction Turnover *			

\* See Section III, Evaluation and Qualification Criteria, Sub-Factor 3.2.

**17. FORM FIN -3.3:**

**Financial Resources**

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 construction cash flow demands of the subject contractor contracts as specified in Section III, Evaluation and Qualification Criteria.

No.	Source of financing	Amount (Kenya Shilling equivalent)
1		
2		
3		

Full Name: .....

Designation; .....

Signature: ..... Date: .....

Official Rubber Stamp: .....

**18. FORM FIN -3.4:**

**Current Contract Commitments / Works in Progress**

Tenderers and each member to a JV 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.

No.	Name of Contract	Procuring Entity's Contact Address, Tel,	Value of Outstanding Work [Current Kenya Shilling /month Equivalent]	Estimated Completion Date	Average Monthly Invoicing Over Last Six Months [Kenya Shilling /month)]
1					
2					
3					
4					
5					
6					

Full Name: .....

Designation; .....

Signature: ..... Date: .....

Official Rubber Stamp: .....

**19. FORM EXP - 4.1**

**General Relevant Work Experience**

Tenderer's Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member's Name \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

<b>Starting Year</b>	<b>Ending Year</b>	<b>Contract Identification</b>	<b>Role of Tenderer</b>
		Contract name: _____ Brief Description of the Works performed by the Tenderer: _____ Amount of contract: _____ Name of Procuring Entity: _____ Address: _____	
		Contract name: _____ Brief Description of the Works performed by the Tenderer: _____ Amount of contract: _____ Name of Procuring Entity: _____ Address: _____	
		Contract name: _____ Brief Description of the Works performed by the Tenderer: _____ Amount of contract: _____ Name of Procuring Entity: _____ Address: _____	



**20. FORM EXP - 4.2 (a)**

**Specific Work and Management Experience**

Tenderer's Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member's Name \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

<b>Similar Contract No.</b>	<b>Information</b>			
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management Contractor <input type="checkbox"/>	Sub-contractor <input type="checkbox"/>
Total Contract Amount	<b>Kenya Shilling</b>			
If member in a JV or sub-contractor, specify participation in total Contract amount				
Procuring Entity's Name:				
Address:				
Telephone/fax number				
E-mail:				
Description of the similarity in accordance with Sub-Factor 4.2(a) of Section III:				
1. Amount				
2. Physical size of required works items				
3. Complexity				
4. Methods/Technology				
5. Construction rate for key activities				
6. Other Characteristics				

**21. FORMEXP- 4.2 (b)**

**Work Experience in Key Activities**

Tenderer's Name: \_\_\_\_\_

Date: \_\_\_\_\_

Tenderer's JV Member Name: \_\_\_\_\_

Sub-contractor's Name<sup>3</sup> (as per ITT 34): \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

All Sub-contractors for key activities must complete the information in this form as per ITT 34 and Section III, Evaluation and Qualification Criteria, Sub-Factor 4.2.

**1. Key Activity No One:**

<b>Information</b>				
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management Contractor <input type="checkbox"/>	Sub-contractor <input type="checkbox"/>
Total Contract Amount	<b>Kenya Shilling</b>			
Quantity (Volume, number or rate of production, as applicable) performed under the contract per year or part of the year	Total quantity in the contract (i)	Percentage participation (ii)		Actual Quantity Performed (i) x (ii)
Year 1				
Year 2				
Year 3				
Year 4				
Procuring Entity's Name:				
Address: Telephone/fax number E-mail:				

**2 Activity No. Two**

3. ....

<sup>3</sup>If applicable

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**PART II – THE TEACHERS SERVICE COMMISSION REQUIREMENTS**

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## **SECTION V - SCHEDULE OF REQUIREMENTS**

### **SUPPLY, DELIVERY, INSTALLATION AND COMMISSIONING OF A TIER 3 MODULAR DATA CENTRE AND RE-LOCATION OF EQUIPMENT FROM CURRENT DATA CENTRE TO THE NEW DATA CENTRE**

#### **Background**

- 1.1 Teachers Service Commission is established under article 237 of the Constitution of Kenya and the TSC Act of 2012 to carry out teacher management functions of; Registering trained teachers, Recruiting and employing registered teachers, Assigning teachers employed by the Commission for service in any public school or institution, Promoting and transferring teachers, Exercising disciplinary control over teachers, Terminating the employment of teachers, Reviewing the standards of education and training of persons entering the teaching service, Reviewing the demand for and supply of teachers and advising the national government on matters relating to the teaching profession.
- 1.2 In carrying out its mandate and functions, the Commission has adopted use of systems to improve service delivery. These systems are hosted in the Commission servers located in the server room.
- 1.3 The Commission is looking to upgrade the current server room by upgrading the room to make it suitable to host a Tier-III Modular Datacenter as a primary site for its key equipment.
- 1.4 The Commission is looking to install a Tier-III Modular Datacenter.

#### **2 PROJECT REQUIREMENT**

- 2.1.1 The present requirement is in connection with setting up of a Modular Tier III Data Center.
- 2.2 The Data Centre design should meet the Tier III Data Centre requirements.
- 2.3 The Modular Data Centre is the location where Teachers Service Commission will host its equipment that would be required to run the Commission's Critical and non-critical applications. The equipment to be hosted in the Modular Datacenter racks shall include servers, storage, network components, backup devices, etc. The facilities/requirements are detailed in the Technical Requirement mentioned herein.
- 2.4 The bidder is required to offer total turnkey solution for the comprehensive responsibilities of design, supply, installation, commissioning, warranty support, and post warranty comprehensive Annual Maintenance Contract (AMC) of the total solution comprising of equipment, machinery and software along with perennial/perpetual licenses as per scope of work.
- 2.5 The Bidder shall provide all necessary infrastructure components that would be necessary as per the defined requirements and maintain the same throughout the warranty and Annual Maintenance Contract period.
- 2.6 The Bidder shall make a visit to the site prior to submission of bid to ensure they understand the site.

#### **3 PROJECT COMPLETION SCHEDULE**

- 3.1 The total turnkey execution of infrastructure works and supply, handling, installation, configuration, testing, integration of the systems at site shall be completed within 20 weeks from the date of signing of contract.

#### **4 Scope of Works**

- 4.1 The Commission is looking to have the current server room upgraded to a standard that will make it suitable to host a Tier-III Modular Datacenter at its headquarters in Nairobi.
- 4.2 The Contractor shall take all measure to protect the equipment in the room as they are in use. Any failure of equipment attributed to the contractor; the contractor shall bare the cost of returning the equipment to working condition which may include replacement of equipment.

- 4.3 Teachers Service Commission will provide the room for the Data Centre setup.
- 4.4 The Bidder shall execute the entire Scope of Work covered under these on a **turnkey basis**. Preparing the room, Supply, installation, implementation, testing, commissioning and warranty services for equipment supplied as per the proposed design to meet the desired objectives. The broad scope of work of the project will include, but is not limited to, the following activities:
- 4.5 **Project Plan:** The bidder shall visit the site upon be awarded the tender, analyze the status of the room and the equipment therein. Prepare a detailed work-plan in consultation with the Commission technical team. The work plan shall be approved and the bidder shall be ready to start work based on the approved work plan.
- 4.6 **Equipment Relocation:** The bidder shall move all the equipment to the adjacent room while ensuring there is minimal or no interruption of service delivery. The work shall be done off-working hours and preferably over the weekend or holiday. The equipment shall be reconnected to ensure all services are up and running. The bidder shall ensure that the equipment shall not be affected by the works including protecting them from dust, heat unauthorized access and any other negative physical materials.
- 4.7 **Site Preparation:** Remove any unnecessary materials, prepare the site and perform required civil works essential for installing/implementing various Data Centre Infrastructure systems / components under the scope of this tender.
- 4.8 **Room preparation** shall comprise of civil works and interiors as per the detailed technical specifications provided in *Technical specification I section*. The selected Bidder will only use the acceptable materials and brands with good workmanship qualities to provide Class A finish which is long lasting and easily maintainable.
- 4.9 **Supply / create Infrastructure facilities** comprising of AC, UPS, Electrical works, Fire Safety Systems including Very Early Smoke Detection Apparatus, Access Control, live and recorded CCTV Surveillance, environment monitoring systems, datacenter room moisture and water monitoring, SMS and Email notifications etc., as per the detailed specifications provided in *Technical specification I section*.
- 4.10 **Installation and integration** shall mean to install and configure every component and subsystem component(s), integrating with the required components and integrating other all the necessary ICT components.
- 4.11 User Acceptance and Testing (UAT) shall cover the entire Data Centre including access to the Modular hosting room. A detailed test plan shall be defined by the Bidder in consultation with respective OEMs and this plan shall be submitted to Teachers Service Commission for review and approval; Teachers Service Commission reserves the right to modify the type and / or number of parameters being tested. Approved test plan will be given back to the Bidder for execution in consultation with respective OEMs.
- 4.12 All documentation (as built drawings, equipment labelling details, cable routes, manuals, data sheets, software, maintenance schedule, communication and escalation details etc.) related to the Data Centre shall be completed and submitted to Teachers Service Commission, in hardcopy and where necessary soft copy, before the final acceptance test.
- 4.13 The training requirements as mentioned in below training section shall be completed after the final acceptance test; the schedule shall be decided in consultation with Teachers Service Commission.
- 4.14 The User Acceptance & Testing (UAT) shall include all works, hardware and software items installed at Data Centre as per the layout drawings and technical specifications and availability of all systems shall be verified. The Bidder shall be required to demonstrate all the features / facilities / functionalities. The Bidder will arrange the test equipment required for performance verification

and will also provide documented test results.

- 4.15 The bidder shall provide documentary proof of back-to-back support with OEMs of the third-party products like, UPS, Precision AC, Fire detection and Suppression System, VESDA System, CCTV etc., before UAT sign off.
- 4.16 **Relocation of equipment into the new datacenter** shall mean to disconnect the servers, network equipment and installing them into the new Modular Tier III Datacenter. Any cabling and/or re-cabling of the network and/or electrical equipment required shall be carried out by the bidder.
- 4.17 The equipment shall be disconnected from their current cabinets, in consultation and on approval of the Commission, all the cabling must be marked to ensure every equipment is properly reconnected. The network equipment including the network cables shall be disconnected and reconnected inside the new Modular Data Centre by the bidder.
- 4.18 Power shall be disconnected from the old cabinets and equipment and re-connected after moving the equipment into the new datacenter equipment. Any re-cabling required shall be borne by the bidder.
- 4.19 The bidder shall be fully liable for any breakage or failure of any equipment and/or connections and shall return them to working condition or replace them with similar or better equipment.
- 4.20 **Training:** The Bidder shall conduct training to familiarize the Teachers Service Commission technical team with the operations and maintenance procedures of the Data Centre. The scope of training shall include all equipment installed including the UPS, Access Control, CCTV, VESDA and fire suppression, moisture detection, water detection on the floor, notification equipment, fire-alarm system, amongst others. The training shall involve three weeks with two weeks outside the office and one week practically on the site. The training shall cover all the systems involved in the build of the Data Centre.
- 4.21 **Documentation:** Bidder shall provide documentation, which follows the ITIL/ISO20000 standard.
- 4.22 **Training materials:** Training material shall be provided in soft copy, which shall include the presentations used for training and also the required relevant documents for the topics being covered.
- 4.23 **Process documentation:** The Bidder shall be responsible for preparing process documentation related to the operation and maintenance of each component of the Data Centre. The prepared process document shall be formally approved and signed off by Teachers Service Commission before commencement of UAT.
- 4.24 **Operation and Maintenance Manuals:** Two copies of all final operating and maintenance manuals will be supplied in A4 binders and soft copies.
- 4.25 **Operating Manuals** will comprise instructions on equipment safety checks, startup and close-down procedures, daily operation and full descriptions of operating features. Diagrams will show the full diagrammatic (network structures, outstations and peripherals) and physical layout of the system and components.
- 4.26 **Maintenance Manuals** will comprise full descriptive and maintenance details on each and every major item of equipment supplied. Suppliers and spare parts references, contacts, telephone numbers, and addresses will be supplied where relevant.
- 4.27 **Wiring Schematics:** The contractor will submit wiring schematics in soft copies which can be easily printed either on A1 or A0 size. Detailing individual subsystem-wise cabling including data and electrical cabling and will be appropriately color coded. The layout shall detail location of all components.

- 4.28 **Equipment Configurations:** Configuration details of individual equipment will be recorded and presented as a part of the documentation.
- 4.29 **All the documents will be presented in hard copy (2 sets) and soft copy (1 sets) formats.**
- 4.30 The Bidder shall be responsible for preparing documentation required for certification wherever applicable or as required by Teachers Service Commission.
- 4.31 **Maintenance Service:** The Bidder shall provide maintenance services for an initial minimum period of 3 years, one of which all the infrastructure must be under warranty.
- 4.32 **Physical infrastructure system maintenance service:** The objective of this service is to support and comprehensively maintain the entire Physical Infrastructure of the Data Centre supplied and installed as per manufacturer's practice.
- 4.33 Proactive and reactive maintenance, repair and replacement of defective components (hardware and software). This includes carrying out the necessary repairs and replacement of parts whenever needed to keep the service and operations levels in tune with the requirements. The cost of repair and replacement shall be fully borne by the bidder.
- 4.34 The bidder shall carry out scheduled preventive maintenance activities to keep all the Data Centre Infrastructure systems in optimum working conditions. Preventive maintenance should be carried out at least once in every quarter-year, which includes but is not limited to:
- 4.34.1 Checking for any loose contacts in the cables and connections.
- 4.34.2 Run diagnostics tests on equipment
- 4.34.3 Cleaning and removal of dust and dirt from the interior and exterior of the equipment.
- 4.34.4 Updating wiring and connection diagrams, whenever modifications are made.
- 4.34.5 Checking and listing all wear and tear of the equipment and site environment.
- 4.34.6 Ensuring no flammable material is present in Data Centre area.
- 4.34.7 Clearing up of any unnecessary items / spares.
- 4.34.8 The bidder shall maintain records of all maintenance (preventive & breakdown) of the systems and shall maintain a logbook on site that will be under the custody of the technical team Teachers Service Commission
- 4.35 The bidder shall stock and provide adequate onsite and offsite spare parts and spare components to ensure that the Uptime commitment as per the SLA is met.
- 4.36 The bidder shall have back-to-back SLA with the OEMs of the supplied systems to ensure timely supply of spares and technical support.
- 4.37 The bidder shall provide a copy of the SLA signed with respective OEMs for the entire contract period at the time of UAT.
- 4.38 **Resource Requirement:** The bidder shall prepare and submit to Teachers Service Commission a detailed Project Plan covering various milestones, project organization chart, planned resources deployment, Project Manager and other key resources identified for the project execution, escalation matrix, implementation methodology etc., during the project Kick-off meeting. The project kick-off meeting shall be held within 14 days/ Two weeks from the date of Contract signing.
- 4.39 The Bidder shall be responsible for the deployment, transportation, accommodation and other



requirements of all its employees / contractors required for the execution of the work and for all costs/charges in connection thereof.

