



**NATIONAL OIL CORPORATION OF KENYA**

**TENDER FOR  
SUPPLY AND DELIVERY OF PERSONAL PROTECTIVE  
EQUIPMENT**

**TENDER NO. NOCK/PRC/03(1742)2024-2025**

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

**APRIL, 2025**

**Tender Closing/Opening Date: 30<sup>th</sup> April, 2025**

**Tender Closing/Opening Time: 1000Hrs (East Africa Time)**

## INVITATION TO TENDER

PROCURING ENTITY	NATIONAL OIL CORPORATION OF KENYA
CONTRACT NAME AND DESCRIPTION:	SUPPLY AND DELIVERY OF PERSONAL PROTECTIVE EQUIPMENT
CONTRACT REFERENCE NUMBER:	NOCK/PRC/03(1742)2024-2025

1. National Oil Corporation of Kenya (**National Oil**) invites sealed tenders for the **Supply and Delivery of Personal Protective Equipment**.
2. **Tendering will be conducted under open competitive method (National) using a standardized tender document. Tendering is open to all qualified and interested Tenderers.**
3. The tender is **NOT** subject to multiple contracts/lots, all Tenderers **MUST** quote for all the items.
4. Tender documents obtained from the National Oil website, [www.nationaloil.co.ke](http://www.nationaloil.co.ke) or the PPIP portal, [www.tenders.go.ke](http://www.tenders.go.ke) shall be free of charge.
5. Qualified and interested tenderers may also obtain further information and inspect the Tender Documents during office hours at the address given below.

**Procurement Department**  
**National Oil Corporation – Kawi House, South C,**  
**NAIROBI, KENYA**  
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).

6. A complete set of tender documents may also be obtained electronically from the National Oil website, [www.nationaloil.co.ke](http://www.nationaloil.co.ke) or the PPIP portal, [www.tenders.go.ke](http://www.tenders.go.ke) shall be free of charge.
7. Tenderers who download the tender document must forward their particulars immediately to [tenders@nockenya.co.ke](mailto:tenders@nockenya.co.ke) to facilitate any further clarification or addendum/addenda.
8. All Tenders must be accompanied by a duly filled Tender-Securing Declaration.
9. The Tenderer shall chronologically serialize all pages of the tender documents submitted.
10. Completed tenders must be delivered to the address below on or before **30<sup>th</sup> April, 2025 at 1000hrs (East Africa Time)**. Electronic Tenders **WILL NOT** be permitted.

**Chief Executive Officer**  
**National Oil Corporation – Kawi Complex-Block D,**  
**Red Cross Lane off Red Cross Road, South C,**  
**P.O Box 58567 – 00200,**  
**NAIROBI, KENYA**

and deposited in the **Tender Box** provided at:  
**National Oil Corporation – Reception, Ground Floor, Kawi Complex-Block D,**  
**Red Cross Lane, off Red Cross Lane, South C,**  
**P.O Box 58567 – 00200, NAIROBI**

11. Tenders that do not fit in the tender box shall be deposited at the Reception Desk and recorded using the register located at the reception area at the address located in clause 10 above.
12. Tenders will be opened immediately after the deadline date and time specified above or any

deadline date and time specified later. Tenders will be publicly opened in the presence of the Tenderers' designated representatives who choose to attend at the address below.

13. Late tenders will be rejected.

14. The addresses referred to above are:

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

PROCUREMENT DEPARTMENT

NATIONAL OIL CORPORATION OF KENYA

GROUND FLOOR, KAWI COMPLEX – BLOCK D, RED CROSS LANE, OFF POPO ROAD, SOUTH C,

P.O. BOX 58567-00200, NAIROBI, KENYA

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

B. Address for Submission of Tenders.

CHIEF EXECUTIVE OFFICER

NATIONAL OIL CORPORATION – KAWI COMPLEX – BLOCK D, GROUND FLOOR, RED CROSS LANE OFF RED CROSS ROAD, SOUTH C,

P.O BOX 58567 – 00200, NAIROBI, KENYA

C. Address for Opening of Tenders.

NATIONAL OIL CORPORATION OF KENYA

KAWI COMPLEX – BLOCK D, GROUND FLOOR MEETING ROOM, RED CROSS LANE, OFF RED CROSS ROAD, SOUTH C,

P.O. BOX 58567-00200, NAIROBI, KENYA

**CHIEF EXECUTIVE OFFICER**

**NATIONAL OIL CORPORATION OF KENYA**

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## **PART 1 - TENDERING PROCEDURES**

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## SECTION I: INSTRUCTIONS TO TENDERERS

### A General Provisions

#### 1. Scope of Tender

- 1.1 The Procuring Entity as defined in the TDS invites tenders for supply of goods and, if applicable, any Related Services incidental thereto, as specified in Section V, Supply Requirements. .
- 1.2 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;
  - c) “Day” means calendar day, unless otherwise specified as “Business Day”. A Business Day is any day
  - d) that is an official working day of the Procuring Entity. It excludes official public holidays.

#### 2. Fraud and Corruption

- 2.1 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.
- 2.2 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.
- 2.3 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 **Data Sheet** 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. Eligible Tenderers

- 3.1 A Tenderer may be a firm that is a private entity, an individual, a state-owned enterprise or institution subject to ITT3.7, or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. Public employees and their close relatives (*spouses, children, brothers, sisters and uncles and aunts*) are not eligible to participate in the tender.

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**.

- 3.2 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.
- 3.3 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:
  - 3.3.1 directly or indirectly controls, is controlled by or is under common control with another Tenderer; or
  - 3.3.2 receives or has received any direct or indirect subsidy from another Tenderer; or
  - 3.3.3 has the same - representative or ownership as another Tenderer; or
  - 3.3.4 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
  - 3.3.5 or any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the goods that are the subject of the Tender; or
  - 3.3.6 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
  - 3.3.7 would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the TDS ITT 1.1 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 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 Tendering process and execution of the Contract.
- 3.4 A tenderer shall not be involved in corrupt, coercive, obstructive, collusive or fraudulent practice. A tenderer that is proven to have been involved in any of these practices shall be automatically disqualified.
- 3.5 A firm that is a Tenderer (either individually or as a JV member) shall not submit 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. Members of a joint venture may not also make an individual tender, be a subcontractor in a separate tender or be part of another joint venture for the purposes of the same Tender.
- 3.6 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT3.9. 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.

- 3.7 A Tenderer that has been debarred by the PPRA from participating in public procurement shall be ineligible to tender or be awarded a contract.
- 3.8 Tenderers that are state-owned enterprises or institutions may be eligible to compete and be awarded a Contract(s) only if they are (i) a legal public entity of the state Government and/or public administration, (ii) financially autonomous and not receiving any significant subsidies or budget support from any public entity or Government, and (iii) operating under commercial law and vested with legal rights and liabilities similar to any commercial enterprise to enable it compete with firms in the private sector on an equal basis. Public employees and their close relatives are not eligible to participate in the tender.
- 3.9 Tenderers may be ineligible if their countries of origin (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 for supply of goods or services from that country, or any payments to any country, person, or entity in that country. A tenderer shall provide such documentary evidence of eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.
- 3.10 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.
- 3.11 Where the law requires tenderers to be registered with certain authorities in Kenya, such registration requirements shall be defined in the **TDS**
- 3.12 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).
- 3.13 A Kenyan tenderer shall provide evidence of having fulfilled his/her tax obligations by producing a current tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority.

#### **4. Eligible Goods and Related Services**

- 4.1 All the Goods and Related Services to be supplied under the Contract shall have their origin in any country that is eligible in accordance with ITT 3.9.
- 4.2 For purposes of this ITT, the term “goods” includes commodities, raw material, machinery, equipment, and industrial plants; and “related services” include

services such as insurance, installation, training, and initial maintenance.

- 4.3 The term “origin” means the country where the goods have been mined, grown, cultivated, produced, manufactured or processed; or, through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.
- 4.4 A procuring entity shall ensure that the items listed below shall be sourced from Kenya and there shall be no substitutions from foreign sources. The affected items are:
- 4.4.1 motor vehicles, plant and equipment which are assembled in Kenya;
- 4.4.2 furniture, textile, foodstuffs, oil and gas, information communication technology, steel, cement, leather, agro-processed products, sanitary products, and other goods made in Kenya; or
- 4.4.3 goods manufactured, mined, extracted or grown in Kenya.
- 4.5 Any 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. Sections of Tendering Document**

- 5.1 The tendering document consist 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 ITT8.

### **PART : Tendering Procedures**

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

### **PART 2: Supply Requirements**

- v) Section V - Schedule of 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

- 5.2 The notice of Invitation to Tender or the notice to the prequalified Tenderers issued by the Procuring Entity is not part of the tendering document.
- 5.3 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 ITT7.
- 5.4 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.

## **6. Clarification of Tendering Document**

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.

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.

## **7. Amendment of Tendering Document**

- 7.1 At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the tendering document by issuing addenda. Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tender document from the Procuring Entity.
- 7.2 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders.

## **C. Preparation of Tenders**

### **8. Cost of Tendering**

- 8.1 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.

### **9. Language of Tender**

- 9.1 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 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.

## **10. Documents Comprising the Tender**

- 10.1 The Tender shall comprise the following:
- 10.1.1 Form of Tender prepared in accordance with ITT11;
  - 10.1.2 Price Schedules: completed in accordance with ITT 11 and ITT 13;
  - 10.1.3 Tender Security or Tender-Securing Declaration, in accordance with ITT 18.1;
  - 10.1.4 Alternative Tender: if permissible, in accordance with ITT12;
  - 10.1.5 Authorization: written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT19.3;
  - 10.1.6 Qualifications: documentary evidence in accordance with ITT 16.2 establishing the Tenderer qualifications to perform the Contract if its Tender is accepted;
  - 10.1.7 Tenderer Eligibility: documentary evidence in accordance with ITT16.1 establishing the Tenderer eligibility to tender;
  - 10.1.8 Eligibility of Goods and Related Services: documentary evidence in accordance with ITT 15, establishing the eligibility of the Goods and Related Services to be supplied by the Tenderer;

10.1.9 Conformity: documentary evidence in accordance with ITT15.2 that the Goods and Related Services conform to the tender document; and

10.1.10 any other document required in the TDS.

10.2 In addition to the requirements under ITT 10.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter 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.

10.3 The Tenderer shall furnish in the Form of Tender information on commissions gratuities, and fees, if any, paid or to be paid to agents or any other party relating to this Tender.

## **11. Form of Tender and Price Schedules**

11.1 The Form of Tender and Price Schedules shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text. All blank spaces shall be filled in with the information requested. The Tenderer shall chronologically serialise pages of all tender documents submitted.

## **12. Alternative Tenders**

12.1 Unless otherwise specified **in the TDS**, alternative Tenders shall not be considered.

## **13. Tender Prices and discounts**

13.1 The prices quoted by the Tenderer in the Form of Tender and in the Price, Schedules shall conform to the requirements specified below.

13.2 All items must be listed and priced in the Price Schedule.

13.3 The price to be quoted in the Form of Tender shall be the total price of the Tender, including any discounts offered.

13.4 The Tenderer shall quote any discounts and indicate the methodology for their application in the form of tender. Conditional discounts will be rejected.

13.5 Prices quoted by the Tenderer shall be fixed during the performance of the Contract and not subject to variation on any account. A Tender submitted with an adjustable price quotation shall be treated as non-responsive and shall be rejected.

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

14.1 The currency (ies) of the Tender, the currency (ies) of award and the currency (ies) of contract payments shall be the same.

14.2 The Tenderer shall quote in Kenya shillings. If allowed in the **TDS**, the Tenderer may express the Tender price in any currency, provided it shall use no more than two foreign currencies in addition to the Kenya Shilling.

## **15. Documents Establishing the Eligibility and Conformity of the Goods and Related Services**

15.1 To establish the eligibility of the Goods and Related Services in accordance with ITT 15, Tenderers shall complete the country of origin declarations in the

- Price Schedule Forms, included in Section IV, Tendering Forms.
- 15.2 To establish the conformity of the Goods and Related Services to the tendering document, the Tenderer shall furnish as part of its Tender the documentary evidence that the Goods conform to the technical specifications and standards specified in Section VII, Schedule of Requirements.
- 15.3 The documentary evidence may be in the form of literature, drawings or data, and shall consist of a detailed item by item description of the essential technical and performance characteristics of the Goods and Related Services, demonstrating substantial responsiveness of the Goods and Related Services to the technical specification, and if applicable, a statement of deviations and exceptions to the provisions of the Section VII, Schedule of Requirements.
- 15.4 The Tenderer shall also furnish a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the Goods during the period **specified in the TDS** following commencement of the use of the goods by the Procuring Entity.
- 15.5 Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by the Procuring Entity in the Schedule of Requirements, are intended to be descriptive only and not restrictive. The Tenderer may offer other standards of quality, brand names, and/or catalogue numbers, 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, Schedule of Requirements.

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

- 16.1 To establish Tenderer eligibility in accordance with ITT 4, Tenderers shall complete the Form of Tender, included in Section IV, Tendering Forms.
- 16.2 The documentary evidence of the Tenderer qualifications to perform the Contract if its Tender is accepted shall establish to the Procuring Entity's satisfaction:
- 16.2.1 that, if required **in the TDS**, a Tenderer that does not manufacture or produce the Goods it offers to supply shall submit the Manufacturer's Authorization using the form included in Section IV, Tendering Forms to demonstrate that it has been duly authorized by the manufacturer or producer of the Goods to supply these Goods in Kenya;
- 16.2.2 that, if required **in the TDS**, in case of a Tenderer not doing business within the Kenya, the Tenderer is or will be (if awarded the Contract) represented by an Agent in the country equipped and able to carry out the Supplier's maintenance, repair and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications; and
- 16.2.3 that the Tenderer meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.

#### **17. Period of Validity of Tenders**

- 17.1 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 (as prescribed by the Procuring Entity in accordance with ITT 21.1). A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.
- 17.2 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 18, 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 17.3.

- 17.3 If the award is delayed by a period exceeding the number of days to be specified in the **TDS** days beyond the expiry of the initial tender validity period, the Contract price shall be determined as follows:

17.3.1 in the case of **fixed price** contracts, the Contract price shall be the tender price adjusted by the factor specified **in the TDS**;

17.3.2 in the case of **adjustable price** contracts, no adjustment shall be made; or in any case, tender evaluation shall be based on the tender price without taking into consideration the applicable correction from those indicated above.

## **18. Tender Security**

- 18.1 The Tenderer shall furnish as part of its Tender, a Tender-Securing Declaration, as specified **in the TDS**, in original form.
- 18.2 A Tender Securing Declaration shall use the form included in Section IV, Tendering Forms.
- 18.3 Where tender securing declaration is executed, the Procuring Entity shall recommend to the PPRA that PPRA debars the Tenderer from participating in public procurement as provided in the law.
- 18.4 The 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 letter of intent referred to in ITT3.1 and ITT 10.2.

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

- 19.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 11 and clearly mark it "ORIGINAL." Alternative Tenders, if permitted in accordance with ITT 12, shall be clearly marked "ALTERNATIVE." In addition, the Tenderer shall submit copies of the Tender, in the number **specified in the TDS** and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.
- 19.2 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.
- 19.3 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person 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 initialled by the person signing the Tender.
- 19.4 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 each members' legally authorized representatives.
- 19.5 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialled by the person signing the Tender.

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

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

- 201 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:
- a) in an envelope or package or container marked “ORIGINAL”, all documents comprising the Tender, as described in ITT 11; and
  - b) in an envelope or package or container marked “COPIES”, all required copies of the Tender; and
- 202 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.
- 203 If the tender package or container cannot fit in the tender box, the procuring entity shall:
- a) Specify in the **TDS** where such documents should be received.
  - b) Ensure all tenders received are handed over to the tender opening committee for opening at the specified opening place and time.
- 204 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 misplaced or opened prematurely will not be accepted.

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

- 21.1 Tenders must be received by the Procuring Entity at the address and no later than the date and time specified **in the TDS**.
- 21.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the tendering document in accordance with ITT7, 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.

### **22. Late Tenders**

- 21.3 The Procuring Entity shall not consider any Tender that arrives after the deadline for submission of Tenders. 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.

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

- 22.1 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 ITT19.3, (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:
- a) prepared and submitted in accordance with ITT 20 and 21 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL,” “SUBSTITUTION,” or “MODIFICATION;” and

- b) received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT 22.

22.1 Tenders requested to be withdrawn in accordance with ITT 23.1 shall be returned unopened to the Tenderers.

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

22.3 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.

### **23. Tender Opening**

23.1 Except as in the cases specified in ITT 23, 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 who choose to attend.

23.2 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.

23.3 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.

