



# **NATIONAL OIL CORPORATION OF KENYA**

**TENDER FOR SUPPLY AND DELIVERY OF BRANDED ACME 18CM TAMPER  
PROOF SEALS**

**TENDER NO. NOCK/PRC/03(1325)2017/2018**

**NATIONAL OIL CORPORATION  
KAWI HOUSE, SOUTH C, RED CROSS ROAD  
OFF POPO ROAD  
P.O Box 58567 – 00200  
NAIROBI**

**Email: [tenders@nockkenya.co.ke](mailto:tenders@nockkenya.co.ke)**

**JANUARY 2018**

**TENDER CLOSING DATE: 26<sup>th</sup> JANUARY 2018 TIME: 1000HRS (EAST AFRICA  
TIME)**



<b>TABLE OF CONTENTS.....</b>	<b>Page</b>
<b>1 SECTION I – INVITATION TO TENDER .....</b>	<b>3</b>
<b>2 SECTION II – INSTRUCTIONS TO TENDERERS .....</b>	<b>5</b>
<b>3 SECTION III – GENERAL CONDITIONS OF CONTRACT .....</b>	<b>20</b>
<b>4 SECTION IV – SPECIAL CONDITIONS OF CONTRACT .....</b>	<b>26</b>
<b>5 SECTION V – TECHNICAL SPECIFICATIONS .....</b>	<b>28</b>
<b>6 SECTION VI – SCHEDULE OF REQUIREMENTS .....</b>	<b>30</b>
<b>7 SECTION VII – PRICE SCHEDULE FOR GOODS.....</b>	<b>31</b>
<b>8 SECTION VIII – STANDARD FORMS.....</b>	<b>32</b>



# 1 SECTION I – INVITATION TO TENDER

DATE: JANUARY 2018

**Tender Ref. No. NOCK/PRC/03(1325) 2017/2018**

**Tender Name: TENDER FOR SUPPLY BRANDED ACME TAMPER PROOF SEALS**

1.1 The National Oil Corporation of Kenya (herein referred to as the Procuring entity) invites eligible candidate for supply of Branded ACME Tamper Proof Seals on a three year framework contract.

1.2 Interested eligible candidates may obtain further information from and inspect the tender documents at:

**Procurement Department  
National Oil Corporation – Kawi House, South C,  
Red Cross Road off Popo Road  
P.O Box Number 58567 – 00200,  
NAIROBI  
Tel: +254-20-6952000, Fax: +254-20-6952400**

**Email: [tenders@nockenya.co.ke](mailto:tenders@nockenya.co.ke)**

during normal working hours on Monday to Friday between 0800hrs to 1700hrs (East Africa Time).

1.3 The complete tender document is downloaded from the National Oil Corporation website [www.nationaloil.co.ke](http://www.nationaloil.co.ke) free of charge. They should immediately forward their particulars for records and/or for the purposes of receiving any further clarifications/addenda to [tenders@nockenya.co.ke](mailto:tenders@nockenya.co.ke)

Printed tender documents collected in hard copy attracts a non- refundable fee of Kenya Shillings one thousand only (Kshs 1,000.00) which is payable before issuance of the tender document. Payment should in form of cash deposits at the National Oil Bank Accounts as given below.

(a)	Account Name:	NATIONAL OIL CORPORATION OF KENYA
	Account Number:	1107169380
	Bank:	KENYA COMMERCIAL BANK LTD
	Branch:	MOI AVENUE
(b)	Account Name:	NATIONAL OIL CORPORATION OF KENYA
	Account Number:	0560292466991
	Bank:	EQUITY BANK LIMITED
	Branch:	KENPIPE INDUSTRIAL AREA
	Swift Code:	EQBLKENA NAIROBI, KENYA

The deposit slip must bear the name of the bidding firm/company.



- 1.4 Prices quoted shall be inclusive of any applicable taxes and shall remain valid for 120 days from the closing date of the tender.
- 1.5 Tenderers are required to submit copies of the documents below which will be used for preliminary evaluation.
- i) Copy of Certificate of incorporation/registration
  - ii) Copy of Valid tax compliance certificate
  - iii) Copy of CR12 for Limited Company from registrar of business names
  - iv) Copy of National Identity Card/ Passport
  - v) Duly filled and signed Tender Securing Declaration Form
  - vi) Duly filled and signed confidential business questionnaire (Section VIII).
  - vii) Duly signed bidder's declaration and integrity pact (Section VIII).

- 1.6 Completed tender documents are to be enclosed in plain sealed envelopes marked: **"TENDER FOR SUPPLY OF BRANDED ACME TAMPER PROOF SEALS. – Ref No. NOCK/PRC/03(1325) 2017-2018"** with the instructions **"DO NOT OPEN BEFORE 26<sup>TH</sup> JANUARY 2018 AT 1000HRS (EAST AFRICA TIME)"** so as to be received on or before **26<sup>th</sup> January 2018 AT 1000HRS (EAST AFRICA TIME)"** addressed to:

**Chief Executive Officer  
National Oil Corporation – Kawi House, South C,  
Red Cross Road off Popo Road  
P.O Box 58567 – 00200, NAIROBI**

and deposited in the Tender Box provided at:

**National Oil Corporation – 1st Floor Kawi House Complex, South C,  
Red Cross Road, off Popo Road  
P.O Box 58567 – 00200, NAIROBI**

to be received on or before **26<sup>th</sup> January 2018 at 1000hrs (East Africa Time)**. Late submissions shall automatically be disqualified.