- 4.40 The Bidder shall provide and deploy, on the Site personnel for carrying out the work, only those manpower resources who are skilled and experienced in their respective trades and who are competent to execute or manage/supervise the work in a professional manner and within given timelines.
- 4.41 The Bidder shall maintain backup personnel and shall promptly provide replacement of every person removed, pursuant to this section, with an equally competent substitute from the pool of backup personnel.
- 4.42 In case of change in its team composition owing to attrition, the Bidder shall ensure a reasonable amount of time-overlap in activities to ensure proper knowledge transfer and handover/takeover of documents and other relevant materials between the outgoing and the new member. The exiting team member should be replaced with an equally competent substitute from the pool of backup personnel.

## **5 Technical Specifications**

- 5.1 This section describes the technical requirements of the Data Centre room and the Modular Tier III Datacenter and the specifications of the systems/components required to fulfill the requirements. The detailed technical specifications for various systems/subsystems required for building the Data Centre are given below. These technical specifications are minimum required and items with better specifications are acceptable. The bidder shall indicate its compliance to each and every point in the technical specifications in the column marked as “**Compliance**”.

### **5.2 Technical Requirements**

- 5.2.1 The Data Centre will cater for internal IT requirements, i.e., applications and users and also provide an isolated high performance computing environment and network for the Commission.
- 5.2.2 The bidder shall be responsible for designing and setting up of all the infrastructure requirement of the Data Centre. The bidder shall carry out all the following infrastructure related works of the Data Centre.

### **5.3 Infrastructure preparation for the Data Centre:**

#### **5.3.1 Datacenter Room**

- 5.3.1.1.1 Datacenter area will have raised access floor with 2 x 2 ft size tiles having cement fill/Calcium sulphate & anti-static 1.5 mm laminate top cover. Height of the fire rated raised floor top finish will be 1.5 ft (450mm) from true floor and capable of withstanding UDL of 1,350 kgs/sq. mtr. and a point load of 450 kgs.
- 5.3.1.1.2 Modular false ceiling grid will be provided, to hide installation on the ceiling support and will have 2 x 2 ft size fine fissure type tiles fire rated & supported on a hot dipped galvanized steel section with vertical supports using 2mm wire on true ceiling.
- 5.3.1.1.3 Fly-ash /Aerocon /Fire rated bricks/quarry stones partition will be made extending from slab to slab creating 1hour fire rating room envelope. Partition facing the Network Operations Centre (NOC) room will have a clear fire rated vision part glazing which enables the team to view the happenings of the datacenter. Upon smoothed surface, one coat of primer and two coats of paint will be applied.
- 5.3.1.1.4 The same material above shall be used to seal the windows facing outside to ensure 1 hour fire rating envelope room. While from the inside the building shall be fully sealed, from the outside the current windows shall remain as they are but permanently shut to ensure the building maintains the current look and feel of the building from outside. The window glass shall be replaced with one-way 4mm glass.

- 5.3.1.1.5 **Fire rated Door:** Fire rated Entrance door frame and leaves shall be made from galvanized steel 46mm thick fully flush, double skin door shell in specially designed honeycomb structure for reinforcements & fire rated vision glass.
- 5.3.1.1.6 Thermal Insulation will be provided for ceiling and true flooring using Nitrile rubber based.
- 5.3.1.1.7 The electrical works shall be organized for supporting the datacenter loads. The electrical cables shall be under the raised floor securely fitted on trays raised above the true floor surface. The power source shall be one from the mains and the other from the generator source.
- 5.3.1.1.8 The network cabling work shall be passed and securely held on cable trays different from the trays carrying the power cables. The Bidder shall install new cables to replace the existing ones to ensure a high standard is maintained.
- 5.3.1.1.9 The room shall have a ramp to cart equipment into the room and allow persons living with disability to access the room.
- 5.3.1.1.10 The Access to the room shall be through Biometric Access using 3-level access (Who you are, what you have and what you know – fingerprint/facial, card and pin). The system shall allow panic access which should alert selected persons. Every access to the Datacenter shall sent an alert and photo through email.
- 5.3.1.1.11 The access system shall have minimum capacity for 10 people with necessary security cards.
- 5.3.1.1.12 The room shall have a CCTV Monitoring system accessible only to the relevant staff.
- 5.3.1.1.13 The room shall be fitted with the flood detection and notification systems in case of water.

## **TIER III TECHNICAL SPECIFICATIONS**

### **2.0 SEALED AISLE CONTAINMENT TECHNICAL SPECIFICATION**

To achieve the energy saving target, a cold aisle containment to separate the cold air and cold air to optimize the cooling efficiency, should consists of the skylights, end doors, and cabinets. The net height of the cold aisle containment should be at least 2 m so that it does not affect routine maintenance and the safety of maintenance personnel.

#### **Skylight**

Skylights are used for sealing an aisle containment, should implement the following functionality:

- i. The skylight actuator opens the rotating skylights by interacting with the magnetic locks.
- ii. Upon receiving the fire alarm signal, the skylight controller opens the skylights by interacting with the magnetic locks, generates an audible and visual alarm signal simultaneously, and reports the alarm signal to the equipment room management system.
- iii. The skylights should reserve space for the installation of camera, temperature and humidity sensor, smoke detector, aisle lighting, infrared sensor. Skylights can activate the fire extinguishing linkage alarm signal in the aisle. In case of fire, the magnetic locks open and rotating skylights open automatically due to gravity force.
- iv. The skylights should utilize reinforced glass with an area of no less than 90% to ensure aisle brightness, a thickness of no less than 5 mm, and a transparency of no less than 90% to meet the equipment room fire extinguishing requirements.

## **Aisle Door**

Aisle containment access control and automatic sliding doors are secured to cabinets by screws to ensure that the cold aisle containment is properly sealed and separated, should implement the following functionality:

The middle of the panel is made of reinforced glass, through which you can see the cold aisle. The automatic door should be provided with a buffer device to ensure that it will not be damaged by collision due to quick closing during the opening and closing of the door.

- i. Dimensions: The door height should be the same as the cabinet height.
- ii. The end door frame glass is made of reinforced glass with an area of no less than 98%, a thickness of no less than 5 mm, and a transparency of no less than 90%.
- iii. The end door frame is made of high-intensity class A carbon cold rolled steel plates that are 1.2 mm thick.
- iv. Aisle containment access control should be deployed to guarantee the security, the access control should support biometric, IC cards and password;
- v. The sliding door should be opened and closed automatically by access control outside the module, and open by push the button inside the module

## **eLight**

The Modular Data Center should have a clear status indication, which can support indicate the status of module, and can interact with the access control and the alarm, it should implement the following functionality:

- i. The red light indicates that the recognition failed,
- ii. The green light indicates that the identification is successful.
- iii. The light should interact with the status of the module when the module has an alarm. Critical alarm, Major alarm, Minor alarm, and Warning alarm can be distinguished and can be indicated by different light colors.

## **Cable Tray**

The module DC should provide electric and extra-low voltage (ELV) cable troughs, and support engineering-free installation and expansion in the unit of cabinet. The cable troughs should support cross-column, cross-cabinet row, and cross-module installation.

## **3.0 INTEGRATED POWER DISTRIBUTION UNIT FOR IT AND PRECISION AIR CONDITIONER**

### **Operating Environment and Certification**

Power distribution unit operating environment should implement the following functionality:

- i. Protection level: IP20
- ii. Operating temperature:  $-5^{\circ}\text{C}$  to  $+40^{\circ}\text{C}$
- iii. Relative humidity:  $\leq 95\%$  ( $20^{\circ}\text{C}\pm 5^{\circ}\text{C}$ )
- iv. Altitude:  $\leq 3000$  m
- v. The CE certificate and the CE test report with complete pages should be provided for the precision PDC.

### **Basic Requirements**

Power distribution unit basic requirement should implement the following functionality:

- i. The input voltage should be 380/400/415 V AC and the frequency should be 50/60 Hz to match the power supply mode in most areas.
- ii. The rated input current of IT power supply should be  $\geq 160\text{A}$ , air-conditioner power supply current should be  $\geq 250\text{A}$ .
- iii. The IP protection level should be IP20.
- iv. The surge protection should be no less than level C.
- v. The air conditioner and IT power distribution are integrated in the power distribution system to facilitate cabling and save space.

- vi. The dimensions (W x D x H) of the power distribution unit should be 600 mm x 1200 mm x 2000 mm

### **Monitoring Requirement**

Power distribution unit monitoring requirement should implement the following functionality:

- iii. The Power supply distribution system should provide RS232 or RS485/422, FE (SNMP communication interface), dry contact and ambient monitoring sensor interface, and should provide communication cables to connect the communication interfaces and a variety of alarm signal terminals.
- iv. Bus monitoring parameters
  - Main switch status, load rate
  - The measurement precision of the main route voltage and current should be at least 0.5%; the measurement precision of the active and apparent power should be at least 1%, and the electric energy measurement precision should be at least 1%.
- v. Branch monitoring parameters
  - Rated current, actual current, load rate, switch status, and temperature of each branch
  - The measurement precision of the branch voltage and current should be at least 0.5%; the measurement precision of the active and apparent power should be at least 2%, and the electric energy measurement precision should be at least 2%.
- vi. **Alarm signal**
  - The LCD screen should support audible and visual alarms. The Alarms can be classified into warning, major, and critical based on the severity.

## **4.0 POWER DISTRIBUTION UNIT FOR UPS INPUT AND OUTPUT**

### **Operating Environment and Certification**

Power distribution unit operating environment should implement the following functionality:

- i. Protection level: IP20
- ii. Operating temperature:  $-5^{\circ}\text{C}$  to  $+40^{\circ}\text{C}$
- iii. Relative humidity:  $\leq 95\%$  ( $20^{\circ}\text{C}\pm 5^{\circ}\text{C}$ )
- iv. Altitude:  $\leq 3000$  m
- v. The CE certificate and the CE test report with complete pages should be provided for the precision PDC.

### **Basic Requirements**

Power distribution unit basic requirement should implement the following functionality:

- i. The input voltage should be 240/400/415 V AC and the frequency should be 50/60 Hz to match the power supply mode in most areas.
- ii. Supporting ATS input with capacity of 630A.
- iii. Supporting independent input for mains and bypass input.
- iv. Supporting multi output configuration including 250A, 160A.
- v. The dimensions (W x D x H) of the power distribution unit should be 800 mm x 850 mm x 2000 mm

### **Monitoring Requirement**

Power distribution unit monitoring requirement should implement the following functionality:

- i. Supporting RS485 protocol to compatible with the Level-1 management
- ii. Supporting MODBUS and third-party management system
- iii. Supporting monitoring the three-phase voltage, current, load rate, frequency, power factor, active power, appearance power, inactive power, neuter current, voltage distortion rate, current distortion, total power consuming and so on.
- iv. Supporting 2-31th voltage and current harmonic and total harmonic detection for mains input

- v. The detection precision of voltage and current reach 0.5 class, the active power, inactive power reach 1 class, power consuming detection reach 1 class.

## **5.0 MODULAR UPS SPECIFICATION & REQUIREMENT**

### **General requirements**

The modular UPS general requirement should implement the following functionality:

- i. The bidders should provide online double-conversion modular UPS with 3 phase input and 3 phase outputs.
- ii. The rated capacity of modular UPS system should be no less than 120 KVA. The rated capacity of power module shall be between 20Kva to 50kVA and support hot swap.
- iii. At online mode, the system efficiency of UPS should be 96% at half rated load. At ECO mode, the operating efficiency shall be no less than 99%.
- iv. The modular UPS system that the bidders provide should use concentrated bypass and the bypass module shall be hot swappable. A built-in bypass should be provided.
- v. The modular UPS system should support self-load function to debug easily

### **5.1 Electrical Characteristic Requirement**

The modular UPS electrical characteristic requirement should implement the following functionality:

#### **i. Input**

3Ph +N+PE

Input voltage range (Vac): 138-485VAC; at 305V-485V

Input frequency range (Hz): 40Hz-70Hz

Input power factor: >0.99 at rated load

THdi: <3% (linear load, rated load), <5% (nonlinear load, rated load)

#### **ii. Output**

Rated voltage: 380V AC/400V AC/415V AC±1%

Output accuracy: ±1 %;

Thdv: <1% (linear load, rated load, <4% (nonlinear load, rated load)

Voltage transient range: ±5% (recovery in 20ms)

Crest factor: 3: 1

Output frequency: Tracking the bypass input (online mode), 50Hz/60Hz±0.25% (Battery mode)

Output power factor: 1

Load adaptability: No derating for load with a PF>0.5

Overload capacity: 110% overload for 60min; 125% over load for 10min; 150% overload for 1min

#### **iii. Battery and charger**

A single UPS supports minimum 15 minutes of battery bank

Battery should be sealed lead acid type with free maintenance

Battery cold start: supported

Battery charger capacity: The charging capacity shall not be less than the 10% of single module capacity

Battery number adjustable: supported

## **6.0 CABINET SYSTEM SPECIFICATION & REQUIREMENT**

The cabinet system specification & requirement should implement the following functionality:

- i. The cabinet dimension: 600 mm x 1200 mm x 2000 mm

- ii. The cabinet doors and side panels should be removable. The doors can be opened and closed flexibly, locked reliably, and are easy to install and maintain.
- iii. The cabinet complies with IEC 60297-2 and ANSI/EIA RS-310-D and is compatible with the 19" rack international standard.
- iv. The cabinet is black.
- v. The cabinet is made of high-intensity class A carbon cold rolled steel plates and zinc-coated steel plates. The cabinet surface coating should be at least 60 am thick and use the black sand texture so that the cabinet surfaces are anticorrosive, antirust, bright, clean, even, and free from sagging, exposure, bubbles, and crack. The metalwork does not have burrs or corrosion.
- vi. The static bearing capacity is not less than 1500 kg, and the test report issued by a third-party authority is provided.
- vii. The front and rear doors of the cabinet are ventilated mesh doors, and the ventilation rate is not less than 70%.
- viii. Protection level: IP20
- ix. The cabinet should configure two rPDU with single phase C13/C19 standard socket, circuit breaker protection supported by the rPDU of 32 A or higher current

## **7.0 COOLING SYSTEM SPECIFICATION & REQUIREMENT**

### **The cooling system general requirement**

The cooling system general requirement should implement the following functionality:

- i. The manufacturer must be ISO 9001-, ISO 14001-, ISO 27001-, and OHSAS 18001-certified.
- ii. The manufacturer must comply with the RoHS, REACH, and WEEE statement for the standard PAC unit to ensure that the PACs do not contain compounds harmful to humans, animals, and to protect human health and environmental safety. The RoHS, REACH, and WEEE statement by the National Certified Institution of the Original Country should be provided.
- iii. The manufacturer **MUST** have comprehensive, functional inspection equipment on the product assembly line, with programmable auto-inspection for detailed online product inspection. Items should include cooling, heating, humidifying, dehumidifying, other related sensor functions, and system protection inspections to ensure production quality before shipment. The proof material, and accept the factory inspection after contracted should be provided.
- iv. The cooling system should be configured with DC inverter compressor, evaporator, EC fans, controller, electric expansion valve, oil separator, sight glass, dryer filter.
- v. The cooling system should be equipped with high efficiency and the cooling capacity can be adjusted steplessly between 10% and 100%. To save energy, the cooling capacity should be adjusted according to heat load. The compressor crankcase should be equipped with an electric heater to improve compressor reliability.
- vi. The cooling system indoor unit should use high efficiency, energy-saving variable speed EC fans with N+1 redundancy and hot-swapped design, each fan failure will not affect the performance.
- vii. The cooling system should support convenient on-site and remote monitoring.
- viii. The cooling system should support RS485 and FE communication ports that enable remotely inspecting the system and configuring parameters. In addition, ModBus and SNMP open protocols are provided to access the environmental monitoring system of the equipment room, reducing the service costs.
- ix. The cooling system electronic expansion valve has its own power module and driver that will close the valve normally during sudden power-down situations, which will prevent liquid flow back to the compressor and ensures system reliability.
- x. The cooling system should support self-diagnose malfunctions. When a fault occurs, the fault diagnosis function is enabled. It excludes irrelevant causes of faults and quickly guides Operations & Maintenance (O&M) personnel through maintenance. This simplifies O&M and reduces troubleshooting time.