23.4 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.

23.5 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, if required; and any other details as the Procuring Entity may consider appropriate.

23.6 Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further for evaluation. The Form of Tender and pages of the Bills of Quantities are to be initialed by the members of the tender opening committee attending the opening. The number of representatives of the Procuring Entity to sign shall be specified in the **TDS**.

23.7 The Procuring entity will prepare minutes of the tender opening.

23.8 The Tenderers' representatives who are present shall be requested to sign the record. The omission of a Tenderer signature on the record shall not invalidate the contents and effect of the record.

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

### **24. Confidentiality**

- 24.1 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 the information on Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 41.
- 24.2 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.
- 24.3 Notwithstanding ITT 25.2, 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.

### **25. Clarification of Tenders**

- 25.1 To assist in the examination, evaluation, comparison of the Tenders, and qualification of the Tenderers, the Procuring Entity may, at its discretion, ask any Tenderer for a clarification of its Tender. 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 30.

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.

### **26. Determination of Responsiveness**

- 26.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT28.2.
- 26.2 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 Goods and Related 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 obligations under the Contract; or
  - b) if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.
- 26.3 The Procuring Entity shall examine the technical aspects of the Tender submitted in accordance with ITT 15 and ITT 16, in particular, to confirm that all requirements of Section VII, Schedule of Requirements have been met without any material deviation or reservation, or omission.
- 26.4 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.

## **27. Arithmetical Errors**

- 27.1 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 or entity.
- 27.2 Provided that the Tender is substantially responsive, the Procuring Entity shall handle errors on the following basis:
- 27.2.1 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 .
- 27.2.2 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
- 27.2.3 if there is a discrepancy between words and figures, the amount in words shall prevail.
- 30.2 Tenderers shall be notified of any error detected in their bid during the notification of award.

## **28. Conversion to Single Currency**

- 28.1 For evaluation and comparison purposes, the currency(ies) of the Tender shall be converted in a single currency as specified in the **TDS**.

## **29. Evaluation of Tenders**

- 29.1 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 Lowest Evaluated Tender. This is the Tender of the Tenderer that meets the qualification criteria and whose Tender has been determined to be:
- 29.1.1 substantially responsive to the tender documents; and
- 29.1.2 the lowest evaluated price.
- 29.2 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.

## **30. Comparison of Tenders**

- 30.1 The Procuring Entity shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 33.2 to determine the Tender that has the lowest evaluated cost. The comparison shall be on the basis of total cost (place of final destination) prices for all goods and all prices, plus cost of inland transportation and insurance to place of destination, for goods

manufactured within the Kenya, together with prices for any required installation, training, commissioning and other services.

### **31. Post Qualification of the Tenderer**

- 31.1 The Procuring Entity shall determine, to its satisfaction, whether the eligible Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender, meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.
- 31.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer qualifications submitted by the Tenderer, pursuant to ITT 15 and 16. The determination shall not take into consideration the qualifications of other firms such as the Tenderer subsidiaries, parent entities, affiliates, subcontractors (other than specialized subcontractors if permitted in the tendering document), or any other firm(s) different from the Tenderer.
- 31.3 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 qualifications to perform satisfactorily.

### **32. Lowest Evaluated Tender**

- 32.1 Having compared the evaluated prices of Tenders, the Procuring Entity shall determine the Lowest Evaluated Tender. The Lowest Evaluated Tender is the Tender of the Tenderer that meets the Qualification Criteria and whose Tender has been determined to be:
- 32.1.1 Most responsive to the Tender document; and
- 32.1.2 the lowest evaluated price.

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

- 33.1 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 notification Award, without thereby incurring any liability to Tenderers. In case of annulment, all Tenderers shall be notified with reasons and all Tenders submitted and specifically, tender securities, shall be promptly returned to the Tenderers.

## **F. Award of Contract**

### **34. Award Criteria**

The Procuring Entity will award the Contract to the successful tenderer whose tender has been determined to be the Lowest Evaluated Tender in accordance with procedures in Section 3: Evaluation and Qualification Criteria.

### **35. Notice of Intention to enter into a Contract**

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.

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.

### **36. Signing of Contract**

- 36.1 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.
- 36.2 Within fourteen (14) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to the Procuring Entity.
- 36.3 The written contract shall be entered into within the period specified in the notification of award and before expiry of the tender validity period.

### **37. Performance Security**

- 37.1 Within twenty-one (21) days of the receipt of Letter of Acceptance from the Procuring Entity, the successful Tenderer, if required, shall furnish the Performance Security in accordance with the GCC 18, using for that purpose the Performance Security Form included in Section X, Contract Forms. 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.
- 37.2 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 lowest Evaluated Tender.
- 37.3 Performance security shall not be required for a contract, if so specified in the **TDS**.

### **38. Procurement Related Complaint**

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

## SECTION II – TENDER DATA SHEET (TDS)

The following specific data 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.

ITT Reference	Particulars Of Appendix To Instructions To Tenders
<b>A. General</b>	
<b>ITT 1.1</b>	<p>The reference number of the Invitation for Tenders is: <b>NOCK/PRC/03(1742)2024-2025</b></p> <p>The Procuring Entity is: <b>NATIONAL OIL CORPORATION OF KENYA</b></p> <p>The name of the Contract is: <b>Supply and Delivery of Personal Protective Equipment(PPE)</b></p>
<b>ITT 1.2(a)</b>	<p><b>Electronic –Procurement System</b></p> <p>National Oil Corporation of Kenya will <b>NOT</b> use electronic-procurement system to manage this Tendering process:</p>
<b>ITT 2.3</b>	<p>The Information made available on competing firms is as follows: <b>Not applicable</b></p> <p>Tender for Supply and Delivery of assorted Personal Protective Clothing &amp; Equipment</p> <p>The firms that provided consulting services for the contract being tendered for are: <b>None</b></p>
<b>ITT 3.1</b>	<p><b>Joint Venture</b></p> <p>Maximum number of members in the Joint Venture (JV) shall be: <b>[none]</b></p>
<b>ITT 3.7</b>	<p><b>Debarment</b></p> <p>A list of debarred firms and individuals is available on the PPRA's website: <a href="http://www.ppra.go.ke">www.ppra.go.ke</a></p>
<b>ITT 3.11</b>	<p><b>Relevant Registration</b></p> <p>Tenderers shall be required to be to be registered with National Treasury and issued with a valid certificate as Women, Youth or Person Living with Disability (PWDs)</p>
<b>B. Contents of Tendering Document</b>	
<b>ITT 6.1</b>	<p><b>Clarification of Tendering Document</b></p> <p>(a) Address where to send enquiries is <a href="mailto:tenders@nockkenya.co.ke">tenders@nockkenya.co.ke</a> to reach the Procuring Entity not later than <b>five (5) working days prior to the tender opening date and time.</b></p> <p>(b) National Oil shall reply to any clarifications sought by the tenderer within three (3) working days excluding weekends/public holidays of receiving the request to enable the tenderer to make timely submission of its tender.</p> <p>(c) The Procuring Entity publish its response at the website <a href="http://www.nationaloil.co.ke">www.nationaloil.co.ke</a></p>
<b>ITT 6.2</b>	A pre-tender conference will <b>not be held.</b>
<b>ITT 6.3</b>	The questions to reach the Procuring Entity not later than <b>five (5) working days prior to the tender closing date and time</b>

ITT Reference	Particulars Of Appendix To Instructions To Tenders
ITT 6.5	The Minutes of the Pre-Tender meeting shall be published on the at the website: <b>Not applicable</b>
	<b>C. Preparation of Tenders</b>
ITT 10 (j)	The Tenderer shall submit the following additional documents in its Tender: <b>[Samples of the Personal Protective Equipment]</b>
ITT 12.1	Alternative Tenders <i>shall not be</i> considered.
ITT 13.5	The prices quoted by the Tenderer “ <b>shall not</b> ” be subject to adjustment during the performance of the Contract unless where allowed under PPADA, 2015.
ITT 13.6	Prices quoted shall correspond at least <b>to [100%]</b> percent of the items specified.  Prices quoted shall correspond at least to <b>[100%]</b> percent of the quantities specified.
ITT 13.8 (a) (i) and (iii)	<b>Place of final destination:</b> National Oil Corporation – Kawi House, Block D, Red Cross Road, off Popo Road ,South C , Nairobi, Kenya]
ITT 13.8 (a) (iii)	<b>Final Destination (Project Site):</b> <b>National Oil Corporation – Kawi House, Block D, Red Cross Road, off Popo Road ,South C , Nairobi, Kenya]</b>
ITT 13.8 (b) (i)	<b>Named place of destination, in Kenya:</b>  National Oil Corporation – Kawi House, Block D, Red Cross Road, off Popo Road ,South C , Nairobi, Kenya
ITT 13.8 (b) (ii)	Price for inland transportation, insurance, and other local services required to convey the Goods from the named place of destination to their final destination which is <b>National Oil Corporation – Kawi House, Block D, Red Cross Lane, off Red Cross Road, South C , Nairobi, Kenya]</b>
13.8 (c) (iv)	The place of final destination (Project Site) is <b>National Oil Corporation – Kawi House, Block D, Red Cross Lane, off Red Cross Road, South C, Nairobi, Kenya]</b>
ITT 14.2	<b>Currency</b> Foreign currency requirements <b>not allowed</b> .
ITT 15.4	<b>Warranty</b> Period of time the Goods are expected to be functioning <b>[One year warranty]</b> . Period of validity of warranty for personal protective equipment shall be one (1) year.
ITT 16.2 (a)	<b>Documents establishing the Eligibility and Qualifications of the Tenderer</b>  Manufacturer’s authorization is <i>required</i> . Tenderers <b>MUST submit the Manufacturer’s Authorization Form</b> if they do not manufacture the goods offered
ITT 16.2 (b)	<b>After Sales Services</b>  After sales service is: <b>“not required”]</b>
ITT 17.1	<b>Tender Validity Period</b>  The Tender validity period shall be <b>[150]</b> days.
ITT 17.3	(a) The Number of days beyond the expiry of the initial tender validity period will be 30 days.  (b) The Tender price shall be adjusted by the following percentages of the tender price: <b>Not applicable</b>
ITT 18.1	<b>Tender Security</b>

ITT Reference	Particulars Of Appendix To Instructions To Tenders
	A Tender-Securing Declaration <i>shall be</i> required.
ITT 19.1	<p><b>Format and Signing of Tender;</b></p> <p>Tenderers shall submit ONE (1) ORIGINAL and ONE (1) COPY of the tender document</p> <p>The bid document must be properly bound (spiral or perfect cover, hard cover or case bound), paginated, serialized tender document (each page of the tender submission must have a number and the numbers must be in chronological order). For pagination, the numbers to be used are Arabic numbers, i.e. 1,2,3,4,5,6,7,8,9,...n) n being the last number of the tender document.</p>
	<b>D. Submission and Opening of Tenders</b>
ITT 20.3	<p>Tenders that cannot fit in the tender box shall be submitted and recorded at the address below;</p> <p style="text-align: center;"><b>Reception Area Ground Floor National Oil Corporation – Kawi Complex – Block D, Red Cross Lane, off Red Cross Road, South C, P.O Box 58567 – 00200, NAIROBI</b></p> <p>All tenders submitted at the address above MUST be recorded in the register.</p>
ITT 21.1	<p><b>Deadline for Submission of Tenderers</b></p> <p>Tenders must be received on or before <b>30<sup>th</sup> April 2025 at 1000Hrs (East Africa Time)</b></p> <p>For tender submission purposes only, the address to be used shall as follows;</p> <p style="text-align: center;"><b>Chief Executive Officer National Oil Corporation – Kawi Complex – Block D, Red Cross Lane, off Red Cross Road, South C, P.O Box 58567 – 00200, NAIROBI</b></p> <p>Electronic submissions are <b>NOT</b> allowed</p>
ITT 24.1	<p>The Tender opening shall take place at:</p> <p>Date of tender opening shall be on <b>30<sup>th</sup> April 2025 at 1000Hrs (East Africa Time)</b> and shall take place at the address below;</p> <p style="text-align: center;"><b>Ground Floor Meeting Room National Oil Corporation – Kawi Complex – Block D, Red Cross Lane, off Red Cross Road, South C, P.O Box 58567 – 00200, NAIROBI</b></p>
ITT 24.6	<p>The number of representatives of the Procuring Entity to sign is;</p> <p>The Form of Tender and priced schedule of requirements shall be initialed by at least <b>THREE (3)</b> representatives of the Tender Opening Committee from National Oil Corporation of Kenya</p>
	<b>E. Evaluation and Comparison of Tenders</b>
ITT 31.1	<p><b>Currency of the tender</b></p> <p>Kenya Shillings</p>
ITT 32.3	A margin of preference and/or reservation <i>shall not</i> apply.

ITT Reference	Particulars Of Appendix To Instructions To Tenders
ITT 32.5	<b>Reservations</b>  <b>Not Reserved</b>
ITT 33.2	<b>Price evaluation will be done for</b> Prices will be based on the price schedule.  The award of the tender will be to the tenderer with the lowest evaluated price subject to the tenderer having met the preliminary, technical and commercial requirements, Section III – Evaluation and Qualification Criteria
ITT 33.2 (d)	Additional evaluation factors are _____
ITT 33.6	<b>Consideration of other Factors</b>  The adjustments shall be determined using the following criteria, from amongst those set out in Section III, Evaluation and Qualification Criteria: <ul style="list-style-type: none"> <li>(a) Deviation in delivery schedule</li> <li>(b) Deviation in payment schedule</li> <li>(c) The cost of major replacement component, mandatory spare parts and service</li> <li>(d) Availability in Kenya of spare parts and after-sales services for the equipment offered in the tender</li> <li>(e) Life cycle costs: the costs during the life of the goods or equipment</li> <li>(f) Performance and productivity of the equipment offered</li> </ul>
	<b>F. Award of Contract</b>
ITT 41.1	<b>Variation of Scope</b>  The maximum percentage by which quantities may be increased is: <i>[Not Applicable]</i> The maximum percentage by which quantities may be decreased is: <i>[Not Applicable]</i>
ITT 49.1	If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to:  <b>Chief Executive Officer</b> <b>National Oil Corporation – Kawi Complex - Block D,</b> <b>Red Cross Lane off Red Cross Road, South C,</b> <b>P.O Box 58567 – 00200, NAIROBI</b> <a href="mailto:ceo@nockenya.co.ke">ceo@nockenya.co.ke</a>



## **SECTION III - EVALUATION AND QUALIFICATION CRITERIA**

### **1. General Provisions**

- 11** Wherever a Tenderer is required to state a monetary amount, Tenderers should indicate the Kenya Shilling equivalent using the rate of exchange determined as follows:
- a) For business turnover or financial data required for each year - Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year is to be converted) was originally established.
  - b) Value of single contract - Exchange rate prevailing on the date of the contract signature.
  - c) Exchange rates shall be taken from the publicly available source identified in the **ITT 14.3**. Any error in determining the exchange rates in the Tender may be corrected by the Procuring Entity.
- 12** This section contains the criteria that the Procuring Entity shall use to evaluate tender and qualify tenderers. No other factors, methods or criteria shall be used other than those specified in this tender document. The Tenderer shall provide all the information requested in the forms included in Section IV, Tendering Forms. The Procuring Entity should use the Standard Tender Evaluation Report for Goods and Works for evaluating Tenders.

### **2. Evaluation of Tenders (ITT 33)**

#### **21 Successful Tender or Tenders**

The Procuring Entity shall use the criteria and methodologies listed in this Section to evaluate Tenders. By applying these criteria and methodologies, the Procuring Entity shall determine the successful Tender or Tenders which has/have been determined to:

- a) be substantially responsive to the tender documents;
- b) offer the lowest evaluated cost to the Procuring Entity for all items of Goods to be procured inviting Tender prices and discounts, and provisions made of the Tender Document for evaluation of tenders and award of contract (s); and
- c) be offered by Tenderer or Tenderers that substantially meet the qualification criteria applicable for Contract or combined Contracts for which they are selected.

#### **22 Evaluation of Tenders**

##### **Preliminary Examination for Determination of Responsiveness**

The Procuring Entity will start by examining all tenders to ensure they meet in all respects the eligibility criteria and other mandatory requirements in the ITT, and that the tender is complete in all aspects in meeting the requirements provided for in the preliminary evaluation criteria outlined below. The Standard Tender Evaluation Report Document for Goods and Works for evaluating Tenders provides very clear guide on how to deal with review of these requirements. Tenders that do not pass the Preliminary Examination will be considered non-responsive and will not be considered further.