- 1.7 Bulky tenders that do not fit into the tender box should be deposited at the Chief Executive's Office located on 2<sup>nd</sup> Floor, Kawi House Complex **on or before 26<sup>th</sup> January 2018 1000hrs (East Africa Time)**
- 1.8 Tenders will be opened immediately thereafter in the presence of the Candidate or their representative who choose to attend at

**National Oil Corporation of Kenya  
The Meeting Room, Ground Floor  
Red Cross Road off Popo Road  
NAIROBI**

**CHIEF EXECUTIVE OFFICER**



## 2 SECTION II – INSTRUCTIONS TO TENDERERS

<b>TABLE OF CONTENTS .....</b>	<b>Page</b>
<b>2.1 ELIGIBLE TENDERERS .....</b>	<b>7</b>
<b>2.2 ELIGIBLE GOODS .....</b>	<b>7</b>
<b>2.3 COST OF TENDERING .....</b>	<b>7</b>
<b>2.4 THE TENDER DOCUMENT .....</b>	<b>7</b>
<b>2.5 CLARIFICATION OF DOCUMENTS.....</b>	<b>8</b>
<b>2.6 AMENDMENT OF DOCUMENTS .....</b>	<b>8</b>
<b>2.7 LANGUAGE OF TENDER.....</b>	<b>8</b>
<b>2.8 DOCUMENTS COMPRISING OF TENDER .....</b>	<b>8</b>
<b>2.9 TENDER FORMS .....</b>	<b>9</b>
<b>2.10 TENDER PRICES.....</b>	<b>9</b>
<b>2.11 TENDER CURRENCIES .....</b>	<b>9</b>
<b>2.12 TENDERERS ELIGIBILITY AND QUALIFICATIONS .....</b>	<b>9</b>
<b>2.13 GOODS ELIGIBILITY AND CONFORMITY TO TENDER DOCUMENTS.....</b>	<b>10</b>
<b>2.14 TENDER SECURITY.....</b>	<b>10</b>
<b>2.15 VALIDITY OF TENDERS.....</b>	<b>11</b>
<b>2.16 FORMAT AND SIGNING OF TENDER.....</b>	<b>11</b>
<b>2.17 SEALING AND MARKING OF TENDERS.....</b>	<b>11</b>
<b>2.18 DEADLINE FOR SUBMISSION OF TENDERS .....</b>	<b>12</b>
<b>2.19 MODIFICATION AND WITHDRAWAL OF TENDERS .....</b>	<b>12</b>
<b>2.20 OPENING OF TENDERS .....</b>	<b>13</b>

<b>2.21</b>	<b>CLARIFICATION OF TENDERS.....</b>	<b>13</b>
<b>2.22</b>	<b>PRELIMINARY EXAMINATION .....</b>	<b>13</b>
<b>2.23</b>	<b>CONVERSION TO SINGLE CURRENCY .....</b>	<b>14</b>
<b>2.24</b>	<b>EVALUATION AND COMPARISON OF TENDERS .....</b>	<b>14</b>
<b>2.25</b>	<b>PREFERENCE.....</b>	<b>14</b>
<b>2.26</b>	<b>CONTACTING THE PROCURING ENTITY .....</b>	<b>14</b>
<b>2.27</b>	<b>AWARD OF CONTRACT .....</b>	<b>15</b>
<b>2.28</b>	<b>NOTIFICATION OF AWARD.....</b>	<b>15</b>
<b>2.29</b>	<b>SIGNING OF CONTRACT .....</b>	<b>16</b>
<b>2.30</b>	<b>PERFORMANCE SECURITY .....</b>	<b>16</b>
<b>2.31</b>	<b>CORRUPT OR FRAUDULENT PRACTICES .....</b>	<b>16</b>
<b>2.32</b>	<b>APPENDIX TO INSTRUCTIONS TO TENDERERS.....</b>	<b>17</b>

## **2.1 Eligible Tenderers**

**2.1.1** This Invitation for Tenders is open to all tenderers eligible as described in the Invitation to Tender. Successful tenderers shall complete the supply of goods by the intended completion date specified in the Schedule of Requirements Section VI.

**2.1.2** The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.

**2.1.3** Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods under this Invitation for tenders.

**2.1.4** Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices.

## **2.2 Eligible Goods**

**2.2.1** All goods to be supplied under the contract shall have their origin in eligible source countries.

**2.2.2** For purposes of this clause, "origin" means the place where the goods are mined, grown, or produced. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially-recognized product results that is substantially different in basic characteristics or in purpose or utility from its components

**2.2.3** The origin of goods is distinct from the nationality of the tenderer.

## **2.3 Cost of Tendering**

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

**2.3.2** The price to be charged for the tender document shall not exceed Kshs.1, 000.00.

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

## **2.4 The Tender Document**

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

- i) Invitation to Tender
- ii) Instructions to tenderers
- iii) General Conditions of Contract
- iv) Special Conditions of Contract
- v) Schedule of requirements
- vi) Technical Specifications

- vii) Tender Form and Price Schedules
- viii) Contract Form
- ix) Performance Security Form
- x) Bank Guarantee for Advance Payment Form
- xi) Manufacturer's Authorization Form
- xii) Confidential Business Questionnaire

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

## **2.5 Clarification of Documents**

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

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

## **2.6 Amendment of Documents**

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

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

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

## **2.7 Language of Tender**

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

## **2.8 Documents Comprising of Tender**

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



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

## **2.9 Tender Forms**

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

## **2.10 Tender Prices**

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

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

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

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

## **2.11 Tender Currencies**

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

## **2.12 Tenderers Eligibility and Qualifications**

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

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

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

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

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

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

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

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

- a) A detailed description of the essential technical and performance characteristic of the goods;
- b) A list giving full particulars, including available source and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the goods for a period of three (3) years, following commencement of the use of the goods by the Procuring entity; and
- c) A clause-by-clause commentary on the Procuring entity's Technical Specifications demonstrating substantial responsiveness of the goods and service to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.