The cooling system technical specifications should implement the following functionality:

The air conditioner should be air cooled in-row precision air conditioner, specification requirement as below:

Item	Specification
Air supply	Horizontal
Indoor unit type	EC fan
Total cooling capacity	≥ 42kW
Sensible cooling capacity	≥ 42kW
SHR (Sensible heating ratio)	1
Refrigerant type	R410
Air volume	≥ 8,600m <sup>3</sup> /h
Humidification capacity	≥ 3kg/h
Heating capacity	≥ 6kW

## **8.0 MANAGEMENT SYSTEM SPECIFICATION & REQUIREMENT**

The management system general requirements

The management system general requirements should implement the following functionality:

- i. The management system should be a unified management platform, continuously monitor the power supply and distribution equipment, UPS, air conditioning, temperature and humidity, water leakage, smoke, video surveillance, and access control devices. It also needs to integrate the building management system, security system, and other specialized subsystems.
- ii. The data center management system must have a B/S architecture, and should be able to perform real-time access through a browser at anywhere on the network.
- iii. Data Center Infrastructure Management system should be equipped with professional high-performance servers running on the Linux or windows operating system, and must not use ordinary industrial computers or other low-specification devices.
- iv. The Data Center Infrastructure Management System should support various alarms in colours, e-mail, SMS, or sound. Historical data and alarm events are recorded when alarms happen. All monitoring information is reported to the management platform over the standard northbound SNMP interface.
- v. The management system should support web access and be accessible through a browser at anywhere on the network. The browser should at least be able to support Windows Internet Explorer, Chrome, Firefox, and other mainstream browsers. In addition, the system should support a phone app client, at least Android 4.0 or mainstream Android phones.
- vi. **Energy efficiency management:** The management system should provide energy analysis capabilities, and be able to display equipment room PUE values, DCiE values, and subsystem power consumptions for different sites in real time.
- vii. **Work order management:** The management system should support work-order operation and maintenance management, covering order assignments, processing, feedback, and end, when a fault occurs, the system automatically dispatches a work order, and send an operation and maintenance task to a specified owner by email or SMS. The administrator can query the progress of the work order processing in the system, and appraise operation and maintenance personnel.
- viii. **3D visualization:** The management system should support module layout 3D visualization on the local monitoring screen

### **The management system security requirements**

The management system security requirements should implement the following functionality:

- i. **Virus scanning:** The management system software is subject to at least three types of Enterprise Edition virus scanning tool to scan, including but not limited to, Trend Micro, McAfee, Avira, Kaspersky, Symantec. Scanning reports are required to ensure system security.
- ii. **Vulnerability scanning:** The management system, associated operating systems, and databases are scanned by common Enterprise Edition vulnerability scanning tools (such as Nessus or SAINTbox). High-risk vulnerabilities are not allowed, and scanning reports are required.
- iii. **Log management:** Logs need to cover all operating instructions and user activities in the system. Activities cannot be deleted.

### **8.3 The management system function requirements**

The management system function requirements should implement the following functionality:

- UPS system monitoring
  - Telemetry power phase voltage, phase current, battery voltage, battery current, output frequency.
  - Tele-indication: bypass power supply, mains failure, rectifier failure, inverter failure, bypass failure.
- Power distribution unit monitoring
  - Telemetry: output power phase voltage, current, frequency, output power.
  - Tele-indication: output voltage, current, frequency, alarm information of overload, unbalanced load, AC power failure.
- Precision air conditioner monitoring
  - Telemetry: the operating status and parameters of compressors, fans, pumps, heaters, humidifiers, dehumidifiers, filters. Air conditioning and refrigeration temperature, supply air temperature, return air temperature, supply air humidity return air humidity, fan speed (high / medium / low)
  - Tele-indication: fan status, fault alarm.
  - Tele-command: on/off status of AC.
- Video monitoring
  - Connects in the video equipment and display real-time views on the management platform in data centre.
  - Uses digital cameras, supports more than two coding formats, such as H.264 and MJPEG, and supports Power over Ethernet (PoE) functions.
  - Controls and manages videos by the NVR, supports video recording, query, audio intercom, camera control, and alarm handling.
  - Stores videos for at least 30 days, support expansion in accordance with the custom.
- Access monitoring
  - Monitors the door status in real time and records events such as swiping card and opening and closing doors.
  - Supports Identification (ID) cards.
  - Real-time monitoring and recording personnel access.
  - Authorizes personnel available region, date, and time of access, support division of permissions group.
  - Supports remote management operation for access controller.
  - Supports anti-theft alarm function.
  - Linkage with the fire protection system, when a fire alarm occurs, system receives the fire alarm signal, and controls all door opening.
  - Supports alarm of access abnormal, such as illegally open the door or the door not closed for long periods.



- Fire alarm monitoring

- System supports connecting of fire equipment, system can send the fire alarm.

#### 8.4 The management system hardware specifications & requirements this minimum

The management system hardware specifications & requirements should implement the following functionality:

- Data Controller

- Power input: should support dual-line AC power input, the working voltage range should no less than 85-300V.
- System memory: 512 MB
- Hard disk: 2 GB+128 MB storage space
- FE extension: Two WAN ports, two LAN ports, 10/100/1000 communication speed
- RS485 interface extension:
- No less than 4 RS485 interfaces reserved, with a default communication speed of 9600 bps
- AIDI extension (RJ45):
- At least 6 AI/DI interfaces for connecting smoke, water, and temperature sensors
- DO extension (RJ45):
- Two dry contact expansion interfaces with a dry contact capacity of 20 W
- Two active DO interfaces with an output of 12 V DC/450 mA
- Wireless communication: Wireless communication in the IEEE802.15.4 standard
- 3G: 3G communication with one SIM card slot
- USB: Common USB ports

- Smoke and T/H Sensor

- The smoke and T/H sensors can be connected to the data collector over the FE and wireless communication.
- Temperature monitoring range: -40~80°C, precision $\leq\pm 0.5^{\circ}\text{C}$  (0~50°C)
- Humidity monitoring range: 0~100% RH, precision $\leq\pm 5\%$ RH (25°C, 20%~80% RH)

- HD IP Camera

- Image sensor: 1/3 "2.0-megapixel progressive scan CMOS
- Maximum image size: 1920 (H)  $\times$  1080 (V)
- Minimum illumination: 0.1 Lux @ (F1.2, AGC ON), 0 Lux with IR
- Infrared irradiation distance: 10–30 meters with IR supported
- Day and night modes: Auto (ICR)/Color/B & W/timing/alarm trigger (Boolean)
- Motion Detection: Supports common mode and expert mode. In common mode, any rectangular area on the screen with 6 sensitivity levels. In the expert mode, you can choose eight rectangular areas with sensitivity adjustable between 0 and 100.
- Communication interface: Provides one RJ45 10/100/1000 adaptive Ethernet port and one RS485 port.

- Access Controller

- The access controller should support multiple access control devices, such as a

fingerprint and IC reader with a keypad, fingerprint and IC card reader, and card reader with a keypad.

- The Controller Display LCD

- The controller display screen should support wireless access to the Modular Data Centre management system. Modular Data Centre equipment and environmental parameters are monitored in real time by an app. The micro-module LCD is a capacitive screen which supports the multi-touch function.

**MODULA TIER III DATA CENTRE COMPONENTS BILL OF MATERIALS.**

No.	Description	Qty.
1	Cabinet Components	
	M-type rack, 600 mm (W) x 1200 mm (D) x 2000 mm (H), 42 U	14
	Cabinet side panel, for 1200 mm deep and 2000 mm high cabinets, dedicated for M-type cabinets	64
	Equipment Installation Components	
	Light-load guide rail, bearing 50 kg, for 1200 mm deep cabinets and 1100 deep server cabinets, configured in pairs (each BOM number for one guide rail)	64
	Wind Management Components	
	Blank panel,1U	640
	Cable Management Components	
	Cable Manager, 1 U, horizontal cable routing	32
	Cable ring, standard, for M-type cabinets	96
	Earthing & Door Magnetic Components	
	Horizontal ground bar, for grounding customer equipment, 2 x M8, 19 x M6	16
	Power Cable,0.8m,6mm <sup>2</sup> , yellow/green, (OT6-8),227IEC02-6 <sup>2</sup> Y&G, (OT6-8)	16
	Distribution line-Cable-Industrial Connector-Mounting bracket Subassembly	
	Rack Power Distribution Unit, Basic Type-PDU2000-32-1PH-20/4-B9-20*C13+4*C19-Full height vertical-NO Industrial Connector-Free mounting plate	32
	Industrial connector assembly, single-phase, 32 A	32
2	Aisle Components	
	Control skylight, for 600 mm wide cabinets and 1200 mm wide aisle containments, dedicated for M-type cabinets	2
	300mm full glass skylight, Used for 1200 mm aisle containment	2
	21A 600mm full glass skylight-two pieces packed in one, Used for 1200 mm aisle containment	4
	Double sliding doors, for 2000 mm high cabinets and 1200 mm wide aisle containments	2
	100 mm deep enclosure frame, for extending 1100 mm deep cabinets to 1200 mm deep, used together with integrated UPS cabinets, integrated PDCs, modular precision PDCs, or 600 mm wide air conditioners	2
	Flexible tail frame for the UPS5000E	2
	Cable trough, for 600 mm wide cabinets, every two 600 mm wide cabinets configured with 1 PCS	10
	Cable trough, for 300 mm wide cabinets, every 300 mm wide cabinets configured with 1 PCS	4
	Installed PAD pieces of sheet metal plate, for mounting the pad and access controller	2
	Pad mounting support-for pad installation	1

No.	Description	Qty.
	Primo Packing	1
	Lower sealing plates for 2000 mm high cabinets, front and rear sealing plates, for 600 mm wide cabinets, 1 PCS for every two cabinets, dedicated for M-type cabinets	8
	Lower sealing plates for 2000 mm high cabinets, front and rear sealing plates, for 600 mm wide cabinets, each code contains one 600 mm wide bottom sealing plate and two 300 mm wide bottom sealing plates, dedicated for M-type cabinets	8
	Enclosure plate at the top of a 300 mm wide cabinet-Used to seal the cable trough at the top of a 300 mm wide cabinet-Configure one PCS for every two cabinets	2
	Enclosure plate at the top of a 600 mm wide cabinet-Used to seal the cable trough at the top of a 600 mm wide cabinet-Configure one PCS for every two cabinets	10
	RGB-LED light, 220 - 240V, single phase, 50Hz or 60Hz, supporting RGB colour mixture	2
	Light System, LED ground lamp, 220V-240V, single phase, 50Hz, 3600mW, Ground lamp, blue	1
3	<b>Power Distribution System</b>	
	<b>Integrated UPS, UPS5000-E-60-125kVA</b>	
	Integrated UPS Cabinet, UPS5000-E-125K-HABBS-01, 240/380/400/415V, MCCB Input, Without Air-conditioning Distribution Module	2
	24-way Three Phase Air Cooling Power Distribution Module, C63/3P*8, ABB	2
	Function Module, 30kVA power module, 2U, UPS5000-E	6
	Monitor & Alarm Cable, LBS cable, 10m, D15F, CC8P0.48B(S), D15F	2
	<b>Lithium battery cabinet</b>	
	SmartLi-Lithium battery cabinet-standard configuration (with monitor)-with gas in cylinder	2
	Energy Storage Module, ESM-6440P1, 64V, 40Ah, 200mm*592mm*155mm	16
	Blank panel-Energy-C	16
4	<b>Air Conditioning System</b>	
	Smart Cooling Product, Air Cooling, Indoor Unit, NetCol5000-A035H, 2000H*300W*1200D, Horizontal Air Flow, Up&Down Pipe, Dual Power Supply, Heating & Humidifier, International packaging	2
	Smart Cooling Product, Air Cooling, Indoor Unit, NetCol5000-A035H, 2000H*300W*1200D, Horizontal Air Flow, Up&Down Pipe, Dual Power Supply, Cooling Only, International packaging	2
	Smart Cooling Product, Air Cooling, Outdoor Unit, NetCol5000-A060, 1107H*1356W*1094D, International packaging	4

No.	Description	Qty.
	Smart Cooling Product Auxiliary Material, Copper Pipe Assembly,3/4"(gas pipe) &5/8"(liquid pipe) *25m, Including Engineering Auxiliary Materials	5
5	Monitor System	
	Other Network Accessory-Smart ETH gateway-48VDC-POE	4
	Network Card, WIFI,1 port, USB 2.0, without Driver CD,2.4G, 802.11b/g/n, -20-70degC, split from 06310069	1
	Micro SD 32GB (Class 10)	1
	Power Connector, 2PIN, 250VAC, 16A, AWG24~12, Germany Standard Socket, Rail Mounted	1
	C3220-10-SIU 1T 2MP IR AI Fixed Dome Camera	1
	Access Control System-Skylight Magnetic Lock -12VDC-8kg	5
	Skylight Actuator: POE	1
	Lighting system,220 - 240V, single phase,50Hz, less than 12000mW	24
	Alternating current actuator -ZigBee, used for lighting, PAD power supply channel.	1
	Push Switch-SPDT-12VDC-1A-Panel Mounting-50mm-Square-Entrance guard switch	2
	Fingerprint/Password/Card access control system, applicable to double sliding doors	2
	Sensor Signal Controller-Multi-function Sensor (Smoke /Temperature/humidity detection)-POE/Zigbee	2
	Sensor-Non positioning water immersion sensor-12VDC-NO/NC-Standard 5m immersion rope, maximum extension to 50m	1
	Sensor-Liquid Level Sensor-Non positioning water immersion sensor detecting rope-5m	3
	temperature and humidity sensor	4
	Wire Mount DKBA04804899_HW-WMT-12	80
	Buzzer-9-16VDC	1
6	Pro -Controller- Support SMS	
	Ecc800-Pro -Controller- Support SMS - Dual power supply	1
7	Cabling System	
	Power Cable	
	Subassembly - Accessories-Power Cable for UPS to Mains-(4x50+1x25) mm <sup>2</sup> -(4x95+1x50) mm <sup>2</sup> -(4x185+1x95) mm <sup>2</sup>	
	Electronic Electric Cable,600V/1000V, ZA-YJV, (4x185+1x95) mm <sup>2</sup> , Black (4+1Cores: Yellow, Green, Red, Blue, Black),424A	40
	Naked Crimping Connector, DT,185mm <sup>2</sup> , M12,500A, Tin Plating	22
	Naked Crimping Terminal, DT,95mm <sup>2</sup> , M12,320A, Tin Plating	10
	Subassembly - Accessories-Power Cable for UPS to Battery Cabinet/Rack-25mm <sup>2</sup> ~95mm <sup>2</sup>	
	Naked Crimping Connector, JG, 120mm <sup>2</sup> , M10, 380A, Tin	18