## PRELIMINARY EVALUATION

*Eligible tenderers **MUST** provide the following mandatory requirements (for preliminary evaluation). Non-provision of the below, will lead to the tenderer being disqualified from the tender proceedings*

#	Description
1.	Tenderers <b>MUST</b> provide a <b>valid</b> copy of Certificate of Registration /Incorporation from registrar of companies.
2.	Tenderers <b>MUST</b> provide a <b>valid</b> copy of certification of registration as Women, Youth or Persons with Disability enterprises with National Treasury.
3.	Tenderers <b>MUST</b> provide <b>valid</b> copy of Kenya Revenue Authority Tax Compliance Certificate (Tax Compliance Certificate <b>MUST</b> be valid at the <b>date of tender opening</b> ).
4.	Tenderers <b>MUST</b> provide a <b>valid</b> copy of CR-12 from Registrar of Companies.
5.	Tenderers <b>MUST</b> provide a <b>valid</b> copy of Single Business Permit for local/citizen contractors
6.	Tenderers <b>MUST</b> submit at least <b>2 samples of PPEs</b> they propose to supply.
7.	Tenderers <b>MUST</b> provide a duly filled Tender Securing Declaration.
8.	Tenderers <b>MUST</b> provide Duly filled Confidential Business Questionnaire (Section IV)
9.	Tenderers <b>MUST</b> provide <b>Duly filled Certificate of Independent Tender Determination</b> (Section IV)
10.	Tenderers <b>MUST</b> provide Duly filled <b>Form SD1</b> Self declaration confirming that the person/tenderer is not debarred in the matter of the Public Procurement and Asset Disposal Act 2015 (Section IV)
11.	Tenderers <b>MUST</b> provide Duly filled <b>Form SD2</b> Self Declaration confirming that the person/tenderer will not engage in any corrupt or fraudulent practice (Section IV)
12.	Tenderers <b>MUST</b> provide Duly filled manufacturers authorization form ( <b>where the tenderer is not the manufacturer</b> ) (Section IV)

Bidders who fail to meet the mandatory requirements above shall **NOT** proceed to the technical evaluation stage.

### 221 Evaluation of Technical aspects of the Tender

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

## TECHNICAL EVALUATION

### I. Conformity to Standards Criteria

Conformity to standards criteria will be used to evaluate submitted PPE samples against the conformity standards for respective PPE.

#	Conformity to Standards Criteria	Total Weight
<b>1.</b>	<b>Industrial Safety Helmet</b>	
	<p><b>Standard:</b> EN 397:2012 and ANSI Z89.1</p> <p>Possible score = <b>01 mark</b></p> <p><i>NB: Score zero where sample does NOT meet any of the criteria above</i></p>	<b>01</b>
<b>2.</b>	<b>Industrial Safety/Bump Cap</b>	
	<p><b>Standard:</b> EN 812:2012</p> <p>Possible score = <b>01 mark</b></p> <p><i>NB: Score zero where sample does NOT meet any of the criteria above</i></p>	<b>01</b>
<b>3.</b>	<b>Nitrile Impact Gloves</b>	
	<p><b>Standard:</b> EN ISO 21420:2020 (PPE gloves); EN 388:2016 (protection against mechanical risks); EN ISO 10819:2013 (mechanical vibration and shock).</p> <p>Possible score = <b>01 mark</b></p> <p><i>NB: Score zero where sample does NOT meet any of the criteria above</i></p>	<b>01</b>
<b>4.</b>	<b>Nitrile Coated –Seamless Knitted Gloves</b>	
	<p><b>Standard:</b> EN ISO 21420:2020; EN 388:2016; EN 374.</p> <p>Possible score = <b>01 marks</b></p> <p><i>NB: Score zero where sample does NOT meet any of the criteria above</i></p>	<b>01</b>
<b>5.</b>	<b>Nitrile Industrial Heavy Duty Gloves</b>	
	<p><b>Standard:</b> EN ISO 21420 (PPE gloves): 2020; EN 388:2016 (protection against mechanical risks); EN 374 (protection against chemical risks &amp; micro-organisms).</p> <p>Possible score = <b>01 mark</b></p> <p><i>NB: Score zero where sample does NOT meet any of the criteria above</i></p>	<b>01</b>
<b>6.</b>	<b>Chrome Leather Gloves Elbow Length</b>	
	<p><b>Standard:</b> EN ISO 21420 (PPE gloves): 2020; EN 388:2016 (protection against mechanical risks).</p> <p>Possible score = <b>01 mark</b></p> <p><i>NB: Score zero where sample does NOT meet any of the criteria above</i></p>	<b>01</b>
<b>7.</b>	<b>Helmet Mounted Earmuffs</b>	
	<p><b>Standard:</b> EN 352-3:2002; SNR = 30dB H = 34dB M = 28dB L = 19dB.</p> <p>Possible score = <b>01 mark</b></p> <p><i>NB: Score zero where sample does NOT meet any of the criteria above</i></p>	<b>01</b>
<b>8.</b>	<b>Reusable Earplugs</b>	
	<p><b>Standard:</b> EN 352-2 SNR=32dB L=25dB M=28dB H=33dB.</p> <p>Possible score = <b>01 mark</b></p> <p><i>NB: Score zero where sample does NOT meet any of the criteria above</i></p>	<b>01</b>
<b>9.</b>	<b>Safety Glasses</b>	
	<p><b>Standard:</b> EN 166; EN 170</p> <p>Possible score = <b>01 mark</b></p> <p><i>NB: Score zero where sample does NOT meet any of the criteria above</i></p>	<b>01</b>
<b>10.</b>	<b>Single Use Foldable Half-Mask</b>	
	<p><b>Standard:</b> EN 149; FFP3 NR D</p> <p>Possible score = <b>01 mark</b></p> <p><i>NB: Score zero where sample does NOT meet any of the criteria above</i></p>	<b>01</b>
<b>11.</b>	<b>Fire Fighting Suit – Coat/Jacket</b>	
	<p><b>Standard:</b> The coat must meet the NFPA 1971; 2007 or EN 469: 2005 Level 2 standards or their latest applicable version.</p> <p>Possible score = <b>01 mark</b></p> <p><i>NB: Score zero where sample does NOT meet any of the criteria above</i></p>	<b>01</b>
<b>12.</b>	<b>Fire Fighting Suit – Trousers</b>	

#	Conformity to Standards Criteria	Total Weight
	<p><b>Standard:</b> The fire Trouser must meet the NFPA 1971; 2007 or EN 469: 2005 Level 2 standards or their latest applicable version.</p> <p>The Suit should bear UL marking (for NFPA certified suit) with supporting certification or should bear CE marking (for EN certified suit) with supporting EC Type certification.</p> <p>Possible score = <b>01 mark</b></p> <p><i>NB: Score zero where sample does NOT meet any of the criteria above</i></p>	<b>01</b>
<b>13.</b>	<b>Fire Fighting Suit – Boots</b>	
	<p><b>Standards:</b> Certified to EN 15090:2012 Type 3 or NFPA 1971: 2007</p> <p>Possible score = <b>01 mark</b></p> <p><i>NB: Score zero where sample does NOT meet any of the criteria above</i></p>	<b>01</b>
<b>14.</b>	<b>Fire Fighting Suit – Helmet</b>	
	<p><b>Standards:</b> Certified to EN 443: 2008 or NFPA 1971: 2007</p> <p>Possible score = <b>01 mark</b></p> <p><i>NB: Score zero where sample does NOT meet any of the criteria above</i></p>	<b>01</b>
<b>15.</b>	<b>Fire Fighting Suit – Gloves</b>	
	<p><b>Standards:</b> Certified to EN 659: 2008 or NFPA 1971: 2007 standards. The Gloves should bear CE mark or UL certification to NFPA -1971</p> <p>Possible score = <b>01 mark</b></p> <p><i>NB: Score zero where sample does NOT meet any of the criteria above</i></p>	<b>01</b>
<b>16.</b>	<b>Fire Fighting Suit – Anti-fire Hoods</b>	
	<p><b>Standards:</b> Certified to EN 13911:2004 in connection with EN 340:2003 or NFPA1971 and 70E Standards.</p> <p>Possible score = <b>01 mark</b></p> <p><i>NB: Score zero where sample does NOT meet any of the criteria above</i></p>	<b>01</b>
<b>17.</b>	<b>Protective Coveralls</b>	
	<p><b>Safety Standards:</b> EN ISO 11612 A1+ A2.</p> <p>The fabric should conform to EN ISO 11611 CLASS 2 A1 &amp; A2.</p> <p>Possible score = <b>02 marks</b></p> <p><i>NB: Score zero where sample does NOT meet any of the criteria above</i></p>	<b>02</b>
<b>18.</b>	<b>Safety Harness</b>	
	<p><b>Safety Rating:</b> EN 358:1999, EN 361:2002</p> <p>Possible score = <b>02 marks</b></p> <p><i>NB: Score zero where sample does NOT meet any of the criteria above</i></p>	<b>02</b>
<b>19.</b>	<b>Double Lanyard</b>	
	<p><b>Safety Rating:</b> EN 358:1999, EN 361:2002</p> <p>Possible score = <b>02 marks</b></p> <p><i>NB: Score zero where sample does NOT meet any of the criteria above</i></p>	<b>02</b>
<b>20.</b>	<b>Base Connector</b>	
	<p><b>Standard:</b> EN 362</p> <p>Possible score = <b>01 mark</b></p> <p><i>NB: Score zero where sample does NOT meet any of the criteria above</i></p>	<b>01</b>
<b>21.</b>	<b>Anchorage Connector</b>	
	<p><b>Standard:</b> EN 362</p> <p>Possible score = <b>01 mark</b></p> <p><i>NB: Score zero where sample does NOT meet any of the criteria above</i></p>	<b>01</b>
<b>22.</b>	<b>High Visibility Vests</b>	
	<p><b>Standards:</b> EN 20471 – Class 2; or ANSI/ISEA 107-2015; ASTM D6413</p> <p>Possible score = <b>01 mark</b></p> <p><i>NB: Score zero where sample does NOT meet any of the criteria above</i></p>	<b>01</b>
<b>23.</b>	<b>Knee Pads</b>	

#	Conformity to Standards Criteria	Total Weight
	<b>Standard:</b> EN 14404: 2010, CE Possible score = <b>01 mark</b> <i>NB: Score zero where sample does NOT meet any of the criteria above</i>	<b>01</b>
<b>24.</b>	<b>Field Safety Boots</b>	
	<b>Standards:</b> ASTM F2413:2018; EN ISO 20345:2022  Possible score = <b>03 marks</b> <i>NB: Score zero where sample does NOT meet any of the criteria above</i>	<b>02</b>
<b>25.</b>	<b>High-rise Hiking Boots</b>	
	<b>Category:</b> S3S, FO, HRO, SR  Possible score = <b>01 mark</b> <i>NB: Score zero where sample does NOT meet any of the criteria above</i>	<b>01</b>
<b>26.</b>	<b>Heavy Duty Rubber Open Shoes</b>	
	<b>Standard:</b> CE EN 20347  Possible score = <b>01 mark</b> <i>NB: Score zero where sample does NOT meet any of the criteria above</i>	<b>01</b>
	<b>TOTAL MARKS</b>	<b>30</b>

## II. Technical Requirements

No.	Technical Requirements	Total Weight
	<b>COMPANY PROFILE &amp; EXPERIENCE</b>	
TR 1	Submit bidder's profile, clearly indicating specific experience in provision of similar products: <ul style="list-style-type: none"> <li>• &lt;1 year (0 marks)</li> <li>• ≥1 year ≤ 2 years (2 marks)</li> <li>• &gt;2 years ≤ 3 years (4 marks)</li> <li>• &gt; 3 years ≤ 4 years (6 marks)</li> <li>• &gt; 4 years ≤ 5 years (8 marks)</li> <li>• &gt;5 years (10 marks)</li> </ul> <b>(10 marks)</b>	<b>10</b>
TR 2	Bidder to submit a schedule of at least five (4 No.) written references with accompanying Purchase Orders (POs) complete with name(s), telephone number(s) and email addresses of contact persons for companies whereby supply and delivery of PPE was done in the last three (3) years. <i>Each reference is 2 marks.</i> <b>(8 marks)</b> Bidder to submit at least one (1) Letters of Reference from firms in oil and gas industry whereby supply and delivery of PPE was done in the last three (3) years. <i>Each reference is 1 mark.</i> <b>(2 marks)</b>	<b>10</b>

No.	Technical Requirements	Total Weight
	<p><i><b>Note:</b> National Oil will undertake background checks.</i></p> <p><i>Non-submission of documentation results to zero score</i></p>	
TR 3	<p>Submit evidence in form of at least five (5) Letter(s) of Manufacturer's authorization/distributorship and warranty with PPE manufacturer(s) for every PPE submitted.</p> <p><i><b>Each Letter of Manufacturer authorization/distributorship and warranty is 5 marks.</b></i></p> <ul style="list-style-type: none"> <li>○ 1No. (5 marks)</li> <li>○ 2No. (10 marks)</li> <li>○ 3No. (15 marks)</li> <li>○ 4No. (20 marks)</li> <li>○ ≥5No. (25 marks)</li> </ul> <p><i><b>(25 marks)</b></i></p> <p><i><b>Note:</b> Non-submission of documentation results to zero score</i></p>	<b>25</b>
	<b>TECHNICAL CAPACITY</b>	
TR 4	<p>Submission of <b>at least two (2) sample(s)</b> of PPE items in the category intended to be supplied. <i><b>(10 marks)</b></i></p> <p><i><b>Note:</b> For safety shoes/safety boots sample size should be number 9(43) while clothing items such as dust coats, overalls, raincoats, reflective clothing, firefighting suit, motorbike riding suit should be a large (L) size.</i></p>	<b>10</b>
TR 5	<p>Submission of specification sheets or catalogues that show if the item offered complies with each specified requirement(s)/standard(s) <i><b>(10 marks)</b></i></p> <p><i>Review sample and documentation against the specifications provided in the terms of reference (ToRs) in the respective category.</i></p> <p><i><b>NB:</b> Score zero marks where there is no response</i></p>	<b>05</b>
	<b>WAREHOUSING</b>	
	<p>Demonstrate presence of warehousing facility(ies) to support supply of PPE. <i><b>(10 marks)</b></i></p> <p><i><b>NB:</b> Score zero marks where there is no warehousing infrastructure.</i></p>	<b>10</b>
<b>TOTAL MARKS</b>		<b>70</b>

**NB:**

- a) Bidder **MUST** score **at least 25 marks** to be considered having passed the conformity to Standards criteria.
- b) To be considered technically responsive the sum of **A (conformity to Standards criteria)** and **B (technical evaluation score)** a score of **at least 70 marks** out of a possible 100 marks will be considered.
- c) Only tenderers who score the minimum 70 marks and above will have their financial proposals

evaluated, where award will be to the technically responsive tenderer with the lowest evaluated price amongst the technically responsive tenderers subject to prevailing market prices.

- d) Following this evaluation, the bid that is found to have passed both conformity to Standards criteria technical evaluation criteria will then proceed to financial evaluation.

## **FINANCIAL EVALUATION AND AWARD CRITERIA**

### **a) Post qualification**

National Oil shall conduct post qualification due diligence to 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.

### **b) Award**

- i. National Oil will award the contract to the successful tenderer whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender.
- ii. Award of the tender will be subject to prevailing market prices and due diligence.
- iii. Multiple contracts will **NOT** be permitted.
- iv. **Alternative tenders** are **NOT** allowed.

## **SECTION IV - TENDERING FORMS**

- 1. Form of Tender Tenderer Information Form**
- 2. Tenderer JV Members Information Form**
- 3. Price Schedule: Goods Manufactured Outside Kenya, to be Imported**
- 4. Price Schedule: Goods Manufactured Outside Kenya, already imported**
- 5. Price Schedule: Goods Manufactured in Kenya Price and Completion      Schedule – Related Services**
- 6. Form of Tender Security – Demand Guarantee**
- 7. Form of Tender Security (Tender Bond)**
- 8. Form of Tender-Securing Declaration**
- 9. Manufacturer's Authorization Form**

## 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 CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELF DECLARATION OF THE TENDERER attached to this Form of Tender.*

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

submission] **Tender Name and Identification:**.....[insert

identification] **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 Instructions to tenderers;
- b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest;
- c) **Tender/Proposal-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 3.6;
- d) **Conformity:** We offer to supply in conformity with the Tendering document and in accordance with the Delivery Schedules specified in the Schedule of Requirements the following Goods:  
[insert a brief description of the Goods and Related Services];
- e) **Tender Price:** The total price of our Tender, excluding any discounts offered in item (f) below is:  
  
Total price is: [insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies];
- f) **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 are shown below: [Specify in detail the method that shall be used to apply the discounts];
- g) **Tender Validity Period:** Our Tender shall be valid for the period specified in TDS 17.1 (as amended, if applicable) from the date fixed for the Tender submission deadline specified in TDS 21.1 (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (h) **Performance Security:** If our Tender is accepted, we commit to obtain a performance security in accordance with the Tendering document;

- i) **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 3.9, other than alternative Tenders submitted in accordance with ITT 12;
- j) **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 Procuring Entity. Further, we are not ineligible under the Kenya laws or official regulations or pursuant to a decision of the United Nations Security Council;
- k) **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 3.7];*
- l) **Commissions, gratuities, 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.”)