**2.13.4** For purposes of the documentary evidence to be furnished pursuant to paragraph 2.13.3(c) above, the tenderer shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by the Procurement entity in its Technical Specifications, are intended to be descriptive only and not restrictive. The tenderer may substitute alternative standards, brand names, and/or catalogue numbers in its tender, provided that it demonstrates to the Procurement entity's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

## **2.14 Tender Security**

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

- 2.14.2** The tender security shall not be required. Fill in the “**TENDER SECURING DECLARATION FORM at in Sec. 8.4.**”
- 2.14.3** The tender security is required to protect the Procuring entity against the risk of Tenderer’s conduct which would warrant the security’s forfeiture, pursuant to paragraph 2.14.7.
- 2.14.4** The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form of a bank guarantee or a bank draft issued by a reputable bank located in Kenya or abroad, or a guarantee issued by a reputable insurance company in the form provided in the tender documents or another form acceptable to the Procuring entity and valid for thirty (30) days beyond the validity of the tender.
- 2.14.5** Any tender not secured in accordance with paragraph 2.14.1 and 2.14.3 will be rejected by the Procuring entity as non responsive, pursuant to paragraph 2.22.
- 2.14.6** Unsuccessful Tenderers’ tender security will be discharged or returned as promptly as possible, but not later than thirty (30) days after the expiration of the period of tender validity prescribed by the Procuring entity.
- 2.14.7** The successful Tenderer’s tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 2.27 and furnishing the performance security, pursuant to paragraph 2.28.
- 2.14.8** The tender security may be forfeited:
- a) if a tenderer withdraws its tender during the period of tender validity specified by the procuring entity on the Tender Form; or
  - b) in the case of a successful tenderer, if the tenderer fails:
    - i) to sign the contract in accordance with paragraph 2.29; or
    - ii) To furnish performance security in accordance with paragraph 2.30.

## **2.15 Validity of Tenders**

- 2.15.1** Tenders shall remain valid for 120 days or as specified in the Invitation to Tender after the date of tender opening prescribed by the Procuring entity, pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the Procuring entity as non responsive.
- 2.15.2** In exceptional circumstances, the Procuring entity may solicit the Tenderer’s consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 2.14 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

## **2.16 Format and Signing of Tender**

- 2.16.1** The tenderer shall prepare two copies of the tender, clearly marking each “ORIGINAL TENDER” and “COPY OF TENDER,” as appropriate. In the event of any discrepancy between them, the original shall govern.

**2.16.2** The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. All pages of the tender, except for unamended printed literature, shall be initialed by the person or persons signing the tender.

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

## **2.17 Sealing and Marking of Tenders**

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

**2.17.2** The inner and outer envelopes shall:

- a) Be addressed to the Procuring entity at the address given in the Invitation to Tender:
- b) Bear, tender number and name in the Invitation for Tenders and the words, **“DO NOT OPEN BEFORE 26<sup>TH</sup> JANUARY 2018 AT 1000HRS (EAST AFRICA TIME).”**

**2.17.3** The inner envelopes shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared “late”.

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

## **2.18 Deadline for Submission of Tenders**

**2.18.1** Tenders must be received by the Procuring entity at the address specified under paragraph 2.17.2 **no later than 26<sup>th</sup> January 2018 at 1000hrs (East Africa Time).**

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

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

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

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

- 2.19.3** No tender may be modified after the deadline for submission of tenders.
- 2.19.4** No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the Tenderer's forfeiture of its tender security, pursuant to paragraph 2.14.8.
- 2.19.5** The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 2.19.6** The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

## **2.20 Opening of Tenders**

- 2.20.1** The Procuring entity will open all tenders in the presence of tenderers' and/or their representatives who choose to attend, **at 1000hrs (East Africa Time), 26<sup>th</sup> January 2018** in the location specified in the Invitation to Tender.

The tenderers' and/or their representatives who are present shall sign a register evidencing their attendance.

- 2.20.2** The tenderers' names, tender modifications or withdrawals, tender prices, discounts and the presence or absence of requisite tender security and such other details as the Procuring entity, at its discretion, may consider appropriate, will be announced at the opening.
- 2.20.3** The Procuring entity will prepare minutes of the tender opening.