No.	Description	Qty.
	Plating	
	Naked Crimping Terminal, DT,70mm <sup>2</sup> , M12,260A, Tin Plating	10
	Power Cable,600V/1000V, ZA-YJV,120mm <sup>2</sup> , Black,382A, Single-core Double Insulation (Unit: meter)	21
	Naked Crimping Terminal, DT,120mm <sup>2</sup> , M12,380A, Tin Plating	18
	Power Cable,600V/1000V, ZA-RVV,70mm <sup>2</sup> , Yellow/Green,213A, Single-core Double Insulation (Unit: meter)	7
	Subassembly - Accessories-Cable For UPS/PDU/Precision PDU to rPDU-3x6mm <sup>2</sup> -5x6mm <sup>2</sup>	
	Power Cable,600V/1000V, ZA-RVV,3x6mm <sup>2</sup> , Black (3Cores: Brown, Blue, Yellow/Green),46A, Outdoor Cable, CE (unit: meter)	336
	Common Terminal, Conductor Cross Section 6mm <sup>2</sup> , Length 20mm, Insertion Depth 12mm, Black	134
	Naked Crimping Terminal, OT,6mm <sup>2</sup> , M6, Tin Plating, Insulated Ring Terminal,12~10AWG, yellow	70
	Subassembly - Accessories-Air Container Power Cable (power cable-signal cable-standard network cable-Naked Crimping Terminal)	
	Power Cable,600V/1000V, ZA-RVV,5x10mm <sup>2</sup> , Black (5Cores: Red, Yellow, Green, Blue, Black),63A, Outdoor Cable, CE (unit: meter)	107
	Common Terminal, Single Cord End Terminal, Conductor Cross Section 10mm <sup>2</sup> , Length 22mm, Insertion Depth 12mm, Ivory	30
	Naked Crimping Terminal, OT,10mm <sup>2</sup> , M6, Tin Plating, Naked Ring Terminal	62
	Power Cable,600V/1000V, ZA-RVV,5x2.5mm <sup>2</sup> , Black (5Cores: Red, Yellow, Green, Blue, Black),27A, Outdoor Cable, CE (unit: meter)	120
	Power Cable,300V, SJTW,3x16AWG, Black (3Cores: Black, White, Green),10A, Shielding Outdoor Cable, UL (Unit: meter)	120
	Common Terminal, Single Cord End Terminal, Conductor Cross Section 2.5mm <sup>2</sup> , Insertion Depth 12mm, Blue	38
	Naked Crimping Terminal, OT,2.5mm <sup>2</sup> , M6, Tin Plating, Insulated Ring Terminal,16~14AWG, blue	14
	Common Terminal, Conductor Cross Section 1.5mm <sup>2</sup> , Tin Plating, Insertion Depth 12mm, Black	30
	Subassembly - Accessories-Grounding Cable-6mm <sup>2</sup> ~16mm <sup>2</sup>	
	Power Cable,450V/750V,60227 IEC 02(RV),16mm <sup>2</sup> ,Yellow/Green,85A,CCC,CE (Unit: meter)	84
	Naked Crimping Terminal,OT,16mm <sup>2</sup> ,M8,Tin Plating, Naked Ring Terminal	62
	Power Cable,0.8m,6mm <sup>2</sup> ,yellow/green,(OT6-6),(227IEC02-	2

No.	Description	Qty.
	6^2G&Y),(OT6-6)	
	L1 Power Cable	
	Wiring harness L1 layer power supply	1
	Climate Light Cable	
	Ambient Light power supply	1
8	Signal Power Cable(System monitoring cable-Site Materials)	
	System monitoring cable(standard)	
	Signal Cable, standard network cable,3m,(MP8-I),(CC4P0.5GY),(MP8-I),Power supply	5
	Signal Cable, standard network cable,5m,(MP8-I),(CC4P0.5GY),(MP8-I),Power supply	9
	Cable Bundle, Module, Smart ETH gateway link cable,7.5m	2
	Signal Cable, standard network cable,19m, (MP8-I),(CC4P0.5GY), (MP8-I), Power supply	1
	Cable Bundle, Module, system basic monitor cable, Power supply	1
	Signal Cable, Shielded Straight Through Cable,10m, MP8-II, CC4P0.5GY(S), MP8-II, FTP	4
	System monitoring cable(optional)	
	Signal Cable, standard network cable,5m, (MP8-I), (CC4P0.5GY), (MP8-I), Power supply	3
	Signal Cable, standard network cable,3m, (MP8-I), (CC4P0.5GY), (MP8-I), Power supply	6
	Signal Cable, T&H cable,5m, (MP8-I), (SEYVP), (MP6-I), Power supply	2
	Cable Bundle, Module, electric sunroof lock link cable	4
	Cable Bundle, Module, Access controller basic system cable, Power supply	2
	Cable Bundle-Module-PAD charge socket power cable	1
	Cable Bundle, Module, lighting system cable	1
	Signal Cable, standard network cable,19m, (MP8-I),(CC4P0.5GY), (MP8-I), Power supply	2
	AC power cable	
	Power Cords Cable, AC Power 250V10A,1.5m, C14SM,227IEC53(RVV)1.0mm^2(3C), C13SF, PDU Cable	2
	Materials Kit	1
9	Technical Support Service	
	24-way Three Phase Air Cooling Power Distribution Module, C63/3P*8, ABB_Hi-Care Standard Air Cooling Power Distribution Module, C63_12Month(s)	2
	SmartLi-Lithium battery cabinet-standard configuration (with monitor)-with gas in cylinder_Hi-Care Standard UPS C20 Lithium battery cabinet_12Month(s)	2

No.	Description	Qty.
	Function Module,30kVA power module,2U, UPS5000-E_Hi-Care Standard UPS5000-E UPS Power Module (30K) _12Month(s)	6
	Integrated UPS Cabinet, UPS5000-E-125K-HABBS-01, 380/400/415V, MCCB Input, Without Air-conditioning Distribution Module_Hi-Care Standard Integrated UPS Cabinet,125kVA_12Month(s)	2
	Ecc800-Pro -Controller- Support SMS - Dual power supply_Hi-Care Standard Energy Control Center 800 Serial_12Month(s)	1
	Smart Cooling Product, Air Cooling, Indoor Unit, NetCol5000-A035H,2000H*300W*1200D, Horizontal Air Flow, Up&Down Pipe, Dual Power Supply, Cooling Only, International packaging_Hi-Care Standard NetCol5000-A 20-50kW_12Month(s)	2
	Smart Cooling Product, Air Cooling, Indoor Unit, NetCol5000-A035H,2000H*300W*1200D, Horizontal Air Flow, Up&Down Pipe, Dual Power Supply, Heating&Humidifier, International packaging_Hi-Care Standard NetCol5000-A 20-50kW_12Month(s)	2
	Energy Storage Module, ESM-6440P1,64V,40Ah,200mm*592mm*155mm-Hi-Care Repair UPS C20 Lithum moudle,64V,40AH-12Month(s)	16



**SECTION VI- PRICE SCHEDULE FORM**

**SUPPLY, DELIVERY, INSTALLATION AND COMMISSIONING OF A TIER 3 MODULAR DATA CENTRE AND RE-LOCATION OF EQUIPMENT FROM CURRENT DATA CENTRE TO THE NEW DATA CENTRE**

**FINANCIAL SUBMISSION**

No	Item	Qty.	Unit Price (KSH)	VAT	TOTAL (KSH)
<b>Civil Works</b>					
1	All civil works of converting the current room into the desired room to host the Modular Datacenter. This includes all items indicated in the document but not limited to sealing the wall and windows, raised floor with ramp, false ceiling with necessary material as per the specifications. Protection of equipment during civil works, cable trays	1			
<b>Modular Data Center</b>					
2	Modular Data Center	1			
2.1	Cabinet and Aisle Containment System	1 Lot			
2.2	Power Distribution System	1 Lot			
2.3	In Row Air Conditioning System	1 Lot			
2.4	Monitor System	1 Lot			
2.5	Subassembly – Accessories - Cabling System (Power Cable-Signal Power Cable – System monitoring)	1 Lot			
<b>UPS</b>					
3	UPS	1 Lot			
3.1	Optional Component as per the Technical Specifications	2 pcs			
3.2	Battery with Battery Rack (inclusive power cable)	80 pcs			
3.3	Cable and Auxiliary	1 Lot			
<b>PDU</b>					
4	PDU	2			
4.1	Cable and Auxiliary	1 Lot			
<b>Management system</b>					
5	Data Center Infrastructure Management System	1			
5.1	Hardware	1 Lot			
5.2	Software	1 Lot			
<b>Training</b>					
6	10 Staff members to be trained on first level support and maintenance of the different aspects of Modular Data Center, i.e., Cooling System, Electrical/UPS System, CCTV, Network and Systems administration including all aspects of preventive maintenance etc	1 Lot			
<b>Maintenance and Support</b>					
7	3 Years Maintenance after the end of one year’s warrantee period	1 Lot			
<b>Warranty</b>					
8	1 Year Warranty	1 Lot			

No .	Item	Qty.	Unit Price (KSH)	VAT	TOTAL (KSH)
<b>Relocation and setup of Servers, Storage &amp; Network equipment in New DC</b>					
9	Relocation and Setup of Equipment thus include the network connections for the servers	1 Lot			
<b>Relocation back of all the equipment's to the new Modular data center</b>					
10	Relocation and Setup of Equipment	1 Lot			
<b>Fire Suppression and Access Control System</b>					
11	Fire Suppression & Access Control System	1 Lot			
<b>VAT TOTAL</b>					
<b>GRAND TOTAL</b>					

**Note:**

- **The Total Amount VAT Inclusive MUST BE TRANSFERRED to the Form of Tender.**
- Bidders are required to quote for as per the price activity schedule above only without altering the system.

**Name of Tenderer [insert complete name of Tenderer] .....**

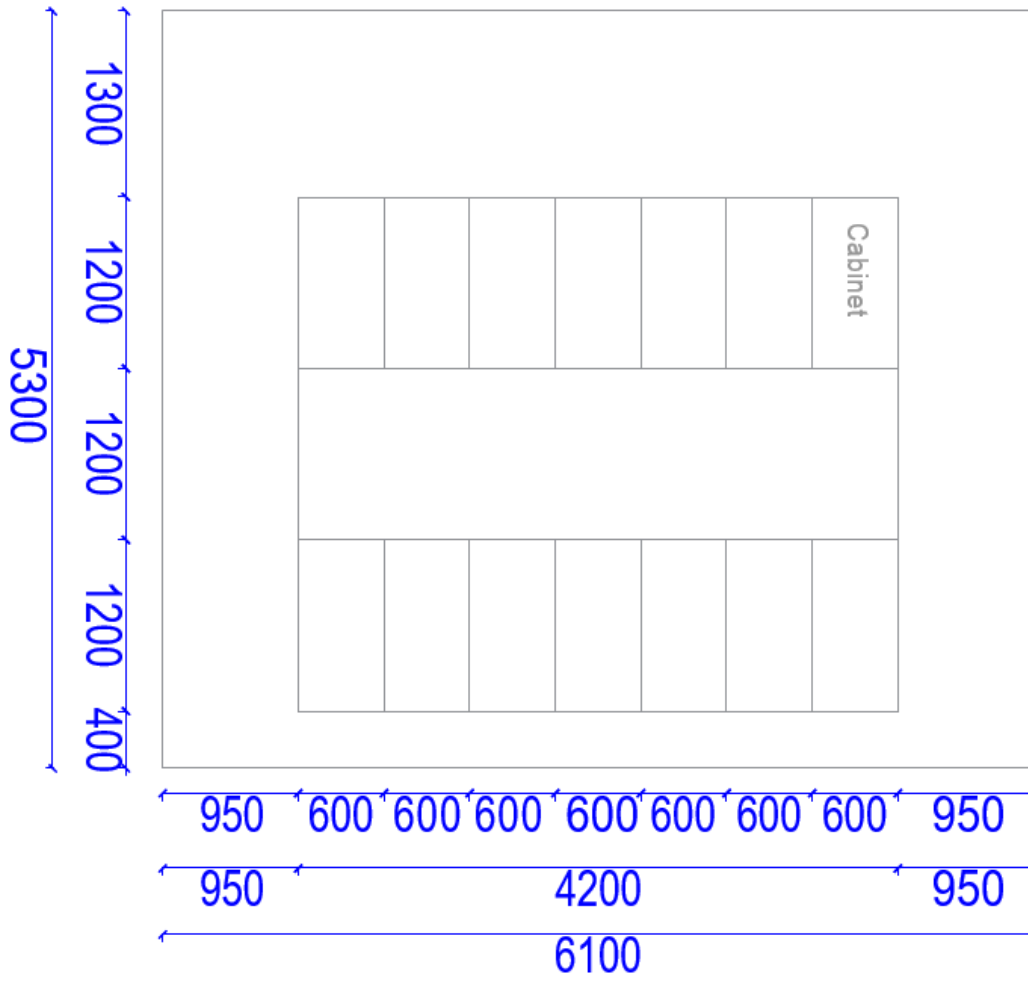
**Signature of Tenderer [signature of person authorized to sign the Tender]**

.....