- m) **Binding Contract:** We understand that this Tender, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- n) **Procuring Entity Not Bound to Accept:** We understand that you are not bound to accept the lowest evaluated cost Tender, the Best Evaluated Tender or any other Tender that you may receive; and
- o) **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.
- p) **Code of Ethical Conduct:** We undertake to adhere by the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal, copy available from \_\_\_\_\_ (*specify website*) during the procurement process and the execution of any resulting contract.
- q) **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.
- r) We, the Tenderer, have completed fully and signed the following Forms as part of our Tender:
- Tenderer's Eligibility; Confidential Business Questionnaire – to establish we are not in any conflict to interest.
  - Certificate of Independent Tender Determination – to declare that we completed the tender without colluding with other tenderers.
  - Self-Declaration of the Tenderer – to declare that we will, if awarded a contract, not engage

in any form of fraud and corruption.

- d) Declaration and commitment to the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal.

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 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]

\*: In the case of the Tender submitted by a 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. The power of attorney shall be attached with the Tender Schedules.

## 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\_\_\_\_\_

Title\_\_\_\_\_

Date\_\_\_\_\_

*[Name, title and signature of authorized agent of Tenderer and Date]*

**SELF-DECLARATION FORMS**

**FORM SD1**

**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 cak
- 3. red from participating in procurement proceeding under Part IV of the Act.
- 4. THAT what is deponed to herein above is true to the best of my knowledge, information and belief.

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

Bidder's Official Stamp

**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)

Bidder's Official Stamp

## 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.....

## APPENDIX 1- FRAUD AND CORRUPTION

*(Appendix 1 shall not be modified)*

### 1. Purpose

- 1.1 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

- 2.1 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.
- 2.2 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 subsection 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 bidder to whom was awarded contract, or a member of the group of bidders to whom the contract was awarded, but the subcontractor 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.
- 2.3 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 thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.*

## 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]*

**Tender Name and Identification:**.....*[insert identification]*

1.Tenderer'sName <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 Name: <i>[insert Authorized Representative's name]</i> Address: <i>[insert Authorized Representative's Address]</i> Telephone/Fax numbers: <i>[insert Authorized Representative's telephone/fax numbers]</i> Email Address: <i>[insert Authorized Representative's email address]</i>
7. Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i> <input type="checkbox"/> For Kenyan Tenderers a current tax clearance certificate or tax exemption certificate issued by the the Kenya Revenue Authority in accordance with ITT 3.14. <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 ITT3.4. <input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 3.1. <input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with ITT4.6 documents establishing: (i) Legal and financial autonomy (ii) Operation under commercial law (iii) Establishing that the tenderer is not under the supervision of the Procuring Entity  2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

## TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

### a) Instructions 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	Name of the Tenderer	
3	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.
4	Reference Number of the Tender	
5	Date and Time of Tender Opening	
6	Current Trade License No and Expiring date	
7	Maximum value of business which the Tenderer handles.	
8		

### 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.

	<b>Names of Partners</b>	<b>Nationality</b>	<b>Citizenship</b>	<b>% Shares owned</b>
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 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**

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
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 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 correct.

Full Name\_\_\_\_\_

Title or Designation\_\_\_\_\_

\_\_\_\_\_

(Signature)

\_\_\_\_\_

(Date)

## 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]*.

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

Page\_\_\_\_\_of\_\_\_\_\_pages

1. Tenderer's Name: *[insert Tenderer's legal name]*

2. Tenderer's JV Member's name: *[insert JV's Member legal name]*

3. Tenderer's JV Member's country of registration: *[insert JV's Member country of registration]*

4. Tenderer's JV Member's year of registration: *[insert JV's Member year of registration]*

5. Tenderer's JV Member's legal address in country of registration: *[insert JV's Member legal address in country of registration]*

6. Tenderer's JV Member's authorized representative information

Name: *[insert name of JV's Member authorized representative]*

Address: *[insert address of JV's Member authorized representative]*

Telephone/Fax numbers: *[insert telephone/fax numbers of JV's Member authorized representative]*

Email Address: *[insert email address of JV's Member authorized representative]*

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 the legal entity named above, in accordance with ITT 4.4. registration

☐ 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 ITT4.6.

8. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

## Price Schedule Forms

*[The tenderer shall fill in these Price Schedule Forms in accordance with the instructions indicated. The list of line items in column 1 of the **Price Schedules** shall coincide with the List of Goods and Related Services specified by the Procuring Entity in the Schedule of Requirements.]*

**Notes to Bidders;**

Bidders are required to fill in the correct price schedule.

**Price Schedule:**

**Bidders are advised to quote for all the items.**

Item	UoM	Expected Quantity	Unit Cost (KES.)	VAT (16%) (KES.)	Total Price Inclusive of 16% VAT
Industrial Safety Helmet	Piece	70			
Industrial Safety Bump Caps	Piece	50			
Safety Sun Hat	Piece	50			
Hair Net	Packet	50			
Nitrile Impact Gloves	Pair	70			
Nitrile coated Gloves	Pair	100			
Nitrile Industrial Heavy Duty Gloves	Pair	100			
Chrome Leather Gloves Elbow Length	Pair	100			
Heavy duty leather Gloves	Pair	200			
Helmet-mounted Ear Muffs	Pair	70			
Reusable Ear Plugs	Packets	20			
Safety Glasses	Pair	70			
Safety Goggles	Pair	40			
Reusable Respirator with Cartridge	Piece	20			
Single-use foldable Half-Mask	Packet	100			

Item	UoM	Expected Quantity	Unit Cost (KES.)	VAT (16%) (KES.)	Total Price Inclusive of 16% VAT
Fire Fighting Suit (Coat/Jacket; Trousers; Boots; Gloves and Anti-fire Hood)	Piece	5			
One-piece Coveralls	Pair	40			
Two-piece Coveralls (Jacket and Pants)	Pair	70			
Laboratory/Dust Coat	Piece	70			
Light-weight breathable T-Shirt	Piece	200			
Umbrella	Piece	300			
Safety Harness and Double Lanyard	Pair	20			
Lifeline Rope and Accessories	Piece	5			
Anti-static high visibility Vest (luminous orange)	Piece	100			
Breathable high visibility Vest (luminous green)	Piece	100			
Knee Pads	Pair	40			
Field Safety Pull-up Boots	Pair	100			
Men Safety Toe Pull-up Boots	Pair	50			
Ladies Safety Boots	Pair	50			
High-rise Hiking Boots	Pair	100			
Men Executive Safety Shoes	Pair	50			
Ladies Executive Safety Shoes	Pair	30			

Item	UoM	Expected Quantity	Unit Cost (KES.)	VAT (16%) (KES.)	Total Price Inclusive of 16% VAT
Heavy duty Rubber Open Shoes					
<b>Total Tender Price Inclusive 16% VAT</b>					

**Note:** Prices quoted should be net **National Oil Corporation – Kawi Complex - Block D, Red Cross Lane, off Red Cross Road ,South C , Nairobi, Kenya** expressed in Kenya Shillings and valid for 150days from the date of tender opening.

**Note:** The projected/estimated quantities can be obtained from Section V – Schedule of Requirements.

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

**Signature of tenderer**..... *[signature of person signing the Tender]*

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

## FORM OF TENDER SECURITY - DEMAND BANK GUARANTEE

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

**ITT No:** \_\_\_\_\_

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

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

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

1. We have been informed that \_\_\_\_\_ (hereinafter called "the Applicant") has submitted or will submit to the Beneficiary its Tender (hereinafter 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 thereto 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) 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.

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

## FORM OF TENDER SECURITY (TENDER BOND)

*[The Surety shall fill in this Tender Bond Form in accordance with the instructions indicated.]*

BOND NO. \_\_\_\_\_

1. BY THIS BOND.....*[name of tenderer]* as Principal (hereinafter called “the Principal”), and..... *[name, legal title, and address of surety]*, **authorized to transact business in** *[name of country of Procuring Entity]*, as Surety (hereinafter called “the Surety”), are held and firmly bound unto..... *[name of Procuring Entity]* as Obligee (hereinafter called “the Procuring Entity”) in the sum of.....*[amount of Bond]*<sup>1</sup>*[amount in words]*, for the payment of which sum, well and truly to be made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.
2. WHEREAS the Principal has submitted or will submit a written Tender to the Procuring Entity dated the \_\_\_\_\_ day \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_\_, for the supply of \_\_\_\_\_ *[name of Contract]* (hereinafter called the “Tender”).
3. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal:
  - 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 Surety 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. The Surety hereby agrees that its obligation will remain in full force and effect up to and including the date 30 days after the date of expiration of the Tender Validity Period set forth in the Principal's Letter of Tender or any extension thereto provided by the Principal.
5. IN TESTIMONY WHEREOF, the Principal and the Surety have caused these presents to be executed in their respective names this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

Principal: \_\_\_\_\_ Corporate Seal (where appropriate)

Surety: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
(Printed name and title)

<sup>1</sup>The amount of the Bond shall be denominated in the currency Kenya shillings or the equivalent amount in USD\$.

## FORM OF TENDER-SECURING DECLARATION

*[The Bidder shall complete this Form in accordance with the instructions indicated]*

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

Tender No.:.....*[insert number of tendering process]*

To:.....*[insert complete name of*

*Purchaser]* I/We, the undersigned, declare that:

1. I/We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.
2. I/We accept that I/we will automatically be suspended from being eligible for tendering 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 withdrawn our tender during the period of tender validity specified by us in the Tendering 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 instructions to tenders.
3. I/We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer(s), upon the earlier of:
  - a) our receipt of a copy of your notification of the name of the successful Tenderer; or
  - b) thirty days after the expiration of our Tender.
4. I/We understand that if I am/we are/in a Joint Venture, the Tender 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 Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed:.....  
.....

Capacity / title (director or partner or sole proprietor, etc.) .....  
.....

Name:.....  
.....

Duly authorized to sign the bid for and on behalf of: .....*[insert complete name of Tenderer]*. Dated on ..... day of ..... *[Insert date of signing]*.

Seal or stamp.

## 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]* Alternative No.:.....*[insert identification No if this is a*

*Tender for an alternative]*

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]*

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**PART 2:            SUPPLY REQUIREMENTS**

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## SECTION V - SCHEDULE OF REQUIREMENTS

The schedule below shows items whose bids are invited and their respective projected quantities:

**Bidders are advised to quote for all the items.**

Item	UoM	Expected Quantity
Industrial Safety Helmet	Piece	70
Industrial Safety Bump Caps	Piece	50
Safety Sun Hat	Piece	50
Hair Net	Packet	50
Nitrile Impact Gloves	Pair	70
Nitrile coated Gloves	Pair	100
Nitrile Industrial Heavy Duty Gloves	Pair	100
Chrome Leather Gloves Elbow Length	Pair	100
Heavy duty leather Gloves	Pair	200
Helmet-mounted Ear Muffs	Pair	70
Reusable Ear Plugs	Packet	20
Safety Glasses	Pair	70
Safety Goggles	Pair	40
Reusable Respirator with Cartridge	Piece	20
Single-use foldable Half-Mask	Packet	100
Fire Fighting Suit (Coat/Jacket; Trousers; Boots; Gloves and Anti-fire Hood)	Piece	5

Item	UoM	Expected Quantity
One-piece Coveralls	Pair	40
Two-piece Coveralls (Jacket and Pants)	Pair	70
Laboratory/Dust Coat	Piece	70
Light-weight breathable T-Shirt	Piece	200
Umbrella	Piece	300
Safety Harness and Double Lanyard	Pair	20
Lifeline Rope and Accessories	Piece	5
Anti-static high visibility Vest (luminous orange)	Piece	100
Breathable high visibility Vest (luminous green)	Piece	100
Knee Pads	Pair	40
Field Safety Pull-up Boots	Pair	100
Men Safety Toe Pull-up Boots	Pair	50
Ladies Safety Boots	Pair	50
High-rise Hiking Boots	Pair	100
Men Executive Safety Shoes	Pair	50
Ladies Executive Safety Shoes	Pair	30
Heavy duty Rubber Open Shoes	Pair	40

### 3. Technical Specifications

3.1 The purpose of the Technical Specifications (TS), is to define the technical characteristics of the Goods and Related Services required by the Procuring Entity. The Procuring Entity shall prepare the detailed TS consider that:

- 1) The TS constitute the benchmarks against which the Procuring Entity will verify the technical responsiveness of Tenders and subsequently evaluate the Tenders. Therefore, well-defined TS will facilitate preparation of responsive Tenders by tenderers, as well as examination, evaluation, and comparison of the Tenders by the Procuring Entity.
- 2) The TS shall require that all goods and materials to be incorporated in the goods be new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided for otherwise in the contract.
- 3) The TS shall make use of best practices. Samples of specifications from successful similar procurements in the same country or sector may provide a sound basis for drafting the TS.
- 4) The PPRA encourages the use of metric units.
- 5) Standardizing technical specifications may be advantageous, depending on the complexity of the goods and the repetitiveness of the type of procurement. Technical Specifications should be broad enough to avoid restrictions on workmanship, materials, and equipment commonly used in manufacturing similar kinds of goods.
- 6) Standards for equipment, materials, and workmanship specified in the Tendering document shall not be restrictive. Recognized international standards should be specified as much as possible. Reference to brand names, catalogue numbers, or other details that limit any materials or items to a specific manufacturer should be avoided as far as possible. Where unavoidable, such item description should always be followed by the words “or substantially equivalent.” When other particular standards or codes of practice are referred to in the TS, whether from the Procuring Entity's or from other eligible countries, a statement should follow other authoritative standards that ensure at least a substantially equal quality, then the standards mentioned in the TS will also be acceptable.
- 7) Reference to brand names and catalogue numbers should be avoided as far as possible; where unavoidable the words “or at least equivalent” shall always follow such references.
- 8) Technical Specifications shall be fully descriptive of the requirements in respect of, but not limited to, the following:
  - a) Standards of materials and workmanship required for the production and manufacturing of the Goods.
  - b) Any sustainable procurement technical requirements shall be clearly specified.

3.2 To encourage tenderers' innovation in addressing sustainable procurement requirements, as long as the Tender evaluation criteria specify the mechanism for monetary adjustments for the purpose of Tender comparisons, tenderers may be invited to offer Goods that exceeds the specified minimum sustainable procurement requirements.

- 1) Detailed tests required (type and number).
- 2) Other additional work and/or Related Services required to achieve full delivery/completion.
- 3) Detailed activities to be performed by the Supplier, and participation of the Procuring Entity thereon.
- 4) List of detailed functional guarantees covered by the Warranty and the specification of the liquidated damages to be applied in the event that such guarantees are not met.

- 33 The TS shall specify all essential technical and performance characteristics and requirements, including guaranteed or acceptable maximum or minimum values, as appropriate. Whenever necessary, the Procuring Entity shall include an additional ad-hoc Tendering form (to be an Attachment to the Letter of Tender), where the tenderer shall provide detailed information on such technical performance characteristics in respect to the corresponding acceptable or guaranteed values.
- 34 When the Procuring Entity requests that the tenderer provides in its Tender a part or all of the Technical Specifications, technical schedules, or other technical information, the Procuring Entity shall specify in detail the nature and extent of the required information and the manner in which it has to be presented by the tenderer in its Tender.
- 35 If a summary of the Technical Specifications (TS) has to be provided, the Procuring Entity shall insert information in the table below. The tenderer shall prepare a similar table to justify compliance with the requirements.

## SECTION V: SCHEDULE OF REQUIREMENTS & SUMMARY OF TECHNICAL SPECIFICATIONS

### A. BACKGROUND

National Oil Corporation of Kenya intends to provide safety wear for staff involved in critical operations with EHS implications/concerns in line with the Occupational Safety and Health Act 2007 and Work Injury Benefits Act 2007. This is aimed at providing protection to employees from exposure to hazards in the course of their work hence minimizing opportunities for work-related injuries.