## **2.21 Clarification of Tenders**

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

## **2.22 Preliminary Examination**

- 2.22.1** The Procuring entity will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order.
- 2.22.2** Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantify, the unit price shall prevail, and the total price shall be corrected. If the candidate does not

accept the correction of the errors, its tender will be rejected, and its tender security forfeited. If there is a discrepancy between words and figures the amount in words will prevail

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

**2.22.4** Prior to the detailed evaluation, pursuant to paragraph 2.23 the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one, which conforms to all the terms and conditions of the tender documents without material deviations. The Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

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

## **2.23 Conversion to Single Currency**

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

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

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

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

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

## **2.25 Preference**

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

## **2.26 Contacting the Procuring entity**

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

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

## **2.27 Award of Contract**

### **a) Post-qualification – due diligence**

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

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

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

### **b) Award Criteria**

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

### **c) Procuring entity's Right to Vary quantities**

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

### **d) Procuring entity's Right to Accept or Reject Any or All Tenders**

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

## **2.28 Notification of Award**

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

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

**2.28.3** Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 2.30, the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.14.

## **2.29 Signing of Contract**

- 2.29.1** At the same time as the Procuring entity notifies the successful tenderer that its tender has been accepted, the Procuring entity will send the tenderer the Contract Form provided in the tender documents, incorporating all agreements between the parties.
- 2.29.2** The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.
- 2.29.3** Within thirty (30) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Procuring entity.

## **2.30 Performance Security**

- 2.30.1** Within Thirty (30) days of the receipt of notification of award from the Procuring entity, the successful tenderer shall furnish the performance security in accordance with the Conditions of Contract, in the Performance Security Form provided in the tender documents, or in another form acceptable to the Procuring entity.
- 2.30.2** Failure of the successful tenderer to comply with the requirements of paragraph 2.27 or paragraph 2.28 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Procuring entity may make the award to the next lowest evaluated Candidate or call for new tenders.

## **2.31 Corrupt or Fraudulent Practices**

- 2.31.1** The Procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts when used in the present regulations, the following terms are defined as follows;
- i) “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and
  - ii) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring entity, and includes collusive practice among tenderer (prior to or after tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive the Procuring entity of the benefits of free and open competition;
- 2.31.2** The procuring entity will reject a proposal for award if it determines that the tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.
- 2.31.3** Further a tenderer who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.



## 2.32 Appendix to Instructions to Tenderers

The Appendix to instructions to tenderers is intended to assist the procuring entity in providing specific information in relation to the corresponding clause in the instructions to Tenderers included in Section II and has to be prepared for each specific procurement.

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

INSTRUCTIONS TO TENDERERS REFERENCE	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
2.1.1	<p><b>Eligible tenderers are as indicated here below:-</b>  <i>Must provide the following mandatory requirements (preliminary evaluation). Non-submission of any of the below documents will lead to disqualification from the tender proceedings</i></p> <ul style="list-style-type: none"> <li>i) Copy of certificate of incorporation/registration</li> <li>ii) Copy of valid tax compliance certificate</li> <li>iii) Copy of CR12 for Limited Company from registrar of business names</li> <li>iv) Copy of National Identity Card / Passport</li> <li>v) Bank statement/ bank reference letter</li> <li>vi) Tender Security – Fill in the “<b>TENDER SECURING DECLARATION FORM</b>”</li> <li>vii) Duly filled and signed confidential business questionnaire (Section VIII)</li> <li>viii) Duly signed bidder’s declaration and integrity pact (Section VIII)</li> </ul> <p><b>Other requirements</b></p> <ul style="list-style-type: none"> <li>ix) Is not limited or debarred under any of the provisions of the Kenya’s Public Procurement and Asset Disposal Act, 2015 and the Public Procurement and Disposal Regulation, 2006 to enter into a Contract;</li> <li>x) Must not be bankrupt or in the process of being wound-up and is not the subject of legal proceedings for the purposes hereof;</li> <li>xi) Provide information regarding current litigation(s) in which the tenderer is involved (if any);</li> </ul>
2.11	Tender currency shall be in Kenya Shillings
2.14.1	Tender security is <b>NOT</b> required for the tender
2.18	<b>Bulky tenders</b> that do not fit into the tender box should be deposited at the reception <i>located on ground Floor</i> , Kawi House Complex on or before 26 <sup>th</sup> January 2018 at 1000hrs (East Africa Time)
2.18.1	Tender closes at 1000hrs (East Africa Time) on <b>26<sup>th</sup> January 2018</b>
2.18.2	The tenderer should not have been evaluated and obtained negative results