**Date [insert date] .....**

**Bidder Official Stamp**

**Server Room Layout**



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**PART III – CONDITIONS OF CONTRACT AND CONTRACT FORMS**

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## SECTION VII - GENERAL CONDITIONS OF CONTRACT

### 1. General Provisions

#### 1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- a) The Adjudicator is the person appointed jointly by the Procuring Entity and the Service Provider to resolve disputes in the first instance, as provided for in Sub-Clause 8.2 hereunder.
- b) “Activity Schedule” is the priced and completed list of items of Services to be performed by the Service Provider forming part of his Tender;
- d) “Completion Date” means the date of completion of the Services by the Service Provider as certified by the Procuring Entity
- e) “Contract” means the Contract signed by the Parties, to which these General Conditions of Contract (GCC) are attached, together with all the documents listed in Clause 1 of such signed Contract;
- f) “Contract Price” means the price to be paid for the performance of the Services, in accordance with Clause 6;
- g) “Day works” means varied work inputs subject to payment on a time basis for the Service Provider's employees and equipment, in addition to payments for associated materials and administration.
- h) “Procuring Entity” means the Procuring Entity or party who employs the Service Provider
- i) “Foreign Currency” means any currency other than the currency of Kenya;
- j) “GCC” means these General Conditions of Contract;
- k) “Government” means the Government of Kenya;
- l) “Local Currency” means Kenya shilling;
- m) “Member,” in case the Service Provider consist of a joint venture of more than one entity, means any of these entities; “Members” means all these entities, and “Member in Charge” means the entity specified in the SC to act on their behalf in exercising all the Service Provider' rights and obligations towards the Procuring Entity under this Contract;
- n) “Party” means the Procuring Entity or the Service Provider, as the case may be, and “Parties” means both of them;
- o) “Personnel” means persons hired by the Service Provider or by any Subcontractor as employees and assigned to the performance of the Services or any part thereof;
- p) “Service Provider” is a person or corporate body whose Tender to provide the Services has been accepted by the Procuring Entity;
- q) “Service Provider's Tender” means the completed Tendering Document submitted by the Service Provider to the Procuring Entity
- r) “SCC” means the Special Conditions of Contract by which the GCC may be amended or supplemented;
- s) “Specifications” means the specifications of the service included in the Tendering Document submitted by the Service Provider to the Procuring Entity
- t) “Services” means the work to be performed by the Service Provider pursuant to this Contract, as described in Appendix A; and in the Specifications and Schedule of Activities included in the Service Provider's Tender.
- u) “Subcontractor” means any entity to which the Service Provider subcontracts any part of the Services in accordance with the provisions of Sub-Clauses 3.5 and 4;
- v) “Public Procurement Regulatory Authority (PPRA)” shall mean the Government Agency

responsible for oversight of public procurement.

- w) “Project Manager” shall the person appointed by the Procuring Entity to act as the Project Manager for the purposes of the Contract and named in the Particular Conditions of Contract, or other person appointed from time to time by the Procuring Entity and notified to the Contractor.
- x) “Notice of Dissatisfaction” means the notice given by either Party to the other indicating its dissatisfaction and intention to commence arbitration.

## **1.2 Applicable Law**

The Contract shall be interpreted in accordance with the laws of Kenya.

## **1.3 Language**

This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

## **1.4 Notices**

Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, hand delivery, or email to such Party at the address **specified in the SCC**.

## **1.5 Location**

The Services shall be performed at such locations as are specified in Appendix A, in the specifications and, where the location of a particular task is not so specified, at such locations, whether in Kenya or elsewhere, as the Procuring Entity may approve.

## **1.6 Authorized Representatives**

Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Procuring Entity or the Service Provider may be taken or executed by the officials **specified in the SCC**.

## **1.7 Inspection and Audit by the PPRA**

Pursuant to paragraph 2.2 e. of Attachment 1 to the General Conditions, the Service Provider shall permit and shall cause its subcontractors and sub-consultants to permit, PPRA and/or persons appointed by PPRA to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by PPRA. The Service Provider's and its Subcontractors' and sub-consultants' attention is drawn to Sub-Clause 3.10 which provides, *inter alia*, that acts intended to materially impede the exercise of PPRA's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to PPRA's prevailing sanctions procedures).

## **1.8 Taxes and Duties**

The Service Provider, Subcontractors, and their Personnel shall pay such taxes, duties, fees, and other impositions as may be levied under the Applicable Law, the amount of which is deemed to have been included in the Contract Price.

## **2. Commencement, Completion, Modification, and Termination of Contract**

### **2.1 Effectiveness of Contract**

This Contract shall come into effect on the date the Contract is signed by both parties or such other

later date as may be **stated in the SCC**.

## 2.2 Commencement of Services

The Service Provider shall start carrying out the Services thirty (30) days after the date the Contract becomes effective, or at such other date as may be **specified in the SCC**.

## 2.3 Intended Completion Date

Unless terminated earlier pursuant to Sub-Clause 2.6, the Service Provider shall complete the activities by the Intended Completion Date, as is **specified in the SCC**. If the Service Provider does not complete the activities by the Intended Completion Date, it shall be liable to pay liquidated damage as per Sub-Clause 3.8. In this case, the Completion Date will be the date of completion of all activities.

## 2.4 Modification

Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written agreement between the Parties.

## 2.5 Value Engineering

2.5.1 The Service Provider may prepare, at its own cost, a value engineering proposal at any time during the performance of the contract. The value engineering proposal shall, at a minimum, include the following;

- a) The proposed change(s), and a description of the difference to the existing contract requirements;
- b) a full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (including life cycle costs, if applicable) the Procuring Entity may incur in implementing the value engineering proposal; and
- c) a description of any effect(s) of the change on performance/functionality.

2.5.2 The Procuring Entity may accept the value engineering proposal if the proposal demonstrates benefits that:

- a) accelerates the delivery period; or
- b) reduces the Contract Price or the lifecycle costs to the Procuring Entity; or
- c) improves the quality, efficiency, safety or sustainability of the services; or
- d) yields any other benefits to the Procuring Entity, without compromising the necessary functions of the Facilities.

2.5.3 If the value engineering proposal is approved by the Procuring Entity and results in:

- a) a reduction of the Contract Price; the amount to be paid to the Service Provider shall be the percentage specified in the **SCC** of the reduction in the Contract Price; or
- b) an increase in the Contract Price; but results in a reduction in lifecycle costs due to any benefit described in
  - (a) to (d) above, the amount to be paid to the Service Provider shall be the full increase in the Contract Price.

## 2.6 Force Majeure

### 2.6.1 Definition

For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

### 2.6.2 No Breach of Contract

The failure of a Party to fulfill any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative Measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

### **2.6.3 Extension of Time**

Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

### **2.6.5 Payments**

During the period of their inability to perform the Services as a result of an event of Force Majeure, the Service Provider shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Service after the end of such period.

## **2.7 Termination**

### **2.7.1 By the Procuring Entity**

The Procuring Entity may terminate this Contract, by not less than thirty (30) days' written notice of termination to the Service Provider, to be given after the occurrence of any of the events specified in paragraphs (a) through (d) of this Sub-Clause 2.6.1:

- a) If the Service Provider does not remedy a failure in the performance of its obligations under the Contract, within thirty (30) days after being notified or within any further period as the Procuring Entity may have subsequently approved in writing;
- b) If the Service Provider become insolvent or bankrupt;
- c) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- d) if the Service Provider, in the judgment of the Procuring Entity has engaged in Fraud and Corruption, as defined in paragraph 2.2 a. of Attachment 1 to the GCC, in competing for or in executing the Contract

### **2.7.2 By the Service Provider**

The Service Provider may terminate this Contract, by not less than thirty (30) days' written notice to the Procuring Entity, such notice to be given after the occurrence of any of the events specified in paragraphs (a) and (b) of this Sub-Clause 2.6.2:

- a) If the Procuring Entity fails to pay any monies due to the Service Provider pursuant to this Contract and not subject to dispute pursuant to Clause 7 within forty-five (45) days after receiving written notice from the Service Provider that such payment is overdue; or
- b) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

### **2.7.3 Payment upon Termination**

Upon termination of this Contract pursuant to Sub-Clauses 2.6.1 or 2.6.2, the Procuring Entity shall make the following payments to the Service Provider:

- a) remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination;



- b) except in the case of termination pursuant to paragraphs (a), (b), (d) of Sub-Clause 2.6.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel.

### **3. Obligations of the Service Provider**

#### **3.1 General**

The Service Provider shall perform the Services in accordance with the Specifications and the Activity Schedule, and carry out its obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Service Provider shall always act, in respect of any matter relating to this Contractor to the Services, as faithful adviser to the Procuring Entity, and shall at all times support and safeguard the Procuring Entity's legitimate interests in any dealings with Subcontractors or third parties.

#### **3.2 Conflict of Interests**

##### **3.2.1 Service Provider Not to Benefit from Commissions and Discounts.**

The remuneration of the Service Provider pursuant to Clause 6 shall constitute the Service Provider's sole remuneration in connection with this Contract or the Services, and the Service Provider shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Service Provider shall use their best efforts to ensure that the Personnel, any Subcontractors, and agents of either of them similarly shall not receive any such additional remuneration.

##### **3.2.2 Service Provider and Affiliates Not to be Otherwise Interested in Project**

The Service Provider agree that, during the term of this Contract and after its termination, the Service Provider and its affiliates, as well as any Subcontractor and any of its affiliates, shall be disqualified from providing goods, works, or Services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.

##### **3.2.3 Prohibition of Conflicting Activities**

Neither the Service Provider nor its Subcontractors nor the Personnel shall engage, either directly or indirectly, in any of the following activities:

- a) During the term of this Contract, any business or professional activities in Kenya which would conflict with the activities assigned to them under this Contract;
- b) during the term of this Contract, neither the Service Provider nor their Subcontractors shall hire public employees in active duty or on any type of leave, to perform any activity under this Contract;
- c) after the termination of this Contract, such other activities as may be **specified in the SCC**.

#### **3.3 Confidentiality**

The Service Provider, its Subcontractors, and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the Procuring Entity's business or operations without the prior written consent of the Procuring Entity.

**3.4 The Service Provider** (a) shall take out and maintain, and shall cause any Subcontractors to take out and maintain, at its (or the Subcontractors', as the case may be) own cost but on terms and conditions approved by the Procuring Entity, insurance against the risks, and for the coverage, as shall be **specified in the SCC**; and (b) at the Procuring Entity's request, shall provide evidence to the Procuring Entity showing that such insurance has been taken out and maintained and that the current premiums have been paid.

### **3.5 Service Provider's Actions Requiring Procuring Entity's Prior Approval**

The Service Provider shall obtain the Procuring Entity's prior approval in writing before taking any of the following actions:

- a) entering into a subcontract for the performance of any part of the Services,
- b) appointing such members of the Personnel not listed by name in Appendix C (“Key Personnel and Subcontractors”),
- c) changing the Program of activities; and
- d) any other action that may be **specified in the SCC**.

### **3.6 Reporting Obligations**

The Service Provider shall submit to the Procuring Entity the reports and documents specified in Appendix B in the form, in the numbers, and within the periods set forth in the said Appendix.

### **3.7 Documents Prepared by the Service Provider to Be the Property of the Procuring Entity**

All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Service Provider in accordance with Sub-Clause 3.6 shall become and remain the property of the Procuring Entity, and the Service Provider shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Procuring Entity, together with a detailed inventory thereof. The Service Provider may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be **specified in the SCC**.

### **3.8 Liquidated Damages**

#### **3.8.1 Payments of Liquidated Damages**

The Service Provider shall pay liquidated damages to the Procuring Entity at the rate per day **stated in the SCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount **defined in the SCC**. The Procuring Entity may deduct liquidated damages from payments due to the Service Provider. Payment of liquidated damages shall not affect the Service Provider's liabilities.

#### **3.8.2 Correction for Over-payment**

If the Intended Completion Date is extended after liquidated damages have been paid, the Procuring Entity shall correct any overpayment of liquidated damages by the Service Provider by adjusting the next payment certificate. The Service Provider shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 6.5.

#### **3.8.3 Lack of performance penalty**

If the Service Provider has not corrected a Defect within the time specified in the Procuring Entity's notice, a penalty for Lack of performance will be paid by the Service Provider. The amount to be paid will be calculated as a percentage of the cost of having the Defect corrected, assessed as described in Sub-Clause 7.2 and **specified in the SCC**.

### **3.9 Performance Security**

The Service Provider shall provide the Performance Security to the Procuring Entity no later than the date specified in the Form of acceptance. The Performance Security shall be issued in an amount and form and by a bank or surety acceptable to the Procuring Entity, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The performance Security shall be valid until a date 28 day from the Completion Date of the Contract in case of a bank guarantee, and until one year from the Completion Date of the Contract in the case of a Performance Bond.

### **3.10 Fraud and Corruption**

The Procuring Entity requires compliance with the Government's Anti-Corruption laws and its prevailing sanctions. The Procuring Entity requires the Service Provider to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the tendering process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

### **3.11 Sustainable Procurement**

The Service Provider shall conform to the sustainable procurement contractual provisions, if and as specified in the SCC.

## **4. Service Provider's Personnel**

### **4.1 Description of Personnel**

The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Service Provider's Key Personnel are described in Appendix C. The Key Personnel and Subcontractors listed by title as well as by name in Appendix C are hereby approved by the Procuring Entity.

### **4.2 Removal and/or Replacement of Personnel**

- a) Except as the Procuring Entity may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Service Provider, it becomes necessary to replace any of the Key Personnel, the Service Provider shall provide as a replacement a person of equivalent or better qualifications.
- b) If the Procuring Entity finds that any of the Personnel have (i) committed serious misconduct or have been charged with having committed a criminal action, or (ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Service Provider shall, at the Procuring Entity's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the Procuring Entity.
- c) The Service Provider shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

## **5. Obligations of the Procuring Entity**

### **5.1 Assistance and Exemptions**

The Procuring Entity shall use its best efforts to ensure that the Government shall provide the Service Provider such assistance and exemptions as **specified in the SCC**.

### **5.2 Change in the Applicable Law**

If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Service Provider, then the remuneration and reimbursable expenses otherwise payable to the Service Provider under this Contract shall be increased or decreased accordingly by agreement between the Parties, and corresponding adjustments shall be made to the amounts referred to in Sub-Clauses 6.2 (a) or (b), as the case may be.

### **5.3 Services and Facilities**

The Procuring Entity shall make available to the Service Provider the Services and Facilities listed under Appendix F.

## **6. Payments to the Service Provider**

### **6.1 Lump-Sum Remuneration**

6.1.1 The Service Provider's remuneration shall not exceed the Contract Price and shall be a fixed lump-sum including all Subcontractors' costs, and all other costs incurred by the Service Provider in carrying out the Services described in Appendix A. Except as provided in Sub-Clause 5.2, the Contract Price may only be increased above the amounts stated in Sub-Clause 6.2 if the Parties have agreed to additional payments in accordance with Sub- Clauses 2.4 and 6.3.

6.1.2 Where the contract price is different from the corrected tender price, in order to ensure the contract or is not paid less or more relative to the contract price (*which would be the tender price*), any part payment valuation and variation orders on omissions and additions valued based on rates in the schedule of rates in the Tender, will be adjusted by a plus or minus percentage. The percentage already worked out during tender evaluation is worked out as follows: (*corrected tender price-tender price*)/*tenderprice*X100.

## 6.2 Contract Price

- a) The price payable is **set forth in the SCC**.
- b) No price will be payable in foreign currency.

## 6.3 Payment for Additional Services, and Performance Incentive Compensation

6.3.1 For the purpose of determining the remuneration due for additional Services as may be agreed under Sub-Clause 2.4, a breakdown of the lump-sum price is provided in Appendices D and E.

**6.3.2 If the SCC so specify**, the service provider shall be paid performance incentive compensation as set out in the Performance Incentive Compensation appendix.

## 6.4 Terms and Conditions of Payment

Payments will be made to the Service Provider according to the payment schedule **stated in the SCC**. **Unless otherwise stated in the SCC**, the advance payment (Advance for Mobilization, Materials and Supplies) shall be made against the provision by the Service Provider of a bank guarantee for the same amount, and shall be valid for the period **stated in the SCC**. Any other payment shall be made after the conditions **listed in the SCC** for such payment have been met, and the Service Provider have submitted an invoice to the Procuring Entity specifying the amount due.