### B. GENERAL REQUIREMENTS

- a) The materials used in manufacture of PPE shall not in the foreseeable conditions of normal use release or degrade to release substances generally known to be toxic, carcinogenic, mutagenic, allergenic, toxic to reproduction or otherwise harmful.
- b) Be available in different sizes so as to suit the target users e.g. S, M, L, Extra Large (XL, 2XL, 3XL).
- c) Provide a sample of the recommended PPE in addition to the user instructions/catalogue/product data sheets.
- d) Tenderers shall be required to submit pre-production samples for approval prior to delivery.
- e) Tenderers **MUST** submit **pre-production samples** for **male** and **female** sexes respectively for clothing that vary due to morphological features of respective sexes, e.g., Sun Hats, Coveralls, High visibility Jackets, Safety Shoes, Safety Boots, T-shirts among others.
- f) Protective clothing shall not have rough, sharp or hard surfaces that irritate or injure the user; be so tight that blood flow is restricted; be so loose and/or heavy so that it interferes with movements.
- g) PPE items will be delivered to National Oil head office at Kawi House, South C, unless otherwise advised by NOC, on call off basis.
- h) Financial quotes to be inclusive of all associated costs (e.g. delivery, labor, materials etc.) and applicable taxes and be based on units/items for use in a one-year framework contract.
- i) Diagrams appearing in the tender document are descriptive and NOT restrictive.
- j) Alternative offers NOT acceptable.

### C. SPECIFIC REQUIREMENTS

#### **I. HEAD PROTECTION**

##### **1) Industrial Safety Helmets**

The following are the proposed specifications of the helmets:



- i. **Standard:** EN 397:2012 and ANSI Z89.1 (designed to reduce the force of impact resulting from a blow to the top of the head).
- ii. **Features:**
  - a) Material: Polyethylene, ABS (Acrylonitrile Butadiene Styrene – a thermoplastic), or fiberglass hardened with polyester resins;
  - b) Maximum Weight: 350g;
  - c) Sizes: Adjustable;
  - d) Thermoformed sweatband;
  - e) Chin strap from same manufacturer;
  - f) Temperature resistance: 15°C up to max +50°C;
  - g) *Colour:* White; and
  - h) *Accessories:* attachment for a chin strap, hearing protection, internal retractable eye shield, and “**National Oil**” logo at the front.
  - i) Must have at least six (6) anchor points.

iii. **Strong points:**

- a) Ventilated helmet;
- b) Closeable ventilation;
- c) *Manufacture date:* Not more than 1 year from the date of manufacture; and
- d) Wheel ratchet.

iv. **Proposed branding and colour**

For branding purposes, the option of a white helmet with the “**National Oil**” logo at the front is suggested, as illustrated in the table below:



Suggested Helmet design	“National Oil” logo (for reference)
	

## 2) Industrial Safety/Bump Cap

- i. **Standard:** EN 812:2012



ii. **Features:**

- a) Have CE rating.
- b) Cap Material: Canvas.
- c) Integral Sweatband: Yes.
- d) Machine Washable: Yes.
- e) Colour: luminous orange and black.
- f) Peak type: Standard.
- g) Head size: 52 - 65cm.
- h) Protective Material: HDPE.
- i) Light weight and comfortable to wear.
- j) Branding: “**National Oil**” logo at the front.

Suggested Safety Cap design	“National Oil” logo (for reference)
	

### 3) Safety Sun Hat

- The following are recommended features of Sun hats:
  - a) Elastic closure;
  - b) Inner sweatband;
  - c) Cooling crystals concentrated at the crown;
  - d) Cord and stopper;
  - e) 100% cotton material;
  - f) Soft and breathable polyester 50+ protection blocks 98% of UVA/UVB sun rays;
  - g) 12cm/4.7" large brim, head circumference: 22.0"-23.6"/56-60 CM
  - h) Long neck flap;
  - i) Adjustable chin strap to hold the hat in place and an elastic draw cord with a toggle at back for adjustability; and
  - j) Mesh side vents for superior airflow and internal moisture-wicking sweatband for a comfortable fit.
  - k) Sun Hats for men and women MUST accommodate varying morphological features of the different sexes.

Suggested Sun Hat design	“National Oil” logo (for reference)
	

### 4) Hair Nets

- a) Material: Spun bonded, non-woven polypropylene;
- b) Thermally sealed waffle pattern with 1 /16-inch center;
- c) Rectangular when open up and can completely cover the head and the hair / bun;
- d) Elastic: Min. 3x stretch;
- e) Elastic band secures head neatly and comfortably;
- f) Elastic band at opening must be of “One size fits all” design and provide comfortable fit;
- g) Anti-Microbial;
- h) Size (stretched): 55cm;
- i) Weight: 20.0 g  $\pm$  10%;
- j) Colours: Blue/White;
- k) Packaging: 100 pcs per white opaque bag, with a secondary transparent overwrap;
- l) Disposable.



## II. HAND PROTECTION

### 5) Hand Gloves

#### a) Nitrile Impact Gloves

- i. **Standard:** EN ISO 21420:2020 (PPE gloves); EN 388:2016 (protection against mechanical risks); EN ISO 10819:2013 (mechanical vibration and shock).
- ii. **Features:**
  - a) Abrasion rating: 4;
  - b) Cut (Coup Test) rating: 5;
  - c) Tear rating: 4.
  - d) Puncture rating: 4;
  - e) Cut (TDM-100 Test) rating: F;
  - f) Impact protection rating: P;
  - g) Resistant to oils and chemicals;
  - h) Coating: rubber foam, coated on palm;
  - i) Support: Polyester lining;
  - j) Excellent grip on dry surfaces;
  - k) Breathable 15-gauge liner to ensure outstanding dexterity for the wearer;
  - l) Excellent grip in wet and dry conditions;
  - m) A reinforced thumb crotch, exterior and interior padded palms for increased durability and comfort;
  - n) Designed specifically for the oil and gas industry.



#### a) Nitrile Coated –Seamless Knitted Gloves

- i. **Standard:** EN ISO 21420:2020; EN 388:2016; EN 374.
- ii. **Features:**
  - a) Support: polyamide and elastane, seamless knitted.
  - b) Gauge: 15.

- c) Wrist: elastic knit with piping.
- d) Coating: nitrile foam, coated on palm.
- e) Suitable for use with touchscreen devices.



## b) Nitrile Industrial Heavy Duty Gloves

- i. **Standard:** EN ISO 21420 (PPE gloves): 2020; EN 388:2016 (protection against mechanical risks); EN 374 (protection against chemical risks & micro-organisms).

### ii. Features:

- a) Cover and protect the entire hands until the elbows, i.e., 33-45cm.
- b) Made from high-quality nitrile rubber for long working life and heavy duty work.
- c) Resistant to a variety of chemical product and excellent against abrasion and puncture.
- d) Excellent chemical and corrosion-resistant properties.
- e) Thick enough to give complete protection even while handling acid and alkali-based solutions.
- f) Ergonomically and anatomically designed to ensure user ease of movement and greater comfort.
- g) Suitable for chemical processing, oil refining, battery manufacturing, plant maintenance, pesticides handling, food processing, and environmental waste cleanup.



## c) Chrome Leather Gloves Elbow Length

- i. **Standard:** EN ISO 21420 (PPE gloves): 2020; EN 388:2016 (protection against mechanical risks).

### ii. Features:

- a) *CE rating:* Yes.
- b) *Palm:* reinforced double layer palm and fingers for durability.
- c) *Backing:* Chrome split leather.
- d) *Cuff:* at least 6-inch elbow length safety cuff.
- e) *Inner lining:* soft fabric inner lining for comfort.
- f) Availability in differing sizes to accommodate varying morphological features for men and women.



### III. EAR PROTECTION

#### 6) Helmet Mounted Earmuffs

- i. **Standard:** EN 352-3:2002; SNR = 30dB H = 34dB M = 28dB L = 19dB.
- ii. **Features:**
  - a) CE rating: Yes.
  - b) Hearing protection: 30 dB(A).
  - c) Earmuffs should completely enclose the ear with a hollow cup and use a spring tensioned headband to hold the cups in place over the ears to provide the desired reduction.
  - d) Soft wide cushions to reduce pressure around the ears and improve comfort and wearability.
  - e) Low contact pressure makes them comfortable to wear.
  - f) Easy-to-replace cushions and inserts help keep them hygienically clean.



#### 7) Reusable Earplugs

- i. **Standard:** EN 352-2 SNR=32dB L=25dB M=28dB H=33dB.
- ii. **Features:**
  - a) CE rating: Yes
  - b) *Material:* thermoplastic elastomer, pre-molded, non-toxic, and non-allergenic;
  - c) High attenuation (SNR 32dB);
  - d) Unique patented tri-flange design;
  - e) Metal detectable - both ear tip and cord;
  - f) Longer stem to make insertion easier;
  - g) Soft and durable material; and
  - h) Easy to wash and clean



#### **IV. EYE PROTECTION**

##### **8) Safety Glasses**

- i. **Standard:** EN 166; EN 170.

Safety eyewear frames and lenses shall be tested and marked with the CE symbol, the manufacturer's logo, and the standard. Eye protection shall meet EN 166:2002 standards. The following specifications should be fulfilled:

**a) Lens**

- a) **Standard:** EN166:2001; ANSI Z87.1-2020.
- b) Optical class: 1.
- c) UV protection: UV 400.
- d) Mechanical strength: Minimum F, Preferable T.
- e) Anti-scratch: K.
- f) Anti-fog: N.
- g) Wraparound lens field of vision.
- h) Sleek Styling Provides Closer Fit (important for narrow/smaller faces).
- i) Fixed Rubber Bridge.
- j) Lenses for protection from UV light shall be in accordance with EN 170.

**b) Frame**

- a) Mechanical strength: Minimum F, Preferable T.
- b) Field of use: Minimum 3.
- c) Soft components around the sensitive parts of the face (ears, forehead, nose).
- d) Fully adjustable side arms for an optimal fit.



##### **9) Safety Goggles**

**i. Features:**

- a) Clear lens.
- b) Medium Impact.
- c) Diamond Tech Hard coat.
- d) Hydro Tech AF.
- e) UV 400.
- f) Pivot hinge.

- g) Element seal.
- h) Durable and resilient polycarbonate lens and sidearm construction.
- i) The supplied elastic strap with quick release clip can be interchanged with the sidearms, converting the spectacle into a goggle.
- j) Indirect ventilation and soft foam padding provide dust protection whilst allowing good air circulation.
- k) Base 9 curve provides perfect optical clarity and an extended wrap for increased side protection.



## **V. RESPIRATORY PROTECTION**

### **10) Reusable Respirators with Cartridge**

#### **i. Features:**

The recommended specifications include:

- a) Primary material: Thermoplastic Elastomer (TPE)
- b) Quick Latch Design with Easy on and off;
- c) Hand Touch Drop Down Mechanism for Putting the Face Piece on and Off While Moving in and Out of Contaminated Areas;
- d) Adjustable Head Harness Assembly for Comfortable Fit with three-size adjustable head cradle;
- e) Long Lasting Polyester/Spandex Straps;
- f) Cool Comfort with Cool Flow Valve designed for easy Exhalation to Help Keep the Wearer More Comfortable;
- g) Resilient Silicone Face Seal;
- h) Half Facepiece Design;
- i) Reduces Fogging: Exhalation Valve Cover Directs Exhaled Breath and Moisture Downward to Reduce Fogging of Face Shields; and
- j) Replaceable cartridges and filters.
- k) Protection: Concentrations up to 10 times the Permissible Exposure Limit (PEL).



### **11) Single Use Foldable Half-Mask**

- a) *Standard:* EN 149; FFP3 NR D;
- b) Foldable half-mask (vertical fold);
- c) With exhalation valve;
- d) Metal nosepiece covered with plastic;
- e) Individually hygienically packed in a Box.



## BODY PROTECTION

### 12) Fire Fighting Suit

#### i. Coat/Jacket

- i. *Standard:* The coat must meet the NFPA 1971; 2007 or EN 469: 2005 Level 2 standards or their latest applicable version.
- ii. *General Description:* Coat with a high central zip closure, covered with suitable storm flap. The coat should have full-length sleeves and a stand up collar with adjustable throat tab.
- iii. The Suit should bear UL marking (for NFPA certified suit) with supporting certification or should bear CE marking (for EN certified suit) with supporting EC Type certification.
- iv. Construction:
  - a) The coat should have a **three-layer** construction:
  - b) *Outer Cloth:* The outer shell fabric should be made from inherently flame resistant meta aramid fibre with requisite blend of antistatic fibres. The colour of the outer shell fabric shall be Dark Navy shade.
  - c) *Moisture Barrier:* Moisture Barrier shall be Fire resistant and breathable in nature. The construction should be micro porous in nature like non-woven substrate/ felt / PU / spun lace aramid - suitably laminated with PTFE / PU like membrane or treated with compound to ensure that no water ingress from outside besides allowing perspiration and heat to escape from inside.
  - d) *Thermal Barrier:* The Thermal Barrier should consist of two integrated or quilted layers. The innermost layer facing the Moisture Barrier should be made from inherently flame resistant fibres in non-woven felt / corded lane construction.
  - e) *The Coat* should be detachable i.e., it should be able to be used as a single layered Coat or multiple layered Garment and should be detachable by buttons from inside.
  - f) *Seams:* All sewing to be done using para-aramid or equivalent strong inherently FR thread. The seams on the outer layer should be stitched with strong thread overlock.
  - g) *Pockets:* Coat should be provided with 3 pockets as standard. 2 waist pockets on the lower fronts with flap closure and 1 patch pocket inside the coat.
  - h) *Collar:* The collar of the Coat should be designed so that the neck portion is doubly secured and covered by means of a throat tab, fitted with fire retardant Velcro for secure fastening across the

neck. A hanger loop, centrally placed on outer collar or inside section to be provided to facilitate hanging.

- i) *Front Closure:* The coat should have a heavy-duty moulded zip beneath a full length catch flap, closing with fire retardant Velcro.
- j) *Sleeves & Cuffs:* The sleeve should be designed to have an additional gusset (all 3 layers) in the underarm or any other design innovation to allow the arms to move freely without raising the hem of the coat. An aramid rib-knitted internal cuff to be provided for suitable wrist protection.
- k) *Reflective Tape:* The Coat should have a high quality reflective tape provided at the following places:
  - Single row 50 mm width, around hem/ waist (including across front flap);
  - Single row 50 mm width, around lower sleeves.The tape should be premium quality and the quality should comply with the length and test parameters stipulated in the corresponding NFPA/ EN standards.
- l) *Sizing:* Size chart should be provided along-with the offer. The size should be suitable for fitting on person of 5' 8'' & 5' 5'' height. Length of the jacket should be 32 inch & 28 inch.
- m) *Labels:* A large clear label should be permanently attached (sealed) or stitched inside the lining of the fire suits. This label should give full details of compliance to international standards, manufacturer's contact details, sizing, wash/care information, style and date of manufacture and traceability coding.

## **ii. Trouser**

- i. *Standards:* The fire Trouser must meet the NFPA 1971; 2007 or EN 469: 2005 Level 2 standards or their latest applicable version. The Suit should bear UL marking (for NFPA certified suit) with supporting certification or should bear CE marking (for EN certified suit) with supporting EC Type certification.
- ii. *General Description:* Trouser should have standard 36 inch & 32-inch waist size and adjustable crossover braces, with the knees suitably padded and reinforced with an extra layer of outer cloth. The waist of the Trouser should be elasticized at both sides to provide a comfortable flexible fit.
- iii. *Shape – Construction:* The trousers should fit on the natural waistline (36 inch), ankle length and constructed with following 3 layers:
  - a) *Outer Cloth:* The outer shell fabric should be made from inherently flame resistant para aramid fibre material with requisite blend of antistatic fibre. The colour of the outer shell fabric shall be Dark Navy shade.
  - b) *Moisture Barrier:* Moisture Barrier shall be Fire resistant and breathable in Nature. The Construction should be micro porous in nature like non-woven substrate/ felt / PU/ spun lace aramid - suitably laminated with PTFE / PU like membrane or treated with compound to ensure no water ingress from outside besides allowing perspiration and heat to escape from inside.
  - c) *Thermal Barrier:* The Thermal Barrier should consist of two integrated or quilted layers. The innermost layer facing the Moisture Barrier should be made from inherently flame resistant fibres in non-woven felt / corded lane construction. The Trouser should be detachable i.e., it should be able

to be used as a single layered Coat or multiple layered Garment and should be detachable by buttons from inside.