2.24	<p><b>Evaluation and Comparison of tenders</b>  <i>The Evaluation criteria given in the table below will be used for tender for Supply of Branded ACME 18CM Tamper Proof Seals:-</i></p> <table border="1" data-bbox="497 338 1433 1227"> <thead> <tr> <th></th> <th><b>Evaluation criteria</b></th> <th><b>Score</b></th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>Ability to supply the required Branded ACME 18CM Tamper Proof Seals– the tenderer’s profile should clearly bring out the ability to supply Branded ACME 18CM Tamper Proof Seals clearly titled as such.</td> <td>5</td> </tr> <tr> <td>2.</td> <td>Experience in the supply of Branded ACME 18CM Tamper Proof Seals. The tenderer should provide at least five references complete with names and telephone numbers of contact persons for companies where similar products have been offered in the last three years</td> <td>15</td> </tr> <tr> <td>3.</td> <td>The bidder must show proof that the Manufacturer of ACME 18CM Tamper Proof Seals is registered with Country of Origin’s relevant Government Certifying/Registration/Standardization bodies”</td> <td>5</td> </tr> <tr> <td>4.</td> <td>Provision of Quality Assurance certificates from relevant Security Seal Testing Authorities</td> <td>15</td> </tr> <tr> <td>5.</td> <td>Applicable Delivery timeline:- Tenderer should clearly state their delivery timeline and demonstrate their capability to supply within the period stated in the tender presentation.</td> <td>20</td> </tr> <tr> <td>6.</td> <td>Provision of one year warranty</td> <td>10</td> </tr> <tr> <td></td> <td><b>TOTAL</b></td> <td><b>70</b></td> </tr> </tbody> </table> <p>To be considered technically responsive for Supply of Branded ACME 18CM Tamper Proof Seals for a framework contract of three years, the tenderer should have a minimum score of 50 points out of the 70 points above.</p>		<b>Evaluation criteria</b>	<b>Score</b>	1.	Ability to supply the required Branded ACME 18CM Tamper Proof Seals– the tenderer’s profile should clearly bring out the ability to supply Branded ACME 18CM Tamper Proof Seals clearly titled as such.	5	2.	Experience in the supply of Branded ACME 18CM Tamper Proof Seals. The tenderer should provide at least five references complete with names and telephone numbers of contact persons for companies where similar products have been offered in the last three years	15	3.	The bidder must show proof that the Manufacturer of ACME 18CM Tamper Proof Seals is registered with Country of Origin’s relevant Government Certifying/Registration/Standardization bodies”	5	4.	Provision of Quality Assurance certificates from relevant Security Seal Testing Authorities	15	5.	Applicable Delivery timeline:- Tenderer should clearly state their delivery timeline and demonstrate their capability to supply within the period stated in the tender presentation.	20	6.	Provision of one year warranty	10		<b>TOTAL</b>	<b>70</b>
	<b>Evaluation criteria</b>	<b>Score</b>																							
1.	Ability to supply the required Branded ACME 18CM Tamper Proof Seals– the tenderer’s profile should clearly bring out the ability to supply Branded ACME 18CM Tamper Proof Seals clearly titled as such.	5																							
2.	Experience in the supply of Branded ACME 18CM Tamper Proof Seals. The tenderer should provide at least five references complete with names and telephone numbers of contact persons for companies where similar products have been offered in the last three years	15																							
3.	The bidder must show proof that the Manufacturer of ACME 18CM Tamper Proof Seals is registered with Country of Origin’s relevant Government Certifying/Registration/Standardization bodies”	5																							
4.	Provision of Quality Assurance certificates from relevant Security Seal Testing Authorities	15																							
5.	Applicable Delivery timeline:- Tenderer should clearly state their delivery timeline and demonstrate their capability to supply within the period stated in the tender presentation.	20																							
6.	Provision of one year warranty	10																							
	<b>TOTAL</b>	<b>70</b>																							
2.29.1	<p><b>Performance Security</b>  The amount of Performance Security shall be 1% of the Contract Price in the format of the Performance Security Form provided in the tender document in the form of a bank guarantee drawn by a bank licensed and operating in Kenya or a foreign bank recognized by the Central Bank of Kenya.</p>																								
2.31	<p><b>In addition to clause 2.31, the ethics as described below will apply:</b>  <b>2.31.4 Ethics</b>  It is a requirement that both National Oil and prospective suppliers of goods, services and works observe the highest standards of ethics during the procurement and execution of contracts.  In pursuance of this policy, National Oil requires that all bidders concerned take measures to ensure that no transfer of gifts, payments or other benefits to officials of National Oil and/or procurement/management staff with decision making responsibility or influence occurs. In this regard, National Oil will require all tenderers to sign, as part of the tender documents, an Integrity Pact (Section VIII – Standard forms, clause 8.8). <b>Non-delivery of the Bidders Declaration</b></p>																								

	<p><b>and Integrity Pact (Section VIII – Standard forms, clause 8.8) duly undersigned by the chief executive or legal representative of the tendering party will result in exclusion of the bid/ quotation from the procurement process.</b></p> <p>National Oil reserves the right to suspend or cancel a tender/quotation if corrupt practices of any kind are discovered at any stage of the award process.</p>
--	--



### 3 SECTION III – GENERAL CONDITIONS OF CONTRACT

<b>TABLE OF CONTENTS</b> .....	<b>Page</b>
<b>3.1 DEFINITIONS</b> .....	<b>21</b>
<b>3.2 APPLICATION</b> .....	<b>21</b>
<b>3.3 COUNTRY OF ORIGIN</b> .....	<b>21</b>
<b>3.4 STANDARDS</b> .....	<b>21</b>
<b>3.5 USE OF CONTRACT DOCUMENTS AND INFORMATION</b> .....	<b>21</b>
<b>3.6 PATENT RIGHTS</b> .....	<b>22</b>
<b>3.7 PERFORMANCE SECURITY</b> .....	<b>22</b>
<b>3.8 INSPECTION AND TESTS</b> .....	<b>22</b>
<b>3.9 PACKING</b> .....	<b>23</b>
<b>3.10 DELIVERY AND DOCUMENTS</b> .....	<b>23</b>
<b>3.11 INSURANCE</b> .....	<b>23</b>
<b>3.12 PAYMENT</b> .....	<b>23</b>
<b>3.13 PRICES</b> .....	<b>23</b>
<b>3.14 ASSIGNMENT</b> .....	<b>24</b>
<b>3.15 SUBCONTRACTS</b> .....	<b>24</b>
<b>3.16 TERMINATION FOR DEFAULT</b> .....	<b>24</b>
<b>3.17 LIQUIDATED DAMAGES</b> .....	<b>24</b>
<b>3.18 RESOLUTION OF DISPUTES</b> .....	<b>24</b>
<b>3.19 LANGUAGE AND LAW</b> .....	<b>25</b>
<b>3.20 FORCE MAJEURE</b> .....	<b>25</b>