## 6.5 Interest on Delayed Payments

If the Procuring Entity has delayed payments beyond thirty (30) days after the due date stated in the **SCC**, interest shall be paid to the Service Provider for each day of delay at the rate stated in **the SCC**.

## 6.6 Price Adjustment

6.6.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC**. If so provided, the amounts certified in each payment certificate, after deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type indicated below applies to each Contract currency:

$$P_c = A_c + B_c L_{mc}/L_{oc} + C_c I_{mc}/I_{oc}$$

Where:

$P_c$  is the adjustment factor for the portion of the Contract Price payable in a specific currency "c".

$A_c$ ,  $B_c$  and  $C_c$  are coefficients specified in the **SCC**, representing:  $A_c$  the non-adjustable portion;  $B_c$  the adjustable portion relative to labor costs and  $C_c$  the adjustable portion for other inputs, of the Contract Price payable in that specific currency "c"; and

$L_{mc}$  is the index prevailing at the first day of the month of the corresponding invoice date and  $L_{oc}$  is the index prevailing 28 days before Tender opening for labor; both in the specific currency "c".

$I_{mc}$  is the index prevailing at the first day of the month of the corresponding invoice date and  $I_{oc}$  is

the index prevailing 28 days before Tender opening for other inputs payable; both in the specific currency “c”.

If a price adjustment factor is applied to payments made in a currency other than the currency of the source of the index for a particular indexed input, a correction factor  $Z_o/Z_n$  will be applied to the respective component factor of  $p_n$  for the formula of the relevant currency.  $Z_o$  is the number of units of Kenya Shillings of the index, equivalent to one unit of the currency payment on the date of the base index, and  $Z_n$  is the corresponding number of such currency units on the date of the current index.

6.6.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

## **6.7 Day works**

6.7.1 If applicable, the Day work rates in the Service Provider's Tender shall be used for small additional amounts of Services only when the Procuring Entity has given written instructions in advance for additional services to be paid in that way.

6.7.2 All work to be paid for as Dayworks shall be recorded by the Service Provider on forms approved by the Procuring Entity. Each completed form shall be verified and signed by the Procuring Entity representative as indicated in Sub-Clause 1.6 within two days of the Services being performed.

6.7.3 The Service Provider shall be paid for Dayworks subject to obtaining signed Dayworks forms as indicated in Sub-Clause 6.7.2

## **7. Quality Control**

### **7.1 Identifying Defects**

The principle and modalities of Inspection of the Services by the Procuring Entity shall be as **indicated in the SCC**. The Procuring Entity shall check the Service Provider's performance and notify him of any Defects that are found. Such checking shall not affect the Service Provider's responsibilities. The Procuring Entity may instruct the Service Provider to search for a Defect and to uncover and test any service that the Procuring Entity considers may have a Defect. Defect Liability Period is as **defined in the SCC**.

### **7.2 Correction of Defects, and Lack of Performance Penalty**

a) The Procuring Entity shall give notice to the Service Provider of any Defects before the end of the Contract. The Defects liability period shall be extended for as long as Defects remain to be corrected.

b) Every time notice a Defect is given, the Service Provider shall correct the notified Defect within the length of time specified by the Procuring Entity's notice.

c) If the Service Provider has not corrected a Defect within the time specified in the Procuring Entity's notice, the Procuring Entity will assess the cost of having the Defect corrected, the Service Provider will pay this amount, and a Penalty for Lack of Performance calculated as described in Sub-Clause 3.8.

## **8. Settlement of Disputes**

### **8.1 Contractor's Claims**

8.1.1 If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.



- 8.1.2 If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Procuring Entity shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.
- 8.1.3 The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.
- 8.1.4 The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting the Procuring Entity's liability, the Project Manager may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.
- 8.1.5 Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full Supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:
- a) This fully detailed claim shall be considered as interim;
  - b) The Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Project Manager may reasonably require; and
  - c) The Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Project Manager.
- 8.1.6 Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the Project Manager shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall never the less give his response on the principles of the claim within the above defined time period.
- 8.1.7 Within the above defined period of 42 days, the Project Manager shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.
- 8.1.8 Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.
- 8.1.9 If the Project Manager does not respond within the time frame defined in this Clause, either Party may consider that the claim is rejected by the Project Manager and any of the Parties may refer to Arbitration in accordance with Sub-Clause 8.2 [Matters that may be referred to arbitration].
- 8.1.10 The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.

## **8.2 Matters that may be referred to arbitration**

**8.2.1** Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Services or abandonment of the Services or termination of the Contract by either party:

- a) The appointment of a replacement Project Manager upon the said person ceasing to act.
- b) Whether or not the issue of an instruction by the Project Manager is empowered by these Conditions.
- c) Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.
- e) Any dispute arising in respect of war risks or war damage.
- f) All other matters shall only be referred to arbitration after the completion or alleged completion of the Services or termination or alleged termination of the Contract, unless the Procuring Entity and the Contractor agree otherwise in writing.

## **8.3 Amicable Settlement**

Where a Notice of Dissatisfaction has been given, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a Notice of Dissatisfaction in accordance with Sub-Clause 8.1 above should move to commence arbitration after the fifty- sixth day from the day on which a Notice of Dissatisfaction was given, even if no attempt at an amicable settlement has been made.

## **8.4 Arbitration**

**8.4.1** Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 8.3 shall be finally settled by arbitration. Arbitration shall be conducted in accordance with the Arbitration Laws of Kenya.

**8.4.2** The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Project Manager from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

**8.4.3** Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction.

**8.4.5** Arbitration may be commenced prior to or after completion of the services. The obligations of the Parties, and the Project Manager shall not be altered by reason of any arbitration being conducted during the progress of the services.

**8.4.6** The terms of the remuneration of each or all the members of Arbitration shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

## **8.5 Arbitration with proceedings**

**8.5.1** In case of any claim or dispute, such claim or dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed, on the request of the applying party, by the Chairman or Vice Chairman of any of the following professional institutions;

- i) Law Society of Kenya or
- ii) Chartered Institute of Arbitrators (Kenya Branch)

**8.5.2** The institution written to first by the aggrieved party shall take precedence overall other

institutions.

- 8.5.3 The arbitration may be on the construction of this Contract or on any matter or thing of whatsoever nature arising there under or in connection there with, including any matter or thing left by this Contract to the discretion of the Project Manager, or the withholding by the Project Manager of any certificate to which the Contractor may claim to be entitled to or the measurement and valuation referred to in clause 23.0 of these conditions, or the rights and liabilities of the parties subsequent to the termination of Contract.
- 8.5.4 Provided that no arbitration proceedings shall be commenced on any claim or dispute where notice of a claim or dispute has not been given by the applying party within ninety days of the occurrence or discovery of the matter or issue giving rise to the dispute.
- 8.5.5 Notwithstanding the issue of a notice as stated above, the arbitration of such a claim or dispute shall not commence unless an attempt has in the first instance been made by the parties to settle such claim or dispute amicably with or without the assistance of third parties. Proof of such attempt shall be required.
- 8.5.6 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.
- 8.5.7 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision requirement or notice had been given.
- 8.5.8 The award of such Arbitrator shall be final and binding upon the parties.

## **8.6 Failure to Comply with Arbitrator's Decision**

- 8.6.1 In the event that a Party fails to comply with a final and binding Arbitrator's decision, then the other Party may, without prejudice to any other rights it may have, refer the matter to a competent court of law.

## **9. The Adjudicator**

- 9.1. Should the Adjudicator resign or die, or should the Procuring Entity and the Service Provider agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator will be jointly appointed by the Procuring Entity and the Service Provider. In case of disagreement between the Procuring Entity and the Service Provider, within 30 days, the Adjudicator shall be designated by the Appointing Authority **designated in the SCC** at the request of either party, within 14 days of receipt of such request.
- 9.2 The Adjudicator shall be paid by the hour at the rate **specified in the TDS and SCC**, together with reimbursable expenses of the types **specified in the SCC**, and the cost shall be divided equally between the Procuring Entity and the Service Provider, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.



## SECTION VIII - SPECIAL CONDITIONS OF CONTRACT

The following Special Conditions of Contract (SCC) shall supplement or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions of the SCC shall prevail over those in the General Conditions of Contract. For the purposes of clarity, any referenced GCC clause numbers are indicated in the left column of the SCC.

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(a)	The Adjudicator is <i>the Teachers Service Commission under the guidance of Legal Labour and Industrial Relations Division</i>
1.1(v)	Project Manager - the Deputy Director ICT
1.1(d)	The contract name is <b>SUPPLY, DELIVERY, INSTALLATION AND COMMISSIONING OF A TIER 3 MODULAR DATA CENTRE AND RE-LOCATION OF EQUIPMENT FROM CURRENT DATA CENTRE TO THE NEW DATA CENTRE</b>
1.1(g)	The Procuring Entity is <i>Teachers Service Commission</i>
1.1(l)	The Member in Charge is <i>to be agreed after award</i>
1.1(o)	The Service Provider is <i>to be agreed after award</i>
1.4	<p>The addresses are:</p> <p>Procuring Entity: Teachers Service Commission            Attention: The Secretary Teachers Service Commission            Phone: <b>0202892301</b></p> <p>Service Provider: <u>To be agreed</u>            Attention: <u>To be agreed</u>            Email address <u>ddprocurement@tsc.go.ke</u></p>
1.6	<p>The Authorized Representatives are:</p> <p>For the Procuring Entity: Deputy Director Supply Chain Management Services ____            For the Service Provider: <u>To be agreed after Contract Signature</u></p>
2.1	The date on which this Contract shall come into effect is <i>30days after notification of award</i>
2.2.2	The Starting Date or the commencement of the Services is <i>to be agreed after contract signing</i>
2.3	The Intended Completion Date will be <i>as stated in the contract</i>
2.4	<p><b>Modification</b></p> <p>Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written agreement between the Parties.</p>
2.6 2.61	<p><b>Force Majeure Definition</b></p> <p>For the purposes of this Contract, “Force Majeure” means an event which is beyond the</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.
2.6.2	<p><b>No Breach of Contract</b></p> <p>The failure of a Party to fulfill any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and(b) has informed the other Party as soon as possible about the occurrence of such an event.</p>
2.6.3	<p><b>Extension of Time</b></p> <p>Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure</p>
2.6.4	<p><b>Payments</b></p> <p>During the period of their inability to perform the Services as a result of an event of Force Majeure, the Service Provider shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Service after the end of such period.</p>
2.7	<p><b>Termination</b></p> <p>By Teachers Service Commission</p> <p>Teachers Service Commission may terminate this Contract, by not less than thirty (30) days' written notice of termination to the Service Provider, to be given after the occurrence of any of the events specified in paragraphs(a)through</p> <p>(a) of this Sub-Clause 2.6.1:</p> <ul style="list-style-type: none"> <li>a) If the Service Provider does not remedy a failure in the performance of its obligations under the Contract, within thirty (30) days after being notified or within any further period as the Procuring Entity may have subsequently approved in writing;</li> <li>b) if the Service Provider become insolvent or bankrupt;</li> <li>c) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or</li> <li>d) if the Service Provider, in the judgment of the Teachers Service Commission has engaged in Fraud and Corruption, as defined in paragraph2.2a. of Attachment1 to the GCC, in competing for or in executing the Contract</li> </ul>
2.7.2	<p><b>By the Service Provider</b></p> <p>The Service Provider may terminate this Contract, by not less than thirty (90) days' written notice to the Procuring Entity, such notice to be given after the occurrence of any of the events specified in paragraphs (a) and</p> <p>(b) of this Sub-Clause 2.6.2:</p> <ul style="list-style-type: none"> <li>a) If Teachers Service Commission fails to pay any monies due to the Service Provider pursuant to this Contract and not subject to dispute pursuant to Clause 7 within ninety (90) days after receiving written notice from the Service Provider that such payment</li> </ul>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>is overdue; or</p> <p>b) if, as the result of Force Majeure, the Service Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days</p>
2.7.3	<p><b>Payment up on Termination</b></p> <p>Upon termination of this Contract pursuant to Sub-Clauses 2.6.1 or 2.6.2, the Teachers Service Commission shall make the following payments to the Service Provider:</p> <p>a) remuneration pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination;</p> <p>b) except in the case of termination pursuant to paragraphs (a), (b), (d) of Sub-Clause 2.6.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract, including the cost of the return travel of the Personnel</p>
3 3.1	<p><b>Obligations of the Service Provider</b></p> <p><b>General</b></p> <p>The Service Provider shall perform the Services in accordance with the Specifications and the Activity Schedule, and carry out its obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The Service Provider shall always act, in respect of any matter relating to this Contractor to the Services, as faithful adviser to Teachers Service Commission , and shall at all times support and safeguard Teachers Service Commission legitimate interests in any dealings with Subcontractors or third parties</p>
3.2 3.2.1  3.2.2  3.2.3	<p><b>Conflict of Interests</b></p> <p><b>3.2.1 Service Provider Not to Benefit from Commissions and Discounts.</b></p> <p>The remuneration of the Service Provider pursuant to Clause 6 shall constitute the Service Provider's sole remuneration in connection with this Contractor the Services, and the Service Provider shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contractor to the Services or in the discharge of their obligations under the Contract, and the Service Provider shall use their best efforts to ensure that the Personnel, any Subcontractors, and agents of either of them similarly shall not receive any such additional remuneration.</p> <p><b>Service Provider and Affiliates Not to be Otherwise Interested in Project</b></p> <p>3.2.2 The Service Provider agree that, during the term of this Contract and after its termination, the Service Provider and its affiliates, as well as any Subcontractor and any of its affiliates, shall be qualified from providing goods, works, or Services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.</p> <p><b>Prohibition of Conflicting Activities</b></p> <p>3.2.3 Neither the Service Provider nor its Subcontractors nor the Personnel shall engage, either directly or indirectly, in any of the following activities:</p> <p>a) During the term of this Contract, any business or professional activities in Kenya which would conflict with the activities assigned to them under this Contract;</p> <p>b) During the term of this Contract, neither the Service Provider nor their Subcontractors shall hire public employees' inactive duty or on any type of leave.</p>
3.5	<p><b>Service Provider's Actions Requiring Procuring Entity's Prior Approval</b></p> <p>The Service Provider shall obtain Teachers Service Commission prior approval in writing</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>before taking any of the following actions:</p> <ul style="list-style-type: none"> <li>a) Entering into a subcontract for the performance of any part of the Services,</li> <li>b) appointing such members of the Personnel not listed by name in Appendix C (“Key Personnel and Subcontractors”),</li> <li>c) changing the Program of activities; and</li> </ul>
3.6	<p><b>Reporting Obligations</b></p> <p>The Service Provider shall submit to Teachers Service Commission the reports and documents specified in Appendix B in the form, in the numbers, and within the periods set forth in the said Appendix.</p>
3.7	<p><b>Documents Prepared by the Service Provider shall be the Property of the TSC</b></p> <p>All plans, drawings, specifications, designs, reports, and other documents and software submitted by the Service Provider in accordance with Sub-Clause 3.6 shall become and remain the property of Teachers Service Commission, and the Service Provider shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Commission, together with a detailed inventory thereof. The Service Provider may retain a copy of such documents and software. The documents shall be kept under the safe custody of the Teachers Service Commission at least for a minimum of six (6) years.</p>
3.8 3.8.1  3.8.2  3.8.3	<p><b>Liquidated Damages</b></p> <p><b>Payments of Liquidated Damages</b></p> <p>The Service Provider shall pay liquidated damages to Teachers Service Commission at the rate of <b>0.01%</b> of the final contract price for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount <b>30%</b> of the total contract price. The TSC may deduct liquidated damages from payments due to the Service Provider. Payment of liquidated damages shall not affect the Service Provider's liabilities</p> <p><b>Correction for Over-payment</b></p> <p>If the Intended Completion Date is extended after liquidated damages have been paid, Teachers Service Commission shall correct any overpayment of liquidated damages by the Service Provider by adjusting the next payment certificate. The Service Provider shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 6.5.</p> <p><b>Lack of performance penalty</b></p> <p>If the Service Provider has not corrected a Defect within the three days, The Teachers Service Commission shall issue a notice. The penalty for Lack of performance will be paid by the Service Provider. The amount to be paid will be calculated as a percentage of the cost of having the Defect corrected, assessed as described in Sub-Clause 7.2 and specified in the SCC 7.2 – <b>Correction of Defects.</b></p>
3.9	<p><b>Performance Security</b></p> <p>The Performance Security shall be ten percent (10%) of the contract sum in form of a bank guarantee from a reputable bank operating in Kenya. The performance security shall be valid up to at least 30 days after the expiry of the contract.</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
3.10	<p><b>Fraud and Corruption</b></p> <p>Teachers Service Commission requires compliance with the Government's Anti-Corruption laws and its prevailing sanctions. Teachers Service Commission requires the Service Provider to disclose any commission or fees that may have been paid or are to be paid to agents or any other party with respect to the tendering process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.</p>
3.11	<p><b>Sustainable Procurement</b></p> <p>The Service Provider shall conform to the sustainable procurement contractual provisions, if and as specified in the Tender document and the contract.</p>
<p>4</p> <p>4.1</p> <p>4.2</p>	<p><b>Service Provider's Personnel</b></p> <p><b>Description of Personnel</b></p> <p>The Tenderer shall provide titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Key Personnel as submitted in Appendix C. The Key Personnel and Subcontractors listed by title as well as by name in Appendix C shall be approved by the Teachers Service Commission.</p> <p><b>Removal and/or Replacement of Personnel</b></p> <p>a) Except as Teachers Service Commission may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Service Provider, it becomes necessary to replace any of the Key Personnel, the Service Provider shall provide as a replacement a person of equivalent or better qualifications.</p> <p>b) If the Teachers Service Commission finds that any of the Personnel have;</p> <p>(i) committed serious misconduct or have been charged with having committed a criminal action, or</p> <p>(ii) have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Service Provider shall, at the Commission's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the TSC.</p> <p>c) The Service Provider shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.</p>
<p>5</p> <p>5.1</p> <p>5.2</p>	<p><b>Obligations of the Procuring Entity</b></p> <p><b>Assistance and Exemptions</b></p> <p>Teachers Service Commission shall use its best efforts to ensure that the Government shall provide the Service Provider such assistance and exemptions as specified in the PPADA, 2015, PFM Act and any other relevant legislation.</p> <p><b>Change in the Applicable Law</b></p> <p>If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost of the Services rendered by the Service Provider, then the remuneration and reimbursable expenses otherwise payable to the Service Provider under this Contract shall be increased or decreased accordingly by agreement between the Parties, and corresponding adjustments shall be made to the amounts referred to in Sub-Clauses 6.2(a) or (b), as the case may be.</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
5.3	<p><b>Services and Facilities</b></p> <p>Teachers Service Commission shall make available to the Service Provider the Services and Facilities listed under Appendix F.</p>
6 6.1 6.2 6.3 6.3.1 6.3.2 6.3.3 6.4 6.5 6.6 6.6.1 6.7 6.7.1	<p><b>Payments to the Service Provider</b></p> <p><b>Lump-Sum Remuneration</b></p> <p>The Service Provider's remuneration shall not exceed the Contract Price and shall be paid at the end of full completion of the works of the <b>Supply, Delivery, Installation and Commissioning of A Tier 3 Modular Data Centre and Re-Location of Equipment From Current Data Centre to the New Data Centre</b>. Except as provided in Sub-Clause 5.2, the Contract Price may only be increased above the amounts stated in Sub-Clause 6.2 if the Parties have agreed to additional payments in accordance with Sub- Clauses 2.4 and 6.3.</p> <p><b>Contract Price</b></p> <p>(i) The price payable be the Lowest Evaluated Tender Sum by the successful Tenderer.</p> <p>(ii) Price shall be payable in Kenya Shillings</p> <p><b>Payment for Additional Services, and Performance Incentive Compensation</b></p> <p>6.3.1 For the purpose of determining additional works due for additional Services as may be agreed under Sub-Clause 2.4, there shall be a mutual agreement by both parties.</p> <p>6.3.2 There shall be NO performance incentive compensation payable to the Service Provider.</p> <p>6.3.3 Tender Price Adjustments or corrected tender prices <b>SHALL NOT BE ALLOWED</b>.</p> <p><b>Terms and Conditions of Payment</b></p> <p>6.5 Payments will be made to the Service at the end of the contract after all the works has been completed to the satisfactory of the Teachers Service Commission. <b><i>Advance Payment shall not apply.</i></b></p> <p><b>Interest on Delayed Payments</b></p> <p>6.6.1 Teachers Service Commission Shall ensure all invoices submitted are paid on time and will avoid any delay in payment. Payment shall be made within 60 calendar days from the date the invoice is received by the Commission.</p> <p><b>Price Adjustment</b></p> <p>6.7.1 There <b><i>shall be no price adjustments.</i></b></p> <p><b>Day works</b></p> <p>If applicable, the Day work rates in the Service Provider's Tender shall be used for small additional amounts of Services only when Teachers Service Commission has given written instructions in advance for additional services to be paid in that way.</p> <p>All works to be paid for as Day works shall be recorded by the Service Provider on forms approved by Teachers Service Commission. Each completed form shall be verified and signed by the Commission's representative as indicated in Sub-Clause 1.6 within two days of the Services being performed.</p>



Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
<p><b>7</b></p> <p><b>7.1</b></p>	<p><b>Quality Control</b></p> <p><b>Identifying Defects</b></p> <p>The principles and modalities of Inspection of the Services by Teachers Service Commission shall be as indicated in the Work plan. Teachers Service Commission shall check the Service Provider's performance and notify him of any Defects that are found. Such checking shall not affect the Service Provider's responsibilities. Teachers Service Commission may instruct the Service Provider to search for a Defect and to uncover and test any service that Teachers Service Commission considers may have a Defect. Defect Liability Period for this Service shall be within 180 calendar days.</p> <p><b>Correction of Defects, and Lack of Performance Penalty</b></p> <p>a) Teachers Service Commission shall give notice to the Service Provider of any Defects before the end of the Contract. The Defects liability period shall be extended for as long as Defects remain to be corrected.</p> <p>b) Every time a notice of Defect is given, the Service Provider shall correct the notified Defect within three working days from the date of delivery of Notice and the Service Provider shall notify the Commission that the Defect has been corrected.</p> <p>c) If the Service Provider has not corrected a Defect with three working days from the date of the notice, the Teachers Service Commission will assess the cost of having the Defect corrected and proceed to correct the defect. The Service Provider will pay this amount and a Penalty for Lack of Performance calculated at the cost of defect correction and the 10% penalty calculated from the cost of Defect costs.</p>
<p><b>8</b></p> <p><b>8.1</b></p> <p><b>8.1.2</b></p> <p><b>8.1.3</b></p> <p><b>8.1.4</b></p> <p><b>8.1.5</b></p> <p><b>8.1.5</b></p>	<p><b>Settlement of Disputes</b></p> <p><b>Contractor's Claims</b></p> <p>If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.</p> <p>If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the TSC shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub- Clauses shall <b>NOT</b> apply.</p> <p>The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all relevant to such event or circumstance.</p> <p>The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting the Commission's liability, the Project Manager may, after receiving any notice under this Sub-Clause, monitor the record-keeping and /or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.</p> <p>Within 60 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
<p><b>8.1.6</b></p> <p><b>8.1.7</b></p> <p><b>8.1.8</b></p> <p><b>8.1.9</b></p> <p><b>8.1.10</b></p>	<p>claim and of the extension of time and /or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:</p> <p>This fully detailed claim shall be considered as interim;</p> <p>a) The Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and /or amount claimed, and such further particulars as the Project Manager may reasonably require; and</p> <p>b) The Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Project Manager.</p> <p>Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the Project Manager shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within the above defined time period.</p> <p>Within the above defined period of 42 days, the Project Manager shall proceed in accordance with Sub-Clause 3.5[Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.</p> <p>Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only have been entitled to payment for such part of the claim as he has been able to substantiate.</p> <p>If the Project Manager does not respond within the time framed in this Clause, either Party may consider that the claim is rejected by the Project Manager and any of the Parties may refer to Arbitration in accordance with Sub-Clause 8.2 [Matters that may be referred to arbitration].</p> <p>The requirements of this Sub-Clause are in addition to those of any other Sub-Clause, which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub- Clause.</p>
<p><b>8.2</b></p> <p><b>8.2.1</b></p>	<p><b>Matters that may be referred to arbitration</b></p> <p>Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Services or abandonment of the Services or termination of the Contract by either party:</p> <p>a) Whether or not the issue of an instruction by the Project Manager is empowered by these Conditions.</p> <p>b) Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.</p> <p>c) Any dispute arising in respect of war risks or war damage.</p> <p>d) All other matters shall only be referred to arbitration after the completion or alleged completion of the Services or termination or alleged termination of the Contract, unless Teachers Service Commission and the Contractor agree otherwise in writing.</p>



Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
8.3	<p><b>Amicable Settlement</b></p> <p>Where a Notice of Dissatisfaction has been given, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a Notice of Dissatisfaction in accordance with Sub-Clause 8.1 above should move to commence arbitration after the fifty-sixth day from the day on which a Notice of Dissatisfaction was given, even if no attempt at an amicable settlement has been made</p>
8.4	<p><b>Arbitration</b></p> <p>8.4.1 Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 8.3 shall be finally settled by arbitration. Arbitration shall be conducted in accordance with the Arbitration Laws of Kenya.</p> <p>8.4.2 The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Project Manager from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.</p> <p>8.4.3 Neither Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction.</p> <p>8.4.4 Arbitration may be commenced prior to or after completion of the services. The obligations of the Parties, and the Project Manager shall not be altered by reason of any arbitration being conducted during the progress of the services.</p> <p>8.4.5 The terms of the remuneration of each or all the members of Arbitration shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.</p>
8.5	<p><b>Arbitration with proceedings</b></p> <p>8.5.1 In case of any claim or dispute, such claim or dispute shall be notified in writing by either party to the other with a request to submit to arbitration and to concur in the appointment of an Arbitrator within thirty (30) calendar days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed, on the request of the applying party, by the Chairman or Vice Chairman of any of the following professional institutions;</p> <p>a) Law Society of Kenya or</p> <p>b) Chartered Institute of Arbitrators (Kenya Branch)</p> <p>8.5.2 The institution written to first by the aggrieved party shall take precedence over all other institutions.</p> <p>8.5.3 The arbitration maybe on the provision of this service or any matter or thing of whatsoever nature arising there under or in connection with the service, including any matter or thing left by this Contract to the discretion of the Project Manager, or the withholding by the Project Manager of any certificate to which the Contractor may claim to been titled to or the measurement/inspection and valuation referred to in clause 23.0 of these conditions, or the rights and liabilities of the parties subsequent to the termination of Contract.</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
8.5.4	Provided that no arbitration proceedings shall be commenced on any claim or dispute where notice of a claim or dispute has not been given by the applying party within ninety days of the occurrence or discovery of the matter or issue-giving rise to the dispute.
8.5.5	Notwithstanding the issue of a notice as stated above, the arbitration of such a claim or dispute <b>shall not commence unless an attempt</b> has in the first instance been made by the parties to settle such claim or dispute amicably with or without the assistance of third parties. Proof of such attempt shall be required.
8.5.6	The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.
8.5.7	<p>The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision requirement or notice had been given.</p> <p>The award of such Arbitrator shall be final and binding upon the parties.</p>
8.6	<p><b>Failure to Comply with Arbitrator's Decision</b></p> <p>8.6.1 In the event that a Party fails to comply with a final and binding Arbitrator's decision, then the other Party may, without prejudice to any other rights it may have, refer the matter to a competent court of law</p>
9	<p><b>The Adjudicator</b></p> <p>9.11 Should the Adjudicator resign or die, or should Teachers Service Commission and the Service Provider agree that the Adjudicator is not functioning in accordance with the provisions of the Contract; a new Adjudicator will be jointly appointed by the Procuring Entity and the Service Provider. In case of disagreement between the Commission and the Service Provider, within 30 days, the Adjudicator shall be designated by the Chairman, Chartered Institute of Arbitration – Kenya being the Appointing Authority, within 14 days of receipt of such request.</p> <p>9.2 The Adjudicator shall be paid <b>Kshs. 2,000</b> per hour together with reimbursable expenses including transportation cost and airtime, and the cost shall be divided equally between the Teachers Service Commission and the Service Provider, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to another Arbitrator or court of law within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration or court of law within 28 days, the Adjudicator's decision will be final and binding.</p>

## **Appendices**

### **Appendix A - Description of the Services**

*Give detailed descriptions of the Services to be provided, dates for completion of various tasks, place of performance for different tasks, specific tasks to be approved by Procuring Entity, etc.*

### **Appendix B - Schedule of Payments and Reporting Requirements**

*List all milestones for payments and list the format, frequency, and contents of reports or products to be delivered; persons to receive them; dates of submission; etc. If no reports are to be submitted, state here "Not applicable."*

### **Appendix C - Subcontractors**

*List under: C-1 List of approved Subcontractors (if already available); same information with respect to their Personnel as in C-1.*

**Appendix D – Breakdown of Contract Price** *List here the elements of cost used to arrive at the breakdown of the lump-sum price. This appendix will exclusively be used for determining remuneration for additional Services.*

### **Appendix E - Services and Facilities Provided by the Procuring Entity**

## **Section IX - Contract Forms**

### **Table of Forms**

1. PERFORMANCE SECURITY OPTION 1– (Unconditional Demand Bank Guarantee)
2. PERFORMANCE SECURITY OPTION 2– (Performance Bond)
3. ADVANCE PAYMENT SECURITY [Demand Bank Guarantee]
4. BENEFICIAL OWNERSHIP DISCLOSURE FORM
5. NOTIFICATION OF INTENTION TO AWARD
6. LETTER OF AWARD
7. FORM OF CONTRACT
8. REQUEST FOR REVIEW

**FORM NO. 1 - PERFORMANCE SECURITY - (Unconditional Demand Bank Guarantee)**

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** \_\_\_\_\_ *[insert name and Address of Procuring*