- iv. *Seams:* All sewing to be done using para-aramid or equivalent strong inherently FR thread. The seams on the outer layer should be stitched with strong thread overlock.
- v. *Knee Construction:* The knee should have an extra layer of outer cloth as reinforcement or alternately an aramid enforcement. The knee region should be shaped or designed suitably for comfort and flexibility.
- vi. *Pockets:* The Trouser should have 1 internal patch pocket inside the right or left hip.
- vii. *Reflective Tape:* The Trouser should have single row of 50 mm wide reflective tape around lower leg. The tape should be premium quality and should comply with test parameters stipulated in the corresponding NFPA/ EN standards.
- viii. *Sizing:* Size chart should be provided along with the offer. The size should be suitable for fitting on person of 5'-8'' height & 36-inch waist.
- ix. *Labels:* A large clear label should be permanently attached (sealed) or stitched to the inside pocket/ section of the Trouser. This label should give full details of compliance to international standards, manufacturer's contact details, sizing, wash/care information, style and date of manufacture and traceability coding.

### **iii. Accessories: Boots**

- i. *Standards:* Certified to EN 15090:2012 Type 3 or NFPA 1971: 2007.
- ii. *Construction:* Light weight premium quality leather or treated rubber having flame retardant upper and waterproof characteristics.
- iii. *Feature:* Rubber Boot should have the following features and Test certificate/ reports confirming the following operational requirements are required to be furnished:
  - a) Outer sole of the Boot should be Heat and Oil resistant & Upper of the Boot should be Heat, Flame and Oil Resistant.
  - b) Outer sole should also have high electrical resistance.
  - c) Sole should be slip resistant even on ceramic tiles & Steel Tiles.
  - d) Sole should have penetration resistance against sharp objects and should have Composite Anti perforation mid sole.
  - e) Toe should be protected with Polymer Toe Cap and no Steel Toe Cap should be used.
  - f) Size should be equivalent to size 8 (Europe) and the weight should be maximum 2.2 Kgs for size 8 (Europe size).
  - g) The entire Boot should be made of Compression Moulding Procedure i.e. should be One piece for sole and upper and no stick on process should be used.
  - h) The Boots should be certified to *EN 374-3* against resistant to dangerous chemicals i.e. n-Heptane, Sodium Hydroxide, Sulfuric Acid and *EN 943-2* against chlorine, Hydrogen Chloride, Ammonia or equivalent NFPA Standards.
  - i) The Boots should have excellent resistance to Fuels, Oils & Greases, Solvents, Weak and Diluted acids.

### **iv. Helmet**

- i. *Standards:* Certified to EN 443: 2008 or NFPA 1971: 2007 standards.
- ii. *Colour:* Fluorescent yellow.
- iii. *Construction:* Helmet should be constructed of composite fibre glass capable of providing full protection even against shorter flash over flames temperature exposures of up to 1000 deg. C.
- iv. *Features:*  
Helmet should have the following features and Test certificate/ reports confirming the following operational

requirements are required to be furnished:

- a) Helmet with visor should have a modular design whereby the face and neck is also protected against flames.
- b) Visor should be provided capable of withstanding extreme heat and impact.
- c) Visor should be capable of being closed - housed within the inner shelf of the Helmet, when not in use and should have double Visor with a goggle visor inside for better protection.
- d) Outer Visor should be Golden-plated.
- e) Weight of the Helmet complete with visor should not exceed 1.5 Kgs.
- f) Interior shock absorption layer to be provided for head protection.
- g) Head size adjustable feature should be available for fitting various head size circumference 51-65 cm of fireman.
- h) Waterproof Torch – EN certified should be provided along with the Hemet too.
- i) The Helmet should have the attachment to fix torches on both the sides.

## **v. Gloves**

- i. *Standards:* Certified to EN 659: 2008 or NFPA 1971: 2007 standards. The Gloves should bear CE mark or UL certification to NFPA -1971.
- ii. *Features:*
  - a) Five fingered, Chrome Leather, soft, supple 2-3 layered Glove for hand and wrist protection.
  - b) The Glove should incorporate knitted wrists made of FR Heat resistant material.
  - c) All threads used for stitching the gloves should be inherently Flame retardant.

## **vi. Anti-Fire Hoods**

- i. *Standards:* Certified to EN 13911:2004 in connection with EN 340:2003 or NFPA1971 and 70E Standards.
- ii. *Features:*
  - a) The Hood should be off white colour.
  - b) The Face opening should be fit and flat.
  - c) The Neck Protector should be fit and properly covering the shoulders.
  - d) The Hood should be double layered having each layer of the Fabric of about 230 GSM, inset collar and face opening with elastic.



### 13) Protective Coveralls

The protective coveralls shall be made into two categories:

- a) One Piece Coverall; and
- b) Two Piece (Jacket and Pants) Coverall.

The following specifications have been proposed for this gear.

#### Lightweight Coveralls

Due harsh and weather associated heat stress, flame resistant (FR) coveralls of lightweight and breathable with moisture wicking fabric will be required to enable the body's natural evaporative cooling process: sweat.



##### i. Material:

- a) Flame retardant work wear;
- b) Super lightweight, anti-static, flame-retardant Coveralls - FR21.
- c) Fabric: 99% Cotton, 1% Carbon fibres, 210g.
- d) Safety Standards: EN ISO 11612 A1+ A2.
- e) The fabric should conform to EN ISO 11611 CLASS 2 A1 & A2.

##### ii. Features:

- a) Flame retardant.
- b) Lightweight.
- c) Anti-static.
- d) Triple stitched seams;
- e) FR strips on shoulder, legs & arms;
- f) Brass zippers;
- g) Concealed back mesh vented panel along the pleat;
- h) Concealed two-way, black high-density polyester coil zip with storm flap;
- i) Two front chest pockets with flap;
- j) Pen slot on the left breast pocket.
- k) Adjustable sleeve opening;
- l) Elastic Waistband;
- m) Loop on the left shoulder for gas detectors or two-way radio;
- n) Two front pockets with inner pant access;
- o) Fully branded with embroidery with National Oil logo on the chest pockets;
- p) Coverall colour: Beige;
- q) Coveralls for men and women MUST accommodate varying morphological features of the different sexes.

**NB:** For branding purposes, the option of a beige or grey coverall is suggested.

Suggested Protective Overalls design	"National Oil" logo (for reference)
	

## 14) Laboratory/Dust Coat

### Features:

- a) 100% Cotton drill;
- b) *Fabric weight:* at least 270 gsm;
- c) Notch collar with lapel and button front closure;
- d) Be past the knee in length;
- e) Must incorporate a reflective strip over the shoulders and round the waist as well as at elbow level;
- f) Must have three pockets i.e. 2No. hip pockets and 1No. left chest pocket;
- g) The back features a locker loop, pleats, and a stitched-down back belt;
- h) Dust Coats for men and women MUST accommodate varying morphological features of the different sexes;
- i) Fully branded with embroidery with the National Oil logo on the on front left chest pocket;
- j) *Colour:* White and Navy Blue.



## 15) Light Weight Breathable Work Safety T-Shirts

### Features:

- a) 100% cotton.
- b) *Fabrics weight:* at least 220gsm.
- c) *Standard:* EN 11611; EN 11612; NFPA 2112-2012.
- d) Moisture wicking & fast drying.
- e) Lightweight & breathable.
- f) T-shirts for men and women MUST accommodate varying morphological features of the different sexes.
- g) Solid colour (beige or grey), short sleeve, loose fit, side pockets.
- h) Fully branded with embroidery with the National Oil logo on the chest.





## 16) Umbrella

Umbrellas are composed primarily of three sections: the canopy, the shank, and the handle. The canopy is that part of the umbrella that spreads and protects the user from rain or sun.

### Description:

- a) *Umbrella size*: 33-inch canopy and can open up to about 40 inches wide.
  - i. Open 100cm x 133cm/39.37inch x 52.36 inch;
  - ii. Close 100cm/39.37inch
- b) *Umbrella material*: double-layer fibreglass cloth, rubber umbrella cap, anti-skid protection, and anti-conductive.
- c) *Handle material*: plastic/rubber.
- d) *Umbrella type*: manual;
- e) *Umbrella shape*: round.
- f) *UV protection*: yes.
- g) *Visibility*: high visibility reflective strip round the canopy.
- h) *Portable*: upgrade frame to ensure durability and can which withstand powerful gusts, heavy rain.
- i) *Design*: lightweight and portable.
- j) *Proposed branding and colour*: for branding purposes, the option of luminous green with the “National Oil” logo at the front is suggested, as illustrated in the table below:

Suggested Helmet design	“National Oil” logo (for reference)
	

## VI. FALL ARREST

### 17) Safety Harness and Double Lanyard

#### a) Features for Safety Harness

- i. 100% cotton.
- ii. Built-in positioning belt.
- iii. Easy to adjust.
- iv. Four attachment points, one on the rear and one on the front (obtained by connecting two semi-attachment points A/2) for fall arrest, and two on the side for restraint and work positioning.
- v. Functional dorsal and lateral hooks made of steel.
- vi. Safety Rating EN 358:1999, EN 361:2002
- vii. Moisture-wicking, breathable back padding with soft edging for added comfort.

**b) Sizes Code - Size - Weight:**

- i. A001-1104.I1 - S-2XL - 1520 g,
- ii. A001-1104.I3 - L-3XL - 1610 g



**c) Features for Double Lanyard**

- i. Built-in energy absorber.
- ii. Nylon static rope with an 11 mm diameter kernmantle weave guarantees effective and optimal resistance against wear and abrasion.

**d) Base Connector:**

- i. Standard: EN 362;
- ii. Opening: 16 Mm;
- iii. Closure: Screw Lock;
- iv. Material: Zinc-Plated Steel;
- v. Minimum Resistance: 23Kn.



**e) Anchorage Connector**

- i. Standard: EN 362;
- ii. Opening: 53 Mm;
- iii. Closure: Automatic Lever;
- iv. Material: Chrome-Plated Steel;
- v. Minimum Resistance: 21Kn.

## **18) Lifeline Ropes and Accessories**

**a) Features:**

- i. *50ft. Lifeline Assembly Kits:* 1 x Fall Protection Rope, 1 x Energy Absorber, 1 x Rope Grab, 2 x Steel Snap Hooks, the fall protection rope is 50 ft. in length and 0.55" in diameter. Appropriate dimension and 310 lbs weight capacity.
- ii. *Steel Snap Hooks & Rope Grab:* 2 steel, double-locking snap hooks. it can connect and be compatible with any safety harness and anchors with D-Rings.
- iii. *Premium Braided Rope:* Vertical lifeline rope is made of wear-proof and high-strength polyester material, it is durable and sturdy.
- iv. *Item Weight:* 8.63 pounds (3.88 kg).
- v. *Package Dimensions:* 17 x 6.75 x 4.75 inches (43.2 x 17.1 x 12.1 cm).



## VII. HIGH VISIBILITY

### 19) High Visibility Vests

Two sets of high visibility vests will be required namely; National Oil staff Hi Vis vests and Visitors Hi Vis vests.

The following are the recommended specifications for each category:

**A. Antistatic high visibility (luminous orange) Vests - Depot staff and Emergency Response Team;**

**B. Breathable high visibility (luminous green) Vests – Field staff**

#### Standard:

- EN 20471 – Class 2; or
- ANSI/ISEA 107-2015; ASTM D6413

#### Features:

- a) Gender – Hi-visibility vests for men and women MUST accommodate varying morphological features of the different sexes;
- b) Colour – Orange & Green;
- c) Composition: 100% polyester;
- d) Double horizontal and vertical 3M reflex stripes;
- e) Left side pocket well-finished edges;
- f) Badge pocket;
- g) 2 vertical reflex stripes and 1 horizontal stripes;
- h) 2 breast pockets with flap and Velcro;
- i) Zipper at front for maximum convenience;
- j) Made from fabric with superb resistance of colours to washings, abrasion, and wear;
- k) Comfort and breathability are guaranteed by the 100% natural fiber composition.
- l) National Oil logo at the front.

**NB:** NOC Emergency response teams, i.e., Fire Marshals and First Aiders, shall have customized reflector jackets with various pockets and names printed at the front while the ones for visitors will be ordinary jackets.

Suggested visibility vests		National Oil logo (for reference)
		

## VIII. KNEE PROTECTION

### 20) Knee Pads

- a) *Standard:*
- EN 14404: 2010, CE
- b) *Features:*
- i. Ergonomic and certified against knee injuries;
  - ii. *Dimensions:* 24 x 14 x 1.8cm;
  - iii. Flexible with straps to enable wearing over pants;
  - iv. Ability to absorb impact and provide extra cushioning;
  - v. Light weight;
  - vi. Pre-shaped knee pads.



## IX. FOOT PROTECTION

The following are the proposed specifications for the footwear:

### 21) Type A: Field Safety Pull-up Boots

- a) *Standards:*
- i. ASTM F2413:2018;
  - ii. EN ISO 20345:2022
- b) *Safety Rating:* S3
- c) **Features:**
- i. *Category:* S3S/SR, SC, LG, ESD, FO, HRO;
  - ii. *Weight:* ≤1kg;
  - iii. *Height:* ≥8-11 inches;
  - iv. *Upper:* Abrasion-resistant full grain, waterproof leather, pull-up leather;
  - v. *Lining:* Mesh;
  - vi. *Footbed:* SJ foam footbed;
  - vii. *Insole:* Waterproof strobil or removable or single-block structure made of soft polyurethane and textile, anatomical, perforated, or with air cooling technology and with heel shock absorbers - Swen-Flex®;

- viii. *Mid-sole*: anti-puncture textile;
- ix. *Outsole*: Rubber - Tred Max or Tempo;
- x. *Toe-cap*: Composite;
- xi. *Shank*: Nylon, fiberglass, or steel;
- xii. *Size range*: UK (3.5-13.0); EU (36-48); US (4.0-13.5);
- xiii. *Outsole properties*: Heat resistant (up to 300°C - 1-minute contact), oil, chemical, slip, and abrasion resistant.
- xiv. Counter-support to protect against snake bite hazards.

**d) Outsole Properties:**

- i. *Slip resistance*: Best;
- ii. *Oil/Gas*: Best
- iii. *Chemicals*: Best
- iv. *Abrasions*: Best
- v. *Heat*: Best



## **22) Type B: Men Safety Toe Pull-on Boots**

**a) Standards:**

- i. EN 20345:2022;
- ii. ASTM F2413-2018

**b) Safety Rating: S3**

**c) Features:**

- i. *Category*: S3/SR, FO, HRO;
- ii. *Height*:  $\geq 6$  Inches;
- iii. *Sample weight*:  $\leq 0.8$ kg;
- iv. *Upper*: Abrasion-resistant full grain, waterproof leather, pull-up leather;
- v. *Lining*: Mesh with perspiration absorbency capacity;
- vi. *Footbed*: SJ foam footbed;
- vii. *Midsole*: steel;
- viii. *Outsole*: Rubber – dual density PU/PU (heat-resistant up to 95°C);
- ix. *Waterproof*: Yes;

- x. *Toe cap*: steel;
- xi. *In-sole*: Non-woven, removable polyurethane;
- xii. *Size range*: UK (3 -13.0); EU (36-48);

**d) Outsole Properties:**

- i. *Slip resistance*: Best;
- ii. *Oil/Gas*: Best;
- iii. *Chemicals*: Best;
- iv. *Abrasions*: Best;
- v. *Heat*: Best.



## 23) Type C: Ladies Safety Boots

**a) Standards:**

- i. EN 20345:2022;
- ii. ASTM F2413-2018

**b) Safety Rating: S3**

**c) Features:**

- i. *Category*: S3, ESD, SRC, HRO;
- ii. *Height*:  $\geq 6$  Inches;
- iii. *Sample weight*:  $\leq 0.6$ kg;
- iv. *Upper*:  $\geq 2.2$ mm full grain leather with pull-up straps and elastic gussets;
- v. *Lining*: Mesh with perspiration absorbency capacity;
- vi. *Footbed*: SJ foam footbed;
- vii. *Midsole*: anti-puncture textile;
- viii. *Outsole*: Rubber - TredMax;
- ix. *Shank*: Nylon;
- x. *Waterproof*: Yes;
- xi. *Toe cap*: ultra-light protective toe cap or steel toe;
- xii. *In-sole*: Non-woven, removable polyurethane;
- xiii. *Size range*: UK (3.5-13.0); EU (36-48); US (4.0-13.5);

**a) Outsole Properties:**

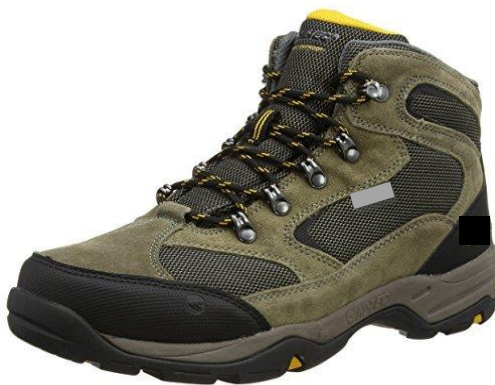
- i. *Slip resistance*: Best
- ii. *Puncture resistance*: Best

- iii. *Oil/Gas*: Best
- iv. *Chemicals*: Best
- v. *Abrasions*: Best
- vi. *Heat*: Best



## 24) Type D: High-rise Hiking Boots

- i. *Category*: S3S, FO, HRO, SR;
- ii. *Upper*: Suede Leather;
- iii. *Outsole*: PU/rubber;
- iv. *Toecap*: Composite;
- v. *Midsole*: Anti-puncture textile;
- vi. *Waterproof*: Yes;
- vii. *Waterproofing type*: waterproof membrane;
- viii. *Lining*: Breathable mesh;
- ix. *Weight (pair)*: 2lbs. 4 oz.;
- x. *Best use*: Hiking;
- xi. *Footwear height*: Over-the-ankle;
- xii. *Footwear closure*: lace up;
- xiii. *Support*: Molded nylon arch shank;
- xiv. *Size range*: UK (3 -13.0); EU (36-48).