### **3.1 Definitions**

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

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

### **3.2 Application**

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

### **3.3 Country of Origin**

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

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

### **3.4 Standards**

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

### **3.5 Use of Contract Documents and Information**

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

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

**3.5.3** Any document, other than the Contract itself, enumerated in paragraph 3.5.1 shall remain the property of the Procuring entity and shall be returned (all copies) to the Procuring entity on

completion of the Tenderer's performance under the Contract if so required by the Procuring entity.

### **3.6 Patent Rights**

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

### **3.7 Performance Security**

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

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

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

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

### **3.8 Inspection and Tests**

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

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

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

**3.8.4** The Procuring entity's right to inspect, test and where necessary, reject the goods after the Goods' arrival shall in no way be limited or waived by reason of the equipment having

previously been inspected, tested and passed by the Procuring entity or its representative prior to the equipment delivery.

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

### **3.9 Packing**

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

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

### **3.10 Delivery and Documents**

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

### **3.11 Insurance**

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

### **3.12 Payment**

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

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

### **3.13 Prices**

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

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

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

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

### **3.14 Assignment**

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

### **3.15 Subcontracts**

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

### **3.16 Termination for default**

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

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

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

### **3.17 Liquidated Damages**

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

### **3.18 Resolution of Disputes**

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

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



### **3.19 Language and Law**

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

### **3.20 Force Majeure**

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

## **4 SECTION IV – SPECIAL CONDITIONS OF CONTRACT**

### **Notes on Special Conditions of Contract**

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

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

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

## SECTION IV – SPECIAL CONDITIONS OF CONTRACT

**4.1** Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, between the GCC and the SCC, the provisions of the SCC herein shall prevail over these in the GCC.

**4.2** **Special conditions of contract as relates to the GCC**

REFERENCE OF GCC	SPECIAL CONDITIONS OF CONTRACT
3.7.1	<p><i>Performance Security</i></p> <p>The performance security shall be 1% of Contract Price in the Form of Bank Guarantee drawn by a bank licensed and operating in Kenya or an international bank recognized by the Central Bank of Kenya.</p> <p>Within <b>fourteen (14) days</b> of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the performance security in the amount specified in Special Conditions of Contract.</p>
3.12.1	<p><i>Payment terms</i></p> <p>Payments shall be within 30 days after receipt of invoice at National Oil and after successful supply of Branded ACME 18CM Tamper Proof Seals</p>

## 5 SECTION V – TECHNICAL SPECIFICATIONS

### 5.1 General

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

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

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

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

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

### 5.2 Warranty

The bidder's quotation shall be required to include a comprehensive warranty for a period of one (1) year for the goods supplied.


## 5.3 PARTICULARS

### 5.3.1 TERMS OF REFERENCE

#### **BRANDED ACME 18CM TAMPER PROOF SEALS SPECIFICATIONS**

Supply branded acme 18cm tamper proof seals specifications where only rates will be contracted as per the price schedule, framework for three years.

ITEM	PARTICULARS	REQUIREMENTS
1	Recommended Applications	Trailers, Tankers and Containers.
2	Material	Matt Tinned Steel
3	Available Operating Lengths	The standard length of 18cm
4	Strip Width	10mm
5	Marking Dimensions	10mm x 85mm

6	Average Breaking Strength	70kg
7	Locking mechanism	The design feature should be the unique double locking action and inspection holes in the lock box which enable the user and security personnel to view the tips of the “T” mechanism within the lock box ensuring the seal has been correctly locked and has not been pre-tampered.
8	Tamper proof	This seal cannot be disengaged by intrusion or manipulation, nor can it be dismantled or cut without leaving obvious traces.
9	Acceptance	HM Revenue & Customs Sub-Group 3 EU Regulation 2454/93, Article 386, Annex 46A US In-Bond Security
10	Marking	Embossed with customer prefix/name Embossed 7 digit consecutive numbers as standard
11	Colors	Matt tinplated
12	Packaging (18cm standard length seal)	Standard Packaging : 25 seals per pack and 1,000 seals/carton Carton Dimensions : 33cm x 25.4cm x 12cm Carton weight : 6.5kg/carton
13	Illustration	



## 6 SECTION VI – SCHEDULE OF REQUIREMENTS

Number	Description	Quantity	Delivery schedule In Weeks from <u>receipt of order (LPO)</u>

The tenderer shall give the proposed delivery schedule which shall be used as part of the evaluation criteria given in Section II – Instructions to tenderers.

## 7 SECTION VII – PRICE SCHEDULE FOR GOODS

Name of tenderer \_\_\_\_\_ Tender Number \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_

### SUPPLY OF BRANDED ACME 18CM TAMPER PROOF SEALS PRICE SCHEDULE

Item	Description	Country of origin	Unit Price EXW per item (KShs)	Taxation – VAT (KShs)	Total Price inclusive of VAT (KShs)	Unit of
1.	Supply and Delivery of Branded ACME 18CM Tamper Proof Seal					

Tenderers must quote for the supply of the Branded ACME 18CM Tamper Proof Seals that meets the terms as given in Clause 5.3.1, as per the schedule above.