Entity] **Date:** \_\_\_\_\_ *[Insert date of issue]*

**PERFORMANCE GUARANTEE No.:** \_\_\_\_\_

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

1. We have been informed that \_\_\_\_\_ (herein after called" the Applicant") has entered into Contract No. \_\_\_\_\_ *[dated]* \_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_ (herein after called" the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.
3. At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_ ( ),<sup>1</sup> such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.
4. This guarantee shall expire, no later than the.....Day of.....<sup>2</sup>, and any demand for payment under it must be received by us at this office indicated above on or before that date.
5. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months]* *[one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”

\_\_\_\_\_  
\_\_\_\_\_  
*[Name of Authorized Official, signature(s) and seals/stamps]*

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

**FORM No. 2 - PERFORMANCE SECURITY OPTION 2 - (Performance Bond)**

*[Note: Procuring Entities are advised to use Performance Security – Unconditional Demand Bank Guarantee instead of Performance Bond due to difficulties involved in calling Bond holder to action]*

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** \_\_\_\_\_ *[insert name and Address of Procuring Entity]*  
**Date:** \_\_\_\_\_ *[Insert date of issue]*

**PERFORMANCE BOND No.:** \_\_\_\_\_

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

1. By this Bond \_\_\_\_\_ as Principal (hereinafter called “the Contractor”) and \_\_\_\_\_ / as Surety (hereinafter called “the Surety”), are held and firmly bound unto \_\_\_\_\_ / as Obligee (herein after called “the Procuring Entity”) in the amount of \_\_\_\_\_ for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.
2. WHEREAS the Contractor has entered into a written Agreement with the Procuring Entity dated the \_\_\_\_\_ Day of \_\_\_\_\_, 20, for \_\_\_\_\_ in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are herein after referred to as the Contract.
3. NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Procuring Entity to be, in default under the Contract, the Procuring Entity having performed the Procuring Entity's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:
  - 1) Complete the Contract in accordance with its terms and conditions; or
  - 2) Obtain a tender or tenders from qualified tenderers for submission to the Procuring Entity for completing the Contract in accordance with its terms and conditions, and upon determination by the Procuring Entity and the Surety of the lowest responsive Tenderers, arrange for a Contract between such Tenderer, and Procuring Entity and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term “Balance of the Contract Price,” as used in this paragraph, shall mean the total amount payable by Procuring Entity to Contractor under the Contract, less the amount properly paid by Procuring Entity to Contractor; or
  - 3) Pay the Procuring Entity the amount required by Procuring Entity to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.
4. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

5. Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking-Over Certificate. No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Procuring Entity named herein or the heirs, executors, administrators, successors, and assigns of the Procuring Entity.
  
6. In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this day            of            20            .

SIGNED ON    on behalf of

By                    in the capacity of In the presence of

By                    in the capacity of In the presence of

SIGNED ON    on behalf of

**FORM NO. 3 - ADVANCE PAYMENT SECURITY [Demand Bank Guarantee]**

*[Guarantor letterhead or SWIFT*

*identifier code] [Guarantor letterhead or*

*SWIFT identifier code]*

**Beneficiary:** \_\_\_\_\_ *[Insert name and Address of Procuring*

*Entity] Date:* \_\_\_\_\_ *[Insert date of issue]*

**ADVANCE PAYMENT GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the*

*letterhead]*

1. We have been informed that \_\_\_\_\_ (herein after called "the Applicant") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_ (herein after called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum \_\_\_\_\_() is to be made against an advance payment guarantee.
3. At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_() <sup>1</sup> upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:
  - a) Has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or
  - b) Has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.
4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Applicant on its account number \_\_ at \_\_.
5. The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the day of, 2, <sup>2</sup> whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.
6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months] [one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

*[Name of Authorized Official, signature(s) and seals/stamps]*

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



<sup>1</sup>The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency (ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Procuring Entity.

<sup>2</sup>Insert the expected expiration date of the Time for Completion. The Procuring Entity should note that in the event of an extension of the time for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Procuring Entity might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months] [one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”

**FORM NO. 4 BENEFICIAL OWNERSHIP DISCLOSURE FORM**

**INSTRUCTIONS TO TENDERERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE FORM**

This Beneficial Ownership Disclosure Form (“Form”) is to be completed by the successful tenderer. In case of joint venture, the tenderer must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.

For the purposes of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the Tenderer by meeting one or more of the following conditions:

- Directly or indirectly holding 25% or more of the shares.
- Directly or in directly holding 25% or more of the voting rights.
- Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer.

Tender Reference No.: \_\_\_\_\_ [insert identification no] Name of the Assignment: \_\_\_\_\_ [insert name of the assignment] to: \_\_\_\_\_ [insert complete name of Procuring Entity]

In response to your notification of award dated \_\_\_\_\_ [insert date of notification of award] to furnish additional information on beneficial ownership: \_\_\_\_\_ [select one option as applicable and delete the options that are not applicable]

I) We here by provide the following beneficial ownership information.

Details of beneficial ownership

<b>Identity of Beneficial Owner</b>	<b>Directly or indirectly holding 25% or more of the shares (Yes / No)</b>	<b>Directly or indirectly holding 25 % or more of the Voting Rights (Yes / No)</b>	<b>Directly or indirectly having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer (Yes / No)</b>
[include full name (last, middle, first),			

<i>nationality, country of residence]</i>			
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*OR*

*ii) We declare that there is no Beneficial Owner meeting one or more of the following conditions: directly or indirectly holding 25% or more of the shares. Directly or indirectly holding 25% or more of the voting rights. Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer.*

*OR*

*We declare that we are unable to identify any Beneficial Owner meeting one or more of the following conditions. [If this option is selected, the Tenderer shall provide explanation on why it is unable to identify any Beneficial Owner]*

*Directly or indirectly holding 25% or more of the shares. Directly or indirectly holding 25% or more of the voting rights.*

*Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer]”*

*Name of the Tenderer: .....\*[insert complete name of the Tenderer]\_\_\_\_\_*

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

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

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

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

**4. NOTIFICATION OF INTENTION TO AWARD**

*[This Notification of Intention to Award shall be sent to each Tenderer that submitted a Tender.]*

*[Send this Notification to the Tenderer's Authorized Representative named in the Tenderer Information Form]*

1) For the attention of Tenderer's Authorized Representative Name: .....*[insert Authorized Representative's name]*

Address: .....*[insert Authorized Representative's Address]*

Telephone numbers: .....*[insert Authorized Representative's telephone/fax numbers]*

Email Address: .....*[insert Authorized Representative's email address]*

***[IMPORTANT: insert the date that this Notification is transmitted to Tenderers. The Notification must be sent to all Tenderers simultaneously. This means on the same date and as close to the same time as possible.]***

**DATE OF TRANSMISSION:** This Notification is sent by: *[email/fax]* on *[date]* (local time) **Procuring Entity:** .....*[insert the name of the Procuring Entity]*

**Contract title:** .....*[insert the name of the contract]*

**ITT No:** .....*[insert ITT reference number from Procurement Plan].*

This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period. During the Standstill Period you may:

- a) Request a debriefing in relation to the evaluation of your Tender, and/or
- b) Submit a Procurement-related Complaint in relation to the decision to award the contract.

**(i) The successful Tenderer**

<b>Name:</b>	<i>[insert name of successful Tenderer]</i>
<b>Address:</b>	<i>[insert address of the successful Tenderer]</i>
<b>Contract price:</b>	<i>[insert contract price of the successful Tender]</i>

**(ii) Other Tenderers [INSTRUCTIONS: insert names of all Tenderers that submitted a Tender. If the Tender's price was evaluated include the evaluated price as well as the Tender price as readout.]**

<b>Name of Tenderer</b>	<b>Tender price</b>	<b>Evaluated Tender price (if applicable)</b>
<i>[insert name]</i>	<i>[insert Tender price]</i>	<i>[insert evaluated price]</i>

[insert name]	[insert price]	Tender	[insert evaluated price]
[insert name]	[insert price]	Tender	[insert evaluated price]
[insert name]	[insert price]	Tender	[insert evaluated price]
[insert name]	[insert price]	Tender	[insert evaluated price]

## 2) How to request a debriefing.

**DEADLINE: The deadline to request a debriefing expires at midnight on [insert date] (local time).**

You may request a debriefing in relation to the results of the evaluation of your Tender. If you decide to request a debriefing your written request must be made within three (3) Business Days of receipt of this Notification of Intention to Award.

Provide the contract name, reference number, name of the Tenderer, contact details; and address the request for debriefing as follows:

**Attention:** .....[insert full name of person, if applicable]

**Title/position:** .....[insert title/position]

**Agency:** .....[insert name of Procuring Entity]

**Email address:** .....[insert email address]

If your request for a debriefing is received within the 3 Business Days deadline, we will provide the debriefing within five (5) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (5) Business Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.

The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.

If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Business Days from the date of publication of the Contract Award Notice.

## 3) How to make a complaint?

**Period: Procurement-related Complaint challenging the decision to award shall be submitted by [insert date and time].**

Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-related Complaint as follows:

**Attention:** ..... [insert full name of person, if applicable]

**Title/position:** .....[insert title/position]

**Agency:** ..... [insert name of Procuring Entity]

**Email address:** ..... [insert email address]

At this point in the procurement process, you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.

1. In summary, there are four essential requirements:
2. You must be an 'interested party'. In this case, that means a Tenderer who submitted a Tender in this tendering process, and is the recipient of a Notification of Intention to Award.
3. The complaint can only challenge the decision to award the contract.
4. You must submit the complaint within the period stated above.
5. You must include, in your complaint, all of the information required to support the complaint.
6. The application must be accompanied by the fees set out in the Procurement Regulations, which shall not be
7. refundable (information available from the Public Procurement Authority **(local time)**.  
[complaints@ppra.go.ke](mailto:complaints@ppra.go.ke) [info@ppra.go.ke](mailto:info@ppra.go.ke)

**4) Standstill Period**

**DEADLINE: The Standstill Period is due to end at midnight on *[insert date]***

The Standstill Period lasts ten (10) Business Days after the date of transmission of this Notification of Intention to Award.

The Standstill Period may be extended as stated in Section 4 above. If you

have any questions regarding this Notification please don't hesitate to

contact us. On behalf of the Procuring Entity:

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title/position:** \_\_\_\_\_

\_\_\_\_\_  
**Telephone:** \_\_\_\_\_

**Email:** \_\_\_\_\_

## 6) LETTER OF AWARD

*[Form head paper of the Procuring Entity] [date] To: .....[name and address of the Service Provider]*

This is to notify you that your Tender dated *[date]* for execution of the *[name of the Contract and identification number, as given in the Special Conditions of Contract]* for the Contract Price of the equivalent of *[amount in numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers is hereby accepted by us (Procuring Entity).

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using, for that purpose, one of the Performance Security Forms included in Section X, Contract Forms, of the tender document.

Please return the attached Contract dully signed Authorized Signature:

Name and Title of Signatory:

Name of Agency:

Attachment: Contract

**7) FORM OF CONTRACT [Form head paper of the Procuring Entity]**

**LUMP-SUMREMUNERATION**

This CONTRACT (herein after called the “Contract”) is made the [day] day of the month of [month], [year], between, on the one hand, [name of Procuring Entity] (herein after called the “Procuring Entity”) and, on the other hand, [name of Service Provider] (herein after called the “Service Provider”).

[*Note: In the text below text in brackets is optional; all notes should be deleted in final text. If the Service Provider consist of more than one entity, the above should be partially amended to read as follows: “... (herein after called the “Procuring Entity”) and, on the other hand, a joint venture consisting of the following entities, each of which will be jointly and severally liable to the Procuring Entity for all the Service Provider's obligations under this Contract, namely, [name of Service Provider] and [name of Service Provider] (herein after called the “Service Provider”).*]

**WHEREAS**

- a) the Procuring Entity has requested the Service Provider to provide certain Services as defined in the General Conditions of Contract attached to this Contract (herein after called the “Services”);
- b) the Service Provider, having represented to the Procuring Entity that they have the required professional skills, and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract at a contract price of.....;

NOW THEREFORE the parties hereto hereby agree as follows:

- 1. The following documents shall be deemed to form and be read and construed as part of this Agreement, and the priority of the documents shall be as follows:
  - a) The Form of Acceptance;
  - b) The Service Provider's Tender
  - c) The Special Conditions of Contract;
  - d) The General Conditions of Contract;
  - e) The Specifications and the Priced Activity Schedule; and
  - f) The following Appendices: [*Note: If any of these Appendices are not used, the words “Not Used” should be inserted below next to the title of the Appendix and on the sheet attached hereto carrying the title of that Appendix.*]

Appendix A: Description of the  
 Services Appendix B: Schedule of  
 Payments Appendix C:  
 Subcontractors Appendix D:  
 Breakdown of Contract Price

- 2. The mutual rights and obligations of the Procuring Entity and the Service Provider shall be as set forth in the Contract, in particular:
  - a) The Service Provider shall carry out the Services in accordance with the provisions of the Contract; and
  - b) The Procuring Entity shall make payments to the Service Provider in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in the irrespective names as of the day and year first above written.

For and on behalf of [name of Procuring

For and on behalf of *[name of Service*

---

*Provider] [Authorized Representative]*

*[Note: If the Service Provider consists of more than one entity, all these entities should appear as signatories, e.g., in the following manner:]*

For and on behalf of each of the Members of the Service Provider

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*[name of member]*

*[Authorized*

---

*name of member]*  
*Representative]*

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*[Authorized Representative]*



**8) Request for Review**

**FORM FOR REVIEW (r.203(1))**

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

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

**BETWEEN**

..... **APPLICANT**

**AND**

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

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

**REQUEST FOR REVIEW**

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

- 1.
- 2.

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

- 1.
- 2.

SIGNED ..... (Applicant) Dated on..... day of ...../...20.....

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FOR OFFICIAL USE ONLY Lodged with the Secretary Public Procurement Administrative Review Board on.....day of .....20.....

**SIGNED**

**Board Secretary**

**PREBID CONFERENCE FORM /SITE VISIT**



**TSC/T/39/2021-2022: SUPPLY, DELIVERY, INSTALLATION AND COMMISSIONING OF A TIER 3 MODULAR DATA CENTRE AND RE-LOCATION OF EQUIPMENT FROM CURRENT DATA CENTRE TO THE NEW DATA CENTRE**

1. This is to certify that

[Name/s]

.....

Being the authorized representative/Agent of [Name of Bidder]

.....

.....

.....

.....

Has undertaken the inspection of site / attended Pre bid-conference in accordance with the instruction to Bidders, for purposes of bidding for **TSC/T/39/2021-2022: SUPPLY, DELIVERY, INSTALLATION AND COMMISSIONING OF A TIER 3 MODULAR DATA CENTRE AND RE-LOCATION OF EQUIPMENT FROM CURRENT DATA CENTRE TO THE NEW DATA CENTRE**

Held on..... Day of.....20.....

2. Having studied the tender document, I carefully examined the site to make myself familiar with the local conditions likely to influence the works and cost thereof.

3. I further certify that I am satisfied with the description of the works and I understand perfectly the scope of the works as specified and implied in the performance of the contract

**SIGNED AND STAMPED.....**

**(Bidder's Representative)**

**SIGNED AND STAMPED.....**

**(Teachers Service Commission Representative)**