## 25) Men Executive Safety Shoes

a) *Standard*: EN 20345;

b) **Features:**

- i. *Upper*: Full grain black leather with no perforations;
- ii. *Lining*: Moisture wicking textile lining;
- iii. *Outsole*: Dual-density PU soling system with antistatic properties and shock absorption;
- iv. *Midsole*: Steel;

- v. *Toecap*: Steel (resistant to up to 200J);
- vi. Heat resistant up to 160°C;
- vii. Cushion comfort;
- viii. Gender: Men;
- ix. *Size range*: UK (5-10); EU (36-44).



## 26) Ladies Executive Safety Shoes

- a) *Standard*: EN 20345;
- b) **Features**:
  - i. *Gender*: Ladies;
  - ii. *Upper*: Full grain black leather with no perforations;
  - iii. *Toecap*: Steel;
  - iv. *Midsole*: Composite anti-penetration flexi-midsole;
  - v. *Outsole*: Dual density PU outsole;
  - vi.



## 27) Heavy Duty Rubber Open Shoes

- a) *Standard*: CE EN 20347;
- b) **Features**:
  - i. *Category*: PB, ESD, A, SRC, E;
  - ii. *Sample weight*: 250g;
  - iii. *Upper*: Expanded Ethylene Vinyl Acetate (EVA) - waterproof;

- iv. *Outsole:* EVA; slip-resistant;
- v. *Toecap:* Composite – protects against impacts with energy levels of up to 100 Joules;
- vi. *Footbed:* SJ foam footbed;
- vii. *Size range:* UK (3.0/3.5 -10.5/11.0); EU (35/36-45/46);
- viii. Rubber Open Shoes for men and women **MUST** accommodate varying morphological features of the different sexes.



#### **D. INSPECTION AND TESTS**

The following inspections and tests shall be performed:

- i) Confirmation of quantities received.
- ii) Compare physical goods received vis-à-vis specifications provided in the tender document/contract.



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## **PART 3 - CONDITIONS OF CONTRACT AND CONTRACT FORMS**

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## SECTION VI - GENERAL CONDITIONS OF CONTRACT

### 1. Definitions

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

- a) “Contract” means the Contract Agreement entered into between the Procuring Entity and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
- b) “Contract Documents” means the documents listed in the Contract Agreement, including any amendments thereto.
- c) “Contract Price” means the price payable to the Supplier as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
- d) “Day” means calendar day.
- e) “Completion” means the fulfilment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.
- f) “GCC” means the General Conditions of Contract.
- g) “Goods” means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Procuring Entity under the Contract.
- h) “Procuring Entity” means the Procuring Entity purchasing the Goods and Related Services, as **specified in the SCC**.
- i) “Related Services” means the services incidental to the supply of the goods, such as insurance, delivery, installation, commissioning, training and initial maintenance and other such obligations of the Supplier under the Contract.
- j) “SCC” means the Special Conditions of Contract.
- k) “Subcontractor” means any person, private or government entity, or a combination of the above, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier.
- l) “Supplier” means the person, private or government entity, or a combination of the above, whose Tender to perform the Contract has been accepted by the Procuring Entity and is named as such in the Contract Agreement.
- m) “**Base Date**” means a date 30 day prior to the submission of tenders.
- n) “**Laws**” means all national legislation, statutes, ordinances, and regulations and by-laws of any legally constituted public authority.
- o) “**Letter of Acceptance**” means the letter of formal acceptance, signed by the contractor. Procuring Entity, including any annexed memoranda comprising agreements between and signed by both Parties.
- p) “**Procuring Entity**” means the Entity named in the Special Conditions of Contract.

## **2. Interpretation**

21. If the context so requires it, singular means plural and vice versa.

### **22. Incoterms**

- a) Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms **specified in the SCC**.
- b) The terms EXW and CIP and other similar terms, when used, shall be governed by the rules prescribed in the current edition of Incoterms specified in the **SCC** and published by the International Chamber of Commerce in Paris, France.

## **3. Contract Documents**

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

- a) the Contract Agreement,
- b) the Letter of Acceptance,
- c) the General Conditions of Contract
- d) Special Conditions of Contract
- e) the Form of Tender,
- f) the Specifications and Schedules of the Drawings (if any), and
- g) the Schedules of Requirements, Price Schedule and any other documents forming part of the Contract.

## **4. Fraud and Corruption**

- 31 The supplier shall comply with anti-corruption laws and guidelines and the prevailing sanctions, policies and procedures as set forth in the Laws of Kenya.
- 32 The Supplier shall disclose any commissions, gratuity or fees that may have been paid or are to be paid to agents or any other person 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.

### **4.1 Entire Agreement**

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

### **4.2 Amendment**

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

#### **4.3 Non-waiver**

- a) Subject to GCC Sub-Clause 4.5(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
- b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

#### **4.4 Severability**

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

#### **5. Language**

- 5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Supplier and the Procuring Entity, shall be written in the **English Language**. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate and certified translation of the relevant passages in the **English Language**, in which case, for purposes of interpretation of the Contract, the English language is translation shall govern.
- 5.2 The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Supplier.

#### **6. Joint Venture, Consortium or Association**

- 6.1 If the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Procuring Entity for the fulfilment of the provisions of the Contract and shall designate one member of the joint venture, consortium, or association to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior written consent of the Procuring Entity.

#### **7. Eligibility**

- 7.1 The Supplier and its Subcontractors shall have the nationality of an eligible country. A Supplier or Sub-contractor shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.
- 7.2 All Goods and Related Services to be supplied under the Contract shall have their origin in Eligible Countries. For the purpose of this Clause, origin means the country where the goods have been grown, mined, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.
- 7.3 The Tenderer, if a Kenyan firm, must submit with its tender a valid tax compliance certificate

from the Kenya Revenue Authority.

## **8. Notices**

- 81 Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the **SCC**. The term “in writing” means communicated in written form with proof of receipt.
- 82 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

## **9. Governing Law**

- 9.1 The Contract shall be governed by and interpreted in accordance with the laws of Kenya.
- 9.2 Throughout the execution of the Contract, the Supplier shall comply with the import of goods and services prohibitions in Kenya:
- a) where, as a matter of law, compliance or official regulations, Kenya prohibits commercial relations with that country or any import of goods from that country or any payments to any country, person, or entity in 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 from that country or any payments to any country, person, or entity.

## **10. Settlement of Disputes**

- 10.1 The Procuring Entity and the Supplier shall make every effort to resolve amicably by direct negotiation any disagreement or dispute arising between them under or in connection with the Contract.
- 10.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Procuring Entity or the Supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under the Contract.

### **10.2 Arbitration proceedings shall be conducted as follows:**

- 10.2.1 Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 10.1 shall be finally settled by arbitration.
- 10.2.2 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 thirty days of the occurrence or discovery of the matter or issue giving rise to the dispute.
- 10.2.3 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.
- 10.2.4 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, 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 due payments.
- 10.2.5 Neither Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for the dispute given in its notice of a claim or dispute.
- 10.2.6 Arbitration may be commenced prior to or after delivery of the goods. The obligations of the Parties shall not be altered by reason of any arbitration being conducted during the progress of the delivery of goods.

1027 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.

### **103 Arbitration Proceedings**

1031 Arbitration proceedings with national suppliers will be conducted in accordance with the Arbitration Laws of Kenya. 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 or persons 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) Kenya National Chamber of Commerce
- ii) Chartered Institute of Arbitrators (Kenya Branch)
- iii) The Law Society of Kenya

1032 The institution written to first by the aggrieved party shall take precedence over all other institutions.

### **1033 Alternative Arbitration Proceedings**

Alternatively, the Parties may refer the matter to the Nairobi Centre for International Arbitration (NCIA) which offers a neutral venue for the conduct of national and international arbitration with commitment to providing institutional support to the arbitral process.

### **104 Arbitration with Foreign Suppliers**

1041 Arbitration with foreign suppliers shall be conducted in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration; by one or more arbitrators appointed in accordance with said arbitration rules. The place of arbitration shall be a location specified in the **SCC**; and the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 [Law and Language].

### **105 Alternative Arbitration Proceedings**

Alternatively, the Parties may refer the matter to the Nairobi Centre for International Arbitration (NCIA) which offers a neutral venue for the conduct of national and international arbitration with commitment to providing institutional support to the arbitral process.

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

1061 The award of such Arbitrator shall be final and binding upon the parties.

10.6.1 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.

### **107 Contract operations continue**

Notwithstanding any reference to arbitration herein,

- a) the parties shall continue to perform their respective obligations under the Contract unless

they otherwise agree; and

- b) the Procuring Entity shall pay the Supplier any monies due the Supplier.

## **11. Inspections and Audit by the Procuring Entity**

- 11.1 The Supplier shall keep, and shall cause its Subcontractors to keep, accurate and systematic accounts and records in respect of the Goods in such form and details as will clearly identify relevant time, changes and costs.
- 11.2 Pursuant to paragraph 2.2 of Instruction to Tenderers, the Supplier shall permit and shall cause its subcontractors to permit, the Procuring Entity and/or persons appointed by the Procuring Entity or by other statutory bodies of the Government 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 the Procuring Entity. The Supplier's and its Subcontractors' attention is drawn to Sub- Clause 3.1 which provides, inter alia, that acts intended to materially impede the exercise of the Procuring Entity's inspection and audit rights constitute a prohibited practice subject to contract termination, as well as to a determination of ineligibility.

## **12. Scope of Supply**

- 12.1 The Goods and Related Services to be supplied shall be as specified in the *Schedule of Requirements*.

## **13. Delivery and Documents**

- 13.1 Subject to GCC Sub-Clause 33.1, the delivery of the Goods and completion of the Related Services shall be in accordance with the List of Goods and Delivery Schedule specified in the Supply Requirements. The details of shipping and other documents to be furnished by the Supplier are specified in the **SCC**.

## **14. Supplier's Responsibilities**

- 14.1 The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GCC Clause 12, and the Delivery and Completion Schedule, as per GCC Clause 13.

## **15. Contract Price**

- 15.1 Prices charged by the Supplier for the Goods supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its Tender, with the exception of any price adjustments authorized in the **SCC**.
- 15.2 Where the contract price is different from the corrected tender price, in order to ensure the supplier is not paid less or more relative to the contract price (*which would be the tender price*), any partial payment valuation based on rates in the schedule of prices 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:  $(\text{corrected tender price} - \text{tender price}) / \text{tender price} \times 100$ .

## **16. Terms of Payment**

- 16.1 The Supplier shall request for payment by submitting invoice(s), delivery note(s) and any other relevant documents as specified in the SCC to the Procuring Entity.
- 16.2 Payments shall be made promptly by the Procuring Entity, but not later than thirty (30) days after submission of an invoice by the Supplier, and after the Procuring Entity has accepted it.
- 16.3 Where a Procuring Entity rejects Goods and Related Services, in part or wholly, the procuring Entity shall promptly inform the Supplier to collect, replace or rectify as appropriate and give reasons for rejection. The Supplier shall submit a fresh invoice, delivery note and any other relevant documents as specified in the SCC.
- 16.4 The currencies in which payments shall be made to the Supplier under this Contract shall be those in which the Tender price is expressed.
- 16.5 In the event that the Procuring Entity fails to pay the Supplier any payment by its due date or within the period set forth in the **SCC**, the Procuring Entity may pay to the Supplier interest on the amount of such delayed payment at the rate shown in the **SCC**, for the period of delay until payment has been made in full, whether before or after judgment or arbitration award.

## **17. Taxes and Duties**

- 17.1 The Supplier shall be entirely responsible for all taxes, duties, license fees, and other such levies incurred to deliver the Goods and Related Services to the Procuring Entity at the final delivery point.
- 17.3 If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in Kenya, the Supplier shall inform the Procuring Entity and the Procuring Entity shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

## **18. Performance Security**

- 18.1 If required as specified in the SCC, the Supplier shall, within twenty-eight (28) days of the notification of contract award, provide a performance security for the performance of the Contract in the amount specified in the **SCC**.
- 18.2 The proceeds of the Performance Security shall be payable to the Procuring Entity as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.
- 18.3 As specified in **the SCC**, the Performance Security, if required, shall be denominated in the currency(ies) of the Contract, or in a freely convertible currency acceptable to the Procuring Entity; and shall be in one of the formats stipulated by the Procuring Entity in **the SCC**, or in another format acceptable to the Procuring Entity.
- 18.4 The Performance Security shall be discharged by the Procuring Entity and returned to the Supplier not later than thirty (30) days following the date of Completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the **SCC**.

## **19. Copyright**

- 19.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Procuring Entity by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to the Procuring Entity directly or through the Supplier by any

third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

## **20. Confidential Information**

- 20.1 The Procuring Entity and the Supplier shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Supplier may furnish to its Sub-Supplier such documents, data, and other information it receives from the Procuring Entity to the extent required for the Sub Supplier to perform its work under the Contract, in which event the Supplier shall obtain from such Sub Supplier undertaking of confidentiality similar to that imposed on the Supplier under GCC Clause 20.
- 20.2 The Procuring Entity shall not use such documents, data, and other information received from the Supplier for any purposes unrelated to the contract. Similarly, the Supplier shall not use such documents, data, and other information received from the Procuring Entity for any purpose other than the performance of the Contract.
- 20.3 The obligation of a party under GCC Sub-Clauses 20.1 and 20.2 above, however, shall not apply to information that:
- a) the Procuring Entity or Supplier need to share with other arms of Government or other bodies participating in the financing of the Contract; such parties shall be disclosed in **the SCC**;
  - b) now or hereafter enters the public domain through no fault of that party;
  - c) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
  - d) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
- 20.4 The above provisions of GCC Clause 20 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.
- 20.5 The provisions of GCC Clause 20 shall survive completion or termination, for whatever reason, of the Contract.

## **21. Subcontracting**

- 21.1 The Supplier shall notify the Procuring Entity in writing of all subcontracts awarded under the Contract if not already specified in the Tender. Such notification, in the original Tender or later shall not relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.
- 21.2 Subcontracts shall comply with the provisions of GCC Clauses 3 and 7.

## **22. Specifications and Standards**

- 22.1 Technical Specifications and Drawings
- a) The Goods and Related Services supplied under this Contract shall conform to the technical specifications and standards mentioned in Section VI, Schedule of Requirements and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the Goods' country of origin.
  - b) The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Procuring Entity, by giving a notice of such disclaimer to the Procuring Entity.

- c) Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Schedule of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Procuring Entity and shall be treated in accordance with GCC Clause 33.

## **23. Packing and Documents**

- 23.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 23.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified **in the SCC**, and in any other instructions ordered by the Procuring Entity.

## **24. Insurance**

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

## **25. Transportation and Incidental Services**

- 25.1 Unless otherwise specified in the **SCC**, responsibility for arranging transportation of the Goods shall be in accordance with the specified Incoterms.
- 25.2 The Supplier may be required to provide any or all of the following services, including additional services, if any, specified **in SCC**:
- a) performance or supervision of on-site assembly and/or start-up of the supplied Goods;
  - b) furnishing of tools required for assembly and/or maintenance of the supplied Goods;
  - c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied Goods;
  - d) performance or supervision or maintenance and/or repair of the supplied Goods, for a period of time agreed by the parties, provided that this service shall not relieve the Supplier of any warranty obligations under this Contract; and
  - e) training of the Procuring Entity's personnel, at the Supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied Goods.
- 25.3 Prices charged by the Supplier for incidental services, if not included in the Contract Price for the Goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services

## **26. Inspections and Tests**

- 26.1 The Supplier shall at its own expense and at no cost to the Procuring Entity carry out all such tests and/or inspections of the Goods and Related Services as are specified in the **SCC**.
- 26.2 The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the Goods' final destination, or in another place in Kenya as specified in the **SCC**. Subject to GCC Sub-Clause 26.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to

drawings and production data, shall be furnished to the inspectors at no charge to the Procuring Entity.