Tenderers must give the unit price for one complete unit of Branded ACME 18CM Tamper Proof Seals that has all the elements captured in the terms of reference (but not limited to these elements). Attachment of a complete instruction manual detailing all the parts of the quoted Branded ACME 18CM Tamper Proof Seals is mandatory as this will inform the suitability of the Branded ACME 18CM Tamper Proof Seals being awarded by National Oil.

Only unit prices are to be given by the tenderer, as this is a rates tender that will lead to a framework contract for the supply of Branded ACME 18CM Tamper Proof Seals at Nairobi Terminals(NNT and HQ).

Where need be, a tenderer may amend the price schedule with no major deviation from the above schedule.

Prices quoted should be net inclusive of any applicable charges, and shall remain valid for 120 days from the closing date of the tender.

Signature of tenderer \_\_\_\_\_

The prices quoted here shall remain valid for 120 days from the closing date of the tender.

## 8 SECTION VIII – STANDARD FORMS

### Notes on the sample Forms

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





**8.1 FORM OF TENDER**

Date \_\_\_\_\_

Tender No. \_\_\_\_\_

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

*[name and address of procuring entity]*

Ladies and/or Gentlemen:

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

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

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[in the capacity of]

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



## 8.2 CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

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

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

*Part 1 – General:*

Business Name .....

Location of business premises. ....

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

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

Nature of Business .....

Registration Certificate No. ....

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

Name of your bankers ..... Branch .....

	<b>Part 2 (a) – Sole Proprietor</b>		
	Your name in full .....		Age .....
	Nationality .....		Country of origin .....
	• Citizenship details .....		
	<b>Part 2 (b) Partnership</b>		
	Given details of partners as follows:		
	Name	Nationality	Citizenship Details
	Shares		
	1. ....		
	2. ....		
	3. ....		
	4. ....		
	<b>Part 2 (c ) – Registered Company</b>		
	Private	or	Public
	.....		
	State the nominal and issued capital of company-		
	Nominal Kshs. ....		
	Issued Kshs. ....		
	Given details of all directors as follows		
	Name	Nationality	Citizenship Details



	Shares
	1.....
	2.....
	3.....
	4.....
Date ..... Signature of Candidate .....	

If a Kenyan Citizen, indicate under "Citizenship Details" whether by Birth, Naturalization or registration.



### 8.3 TENDER SECURITY FORM

Whereas ..... [Name of the tenderer] (Hereinafter called “the tenderer”) has submitted its tender dated ..... [Date of submission of tender] for the supply, installation and commissioning of ..... [Name and/or description of the equipment] (Hereinafter called “the Tender”) ..... KNOW ALL PEOPLE by these presents that WE ..... of ..... having our registered office at ..... (Hereinafter called “the Bank”), are bound unto ..... [Name of procuring entity] (Hereinafter called “the Procuring entity”) in the sum of ..... for which payment well and truly to be made to the said Procuring entity, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

THE CONDITIONS of this obligation are:-

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

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

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

[Signature of the bank] \_\_\_\_\_

(Amend accordingly if provided by Insurance Company)



## 8.4 TENDER SECURING DECLARATION FORM

(The Bidder shall complete in this Form in accordance with the instructions indicated)

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

Tender No..... (insert number of bidding process)

To: **National Oil Corporation of Kenya**

We, the undersigned, declare that:-

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

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

a) have with our Bid during the period of bid validity specified by us in the Bidding Data Sheet; or

b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity,

i) fail or refuse to execute the Contract, if required, or

ii) fail or refuse to furnish the Performance Security, in accordance with the ITT

3 We understand that this Bid Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of

i) our receipt of a copy of your notification of the name of successful Bidder, or

ii) twenty-eight days after the expiration of our Tender

4 We understand that if we are a Joint Venture, the Bid Securing Declaration must be in the name of the Joint Venture that submits the bid and the Joint Venture has not been legally constituted at the time of bidding, the Bid Securing shall be in the names of all future partners as named in the letter of intent.

Signed: ..... (insert signature of person whose name and capacity are shown) in the capacity of ..... (insert legal capacity of person signing the Bid Securing Declaration)

Name: ..... (insert complete name of person signing the Bid Securing Declaration)

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

Date on ..... Day of .....(insert



**8.5 CONTRACT FORM**

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

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

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

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

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

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

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

*(Amend accordingly if provided by Insurance Company)*



**8.6 PERFORMANCE SECURITY FORM**

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

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

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

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

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

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

Signed and seal of the Guarantors

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

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

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



**8.7 BANK GUARANTEE FOR ADVANCE PAYMENT FORM**

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

[Name of tender] .....

Ladies and Gentlemen:

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

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

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

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

Yours truly,

Signature and seal of the Guarantors

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

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

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





## 8.8 MANUFACTURER'S AUTHORIZATION FORM

To *[name of the Procuring entity]* .....

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

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

---

*[Signature for and on behalf of manufacturer]*

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



**8.9 BIDDER’S DECLARATION AND INTEGRITY PACT**

**8.9.1 Bidder’s Declaration**

We/I the undersigned ....., in the capacity of .....  
..... for ..... [Name of the  
company/firm/individual] certify that the **bidder is not in any of the following situations:**

- 1 Bankruptcy; are the subject of proceedings for a declaration of bankruptcy, or of an order for compulsory winding up or administration by court, or of any other similar proceedings;
- 2 Payments to us have been suspended in accordance with the judgment of a court other than a judgment declaring bankruptcy and resulting, in accordance with our national laws, in the total or partial loss of the right to administer and dispose off our property;
- 3 Legal proceedings have been instituted against us involving an order suspending payments and which may result, in accordance with our national laws, in a declaration of bankruptcy or in any other situation entailing the total or partial loss of the right to administer and dispose of our property;
- 4 Are being wound up, or our affairs are being administered by court, or have entered into an arrangement with creditors, or have suspended business activities or are subject to an injunction against running business by a court of law;
- 5 Have been convicted by a final judgment of any crime or offence concerning our/my professional conduct;
- 6 Are guilty of serious misrepresentation with regard to information required for participation in an invitation to tender or execution of a tender already awarded; and
- 7 Are in breach of contract on another contract with the Government of Kenya or other local or international contracting authority or foreign government.
- 8 Have been convicted of an offence concerning our/my professional conduct by a court of law, or found guilty of grave professional misconduct;
- 9 Have not fulfilled obligations relating to payments of taxes or statutory contributions.

If the bidder is in any of the above listed situations, kindly attach documents giving details of the situation.

Names in full: [.....]

Duly authorized to sign this bid on behalf of (bidder’s name):

[.....]

Place and date: [.....]

Stamp of the firm/company:

## 8.9.2 Integrity Pact

### Bidder's Oath to fulfill the Integrity Pact

Accepting that transparent business management and fair public administration are key to social development and national competitiveness, and in an effort to purge corruption and apply sanctions to corrupt businesses, and in full support of the worthy goals of this Integrity Pact, concerning the present **tender for Supply of Branded ACME 18CM Tamper Proof Seals** – **NOCK/PRC/03(1113)** all personnel of \_\_\_\_\_ and its sub-contractors and agents hereby agree that:

1. We shall not conduct any unethical business practices, such as bid-rigging for the sake of a particular bidder to win the bid, or price-fixing. If proven as a fact that we have engaged in bid-rigging for the sake of a particular bidder to win the bid, we shall accept to be prohibited from submitting bids placed by National Oil Corporation of Kenya (herein referred to as NATIONAL OIL) for a period of two (2) years. If proven that we have discussed with other bidders in a bid to fix a price, or rigged a bid for a particular bidder to win the bid, we shall accept the prohibition from submitting bids placed by NATIONAL OIL for a period of two (2) years. If any unethical behaviour is tantamount to a fraudulent practice, we accept that such a case may be handed over to the authorities for investigation and possible prosecution.
2. In the process of bidding, or concluding or execution of a contract, we shall not offer any bribe, gifts, entertainment or any other undue benefits directly or indirectly to related officials, and in case it is proved that we have violated any terms of this Integrity Pact in relation with a bid, or concluding or execution of a contract, or offered bribes for favours in a contract, to win a contract, or facilitate payment which should not have been forthcoming, we shall accept the prohibition from submitting a bid placed by NATIONAL OIL for a period of two (2) years. If proven as a fact that we have offered bribes to NATIONAL OIL or related officials for favours regarding a bid or contract to a bidder or a winning bidder, or for the purpose of faulty execution of the objectives of a contract, we shall accept the prohibition from submitting bids placed by NATIONAL OIL for a period of two (2) years. If proven that we have offered bribes to NATIONAL OIL or related officials in relation to bidding, or concluding or execution of a contract, we shall accept the prohibition from submitting bids placed by NATIONAL OIL for a period of two (2) years.
3. In case it is proven that we have offered bribes to a related official or a NATIONAL OIL official regarding a bid, or concluding or execution of a contract, we shall accept the cancellation of the contract, and shall not file any civil, administrative or criminal appeals.
4. We shall make our best effort to institute a Company Code of Conduct that prohibits bribery, bid rigging/fixing or any other corrupt practices in business relations with officials and NATIONAL OIL, and a company regulation that prohibits any retaliatory acts toward anyone reporting inside corruption.
5. In addition, I confirm on behalf of the bidder that the details included in the bidders profile and experience sheet and our quotation are correct to the best of my knowledge



and belief. In addition, we authorize, NATIONAL OIL to seek information from any source to confirm our compliance with the requirements of this Integrity Pact.

- 6 The bidder authorizes NATIONAL OIL, to seek information from any source, including publication of the name of the bidder to confirm that the bidder is compliant with the requirements of this Integrity Pact.

We shall fulfill this Integrity Pact as a solemn oath made on the basis of mutual trust, and, if and when we win a bid, we shall sign and fulfill the above as a “Special Condition of Contract,” and not file any civil, administrative or criminal appeals regarding any of the above terms.

Dated: \_\_\_\_\_

Signed by: \_\_\_\_\_  
(Chief Executive/Managing Director)

Full Name printed: \_\_\_\_\_



**8.10 LETTER OF NOTIFICATION OF AWARD**

Address of Procuring Entity

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

RE: Tender No. \_\_\_\_\_

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

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

\_\_\_\_\_

\_\_\_\_\_

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

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

\_\_\_\_\_

SIGNED FOR ACCOUNTING OFFICER