- 263 The Procuring Entity or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 26.2, provided that the Procuring Entity bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all travelling and board and lodging expenses.
- 264 Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Procuring Entity. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Procuring Entity or its designated representative to attend the test and/or inspection.
- 265 The Procuring Entity may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.
- 266 The Supplier shall provide the Procuring Entity with a report of the results of any such test and/or inspection.
- 267 The Procuring Entity may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Procuring Entity, and shall repeat the test and/or inspection, at no cost to the Procuring Entity, upon giving a notice pursuant to GCC Sub- Clause 26.4.
- 268 The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Procuring Entity or its representative, nor the issue of any report pursuant to GCC Sub-Clause 26.6, shall release the Supplier from any warranties or other obligations under the Contract.

## **27. Liquidated Damages**

- 27.1 Except as provided under GCC Clause 32, if the Supplier fails to deliver any or all of the Goods by the Date(s) of delivery or perform the Related Services within the period specified in the Contract, the Procuring Entity may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the SCC of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those SCC. Once the maximum is reached, the Procuring Entity may terminate the Contract pursuant to GCC Clause 35.

## **28. Warranty**

- 28.1 The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.
- 28.2 Subject to GCC Sub-Clause 22.1(b), the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.

- 283 Unless otherwise specified in the **SCC**, the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the **SCC**, or for eighteen (18) months after the date of shipment from the port or place of loading in the country of origin, whichever period concludes earlier.
- 284 The Procuring Entity shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Procuring Entity shall afford all reasonable opportunity for the Supplier to inspect such defects.
- 285 Upon receipt of such notice, the Supplier shall, within the period specified in the **SCC**, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Procuring Entity.
- 286 If having been notified, the Supplier fails to remedy the defect within the period specified in the **SCC**, the Procuring Entity may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Procuring Entity may have against the Supplier under the Contract.

## **29. Patent Indemnity**

- a) The Supplier shall, subject to the Procuring Entity's compliance with GCC Sub-Clause 29.2, indemnify and hold harmless the Procuring Entity and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Procuring Entity may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of: the installation of the Goods by the Supplier or the use of the Goods in the country where the Site is located; and
- b) the sale in any country of the products produced by the Goods.

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

- 292 If any proceedings are brought or any claim is made against the Procuring Entity arising out of the matters referred to in GCC Sub-Clause 29.1, the Procuring Entity shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Procuring Entity's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.
- 293 If the Supplier fails to notify the Procuring Entity within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Procuring Entity shall be free to conduct the same on its own behalf.
- 294 The Procuring Entity shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.
- 295 The Procuring Entity shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Procuring Entity.

### **30. Limitation of Liability**

- 30.1 Except in cases of criminal negligence or willful misconduct,
- a) the Supplier shall not be liable to the Procuring Entity, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Procuring Entity, and
  - b) the aggregate liability of the Supplier to the Procuring Entity, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the supplier to indemnify the Procuring Entity with respect to patent infringement.

### **31. Change in Laws and Regulations**

- 31.1 Unless otherwise specified in the Contract, if after the date of 30 days prior to date of Tender submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in Kenya (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Clause 15.

### **32. Force Majeure**

- 32.1 The Supplier shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 32.2 For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Procuring Entity in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 32.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Procuring Entity in writing of such condition and the cause thereof. Unless otherwise directed by the Procuring Entity in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

### **33. Change Orders and Contract Amendments**

- 33.1 The Procuring Entity may at any time order the Supplier through notice in accordance GCC Clause 8, to make changes within the general scope of the Contract in any one or more of the following:
- a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Procuring Entity;
  - b) the method of shipment or packing;
  - c) the place of delivery; and
  - d) the Related Services to be provided by the Supplier.

- 332 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier's receipt of the Procuring Entity's change order.
- 333 Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.
- 334 **Value Engineering:** The Supplier 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) 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.
- 335 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 life cycle costs to the Procuring Entity; or
  - c) improves the quality, efficiency or sustainability of the Goods; or
  - d) yields any other benefits to the Procuring Entity, without compromising the necessary functions of the Facilities.
- 336 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 Supplier 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 life cycle costs due to any benefit described in  
(a) to (d) above, the amount to be paid to the Supplier shall be the full increase in the Contract Price.
- 337 Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

#### **34. Extensions of Time**

- 34.1 If at any time during performance of the Contract, the Supplier or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 13, the Supplier shall promptly notify the Procuring Entity in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the Procuring Entity shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.
- 34.2 Except in case of Force Majeure, as provided under GCC Clause 32, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 26, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 34.1.

## **35. Termination**

### **35.1 Termination for Default**

- a) The Procuring Entity, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate the Contract in whole or in part:
  - i) if the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Procuring Entity pursuant to GCC Clause 34;
  - ii) if the Supplier fails to perform any other obligation under the Contract; or
  - iii) if the Supplier, in the judgment of the Procuring Entity has engaged in Fraud and Corruption, as defined in paragraph 2.2 a of the Appendix to the GCC, in competing for or in executing the Contract.
- b) In the event the Procuring Entity terminates the Contract in whole or in part, pursuant to GCC Clause 35.1(a), the Procuring Entity may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Procuring Entity for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

### **35.2 Termination for Insolvency.**

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

### **35.2 Termination for Convenience.**

- a) The Procuring Entity, by notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Procuring Entity's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.
- b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of notice of termination shall be accepted by the Procuring Entity at the Contract terms and prices. For the remaining Goods, the Procuring Entity may elect:
  - i) to have any portion completed and delivered at the Contract terms and prices; and/or
  - ii) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

## **36. Assignment**

- 36.1 Neither the Procuring Entity nor the Supplier shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

## **37. Export Restriction**

- 37.1 Notwithstanding any obligation under the Contract to complete all export formalities, any export restrictions attributable to the Procuring Entity, to Kenya, or to the use of the products/goods, systems or services to be supplied, which arise from trade regulations from a country supplying those products/goods, systems or services, and which substantially impede the Supplier from meeting its obligations under the Contract, shall release the Supplier from the obligation to provide deliveries or services, always provided, however, that the Supplier can demonstrate to the satisfaction of the Procuring Entity that it has completed all formalities in a timely manner, including applying for permits, authorizations

and licenses necessary for the export of the products/goods, systems or services under the terms of the Contract. Termination of the Contract on this basis shall be for the Procuring Entity's convenience pursuant to Sub-Clause 35.3.

## SECTION VII - SPECIAL CONDITIONS OF CONTRACT

The following Special Conditions of Contract (SCC) shall supplement and/or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

<b>GCC clause reference</b>	<b>SCC reference</b>
GCC 1.1 (h)	The Procuring Entity is: <b>National Oil Corporation of Kenya</b>
GCC 28.3	The Final Destination is:  <b>National Oil Corporation – Kawi Complex-Block D, Red Cross Lane, off Red Cross Road, South C, Nairobi, Kenya</b>
GCC 4.2 (a)	The meaning of the trade terms shall be as prescribed by the Incoterms 2020, DDP
GCC 4.2 (b)	The version edition of Incoterms shall be INCOTERM 2020
GCC 8.1	For notices, the Procuring Entity's address shall be:  <b>CHIEF EXECUTIVE OFFICER National Oil Corporation – Kawi Complex-Block D, Red Cross Lane, off Red Cross Road, South C, P.O Box 58567 – 00200, NAIROBI</b>
GCC 10.4.2	The place of Arbitration shall be Nairobi, Kenya Language of arbitration shall be <b>English</b>
GCC 13.1	Details of shipping and other documents to be furnished by the Supplier are; a. Delivery note b. Invoice c. Packing List d. Warranty e. Manufacturer Authorization Form
GCC 15.1	The prices charged for the goods supplied and related services performed shall NOT be adjustable save for an increase/decrease in the quantities required
GCC 16.1	<b>Payment for Goods</b>  Payment shall be made within a credit period of sixty (60) days after supply and delivery, inspection, testing (where applicable) and acceptance  All prices are inclusive of ALL applicable taxes  <b>Advance Payment</b> No advance is allowed
GCC 18.1	<b>Performance security</b> shall be 1% of the Contract Price in the Form of a Bank Guarantee or Irrevocable Letter of Credit drawn by a bank licensed by the Central Bank of Kenya and operating in Kenya
GCC 18.4	Discharge of the performance security shall take place within 30 days after inspection and acceptance of the goods
GCC 23.2	The packing, labelling and documentation within and outside the packages shall be:  <b>Description of items: _____ No. of items: _____ National Oil Corporation – Ground Floor Kawi Complex – Block D, Red Cross Lane, off Red Cross Road P.O Box 58567 – 00200, Nairobi</b>

GCC 24.1	Incoterm DDP shall apply
GCC 25.1	Incoterm DDP shall apply
GCC 25.2	Not applicable
GCC 26.1	Inspections of the equipment shall be physical confirmation of the goods receipt against the specifications set in the contract
GCC 28.3	The personal protective equipment shall have a warranty period of one (1) year
GCC 28.5	Period for repair or replacement shall be one (1) year.

## **SECTION VIII - CONTRACT FORMS**

This Section contains forms which, once completed, will form part of the Contract. The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful tenderer after contract award.

## FORM No 1: 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 Tender Information Form on the format below.

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### **FORMAT**

1. For the attention of Tenderer's Authorized Representative

- I) Name: \_\_\_\_\_ *[insert Authorized Representative's name]*
- ii) Address: \_\_\_\_\_ *[insert Authorized Representative's Address]*
- iii) Telephone: \_\_\_\_\_ *[insert Authorized Representative's telephone/fax numbers]*
- iv) 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.]*

2. Date of transmission: \_\_\_\_\_ *[email]* on *[date]* \_\_\_\_\_ (local time)

This Notification is sent by \_\_\_\_\_ *(Name and designation)*

3. Notification of Intention to Award

- I) Employer: \_\_\_\_\_ *[insert the name of the Employer]*
- ii) Project: \_\_\_\_\_ *[insert name of project]*
- iii) Contract title: \_\_\_\_\_ *[insert the name of the contract]*
- iv) Country: \_\_\_\_\_ *[insert country where ITT is issued]*
- v) 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:

4. Request a debriefing in relation to the evaluation of your tender

Submit a Procurement-related Complaint in relation to the decision to award the contract.

a) The successful tenderer

- i) Name of successful Tender \_\_\_\_\_
- ii) Address of the successful Tender \_\_\_\_\_
- iii) Contract price of the successful Tender Kenya Shillings \_\_\_\_\_ (in words \_\_\_\_\_)

b) Other Tenderers

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 read out. For Tenders not evaluated, give one main reason the Tender was unsuccessful.

S/No	Name of Tender	Tender Price as read out	Tender's evaluated price (Note a)	One Reason Why Not Evaluated
1				
2				
3				
4				
5				

(Note a) State NE if not evaluated

5. How to request a debriefing

- a) DEADLINE: The deadline to request a debriefing expires at midnight on *[insert date]* (local time).
- b) 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 (5) Business Days of receipt of this Notification of Intention to Award.
- c) Provide the contract name, reference number, name of the Tenderer, contact details; and address the request for debriefing as follows:
  - I) Attention: \_\_\_\_\_ *[insert full name of person, if applicable]*
  - ii) Title/position: \_\_\_\_\_ *[insert title/position]*
  - ii) Agency: \_\_\_\_\_ *[insert name of Employer]*
  - iii) Email address: \_\_\_\_\_ *[insert email address]*
- d) If your request for a debriefing is received within the 3 Days deadline, we will provide the debriefing within five (3) 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 (3) 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.
- e) 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.
- f) 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) Days from the date of publication of the Contract Award Notice.

6. How to make a complaint

- a) Period: Procurement-related Complaint challenging the decision to award shall be submitted by midnight, *[insert date]* (local time).
- b) Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-related Complaint as follows:
  - I) Attention: \_\_\_\_\_ *[insert full name of person, if applicable]*
  - ii) Title/position: \_\_\_\_\_ *[insert title/position]*
  - iii) Agency: \_\_\_\_\_ *[insert name of Employer]*
  - iv) Email address: \_\_\_\_\_ *[insert email address]*

- c) 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.
- d) Further information: For more information refer to the Public Procurement and Disposals Act 2015 and its Regulations available from the Website [www.ppra.go.ke](http://www.ppra.go.ke) or email [complaints@ppra.go.ke](mailto:complaints@ppra.go.ke).

You should read these documents before preparing and submitting your complaint.

e) There are four essential requirements:

- i) 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.
- ii) The complaint can only challenge the decision to award the contract.
- iii) You must submit the complaint within the period stated above.
- iv) You must include, in your complaint, all of the information required to support your complaint.

**7. Standstill Period**

- i) DEADLINE: The Standstill Period is due to end at midnight on [*insert date*] (local time).
- ii) The Standstill Period lasts ten (14) Days after the date of transmission of this Notification of Intention to Award.
- iii) The Standstill Period may be extended as stated in paragraph Section 5 (d) above.

If you have any questions regarding this Notification please do not hesitate to contact us.

On behalf of the Employer:

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

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

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

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

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

**FORM NO 2: NOTIFICATION OF AWARD - LETTER OF ACCEPTANCE**

*[letterhead paper of the Employer]*

\_\_\_\_\_ *[date]*

To \_\_\_\_\_ *[name and address of the Contractor]*

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 Contract Data]* for the Accepted Contract Amount \_\_\_\_\_ *[amount in numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers, is hereby accepted by \_\_\_\_\_ *(name of Employer)*.

You are requested to furnish the Performance Security within 30 days in accordance with the Conditions of Contract, using, for that purpose, one of the Performance Security Forms included in Section VIII, Contract Forms, of the Tender Document.

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

Name and Title of Signatory: \_\_\_\_\_

Name of Employer: \_\_\_\_\_

Attachment: *Contract Agreement*: \_\_\_\_\_

## NOTIFICATION OF AWARD - LETTER OF ACCEPTANCE

*[use letterhead paper of the Procuring Entity]*

\_\_\_\_\_ *[date]*

To: \_\_\_\_\_ *[name and address of the Supplier]*

Subject: \_\_\_\_\_ ***Notification of Award Contract No. . . . .***

This is to notify you that your Tender dated \_\_\_\_\_ *[insert date]* for execution of the \_\_\_\_\_ *[insert name of the contract and identification number, as given in the SCC]* for the Accepted Contract Amount of \_\_\_\_\_ *[insert amount in numbers and words and name of currency]*, as corrected and modified in accordance with the Instructions to tenderers is hereby accepted by our Agency.

You are requested to furnish the Performance Security within 30 days in accordance with the Conditions of Contract, using for that purpose the of the Performance Security Form included in Section X, Contract Forms, of the Tendering document.

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

Name and Title of Signatory: \_\_\_\_\_

Name of Agency: \_\_\_\_\_

**FORM NO. 4 - PERFORMANCE SECURITY [Option 1 - Unconditional Demand Bank Guarantee]**

*[Guarantor letterhead]*

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

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

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

1. We have been informed that \_\_\_\_\_ (hereinafter called "the Contractor") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with *(name of Employer)* \_\_\_\_\_ (the Employer as the Beneficiary), for the execution of \_\_\_\_\_ (hereinafter 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 Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ *(in words)*,<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 ....., 2.....<sup>2</sup>, and any demand for payment under it must be received by us at the 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."

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*[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. 5 - 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*

*Employer]* **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 Oblige (hereinafter called “the Employer”) 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 Employer 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 hereinafter 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 Employer to be, in default under the Contract, the Employer having performed the Employer'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 Employer for completing the Contract in accordance with its terms and conditions, and upon determination by the Employer and the Surety of the lowest responsive Tenderers, arrange for a Contract between such Tenderer, and Employer 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 Employer to Contractor under the Contract, less the amount properly paid by Employer to Contractor; or
  - 3) pay the Employer the amount required by Employer 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 Employer named herein or the heirs, executors, administrators, successors, and assigns of the Employer.
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  
SIGNED ON\_\_\_\_\_on behalf of

By\_\_\_\_\_in the capacity

of In the presence of

**FORM NO. 6 - ADVANCE PAYMENT SECURITY [Demand Bank Guarantee]**

*[Guarantor letterhead]*

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

*Employer]* **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 \_\_\_\_\_ (hereinafter called "the Contractor") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_ (hereinafter called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum \_\_\_\_\_ (in words) is to be made against an advance payment guarantee.
3. At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ (in words \_\_\_\_\_)<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 goods; 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 Contractor 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 Contractor 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 of the advance payment as specified in the Contract.*

*<sup>2</sup>Insert the expected expiration date of the Time for Completion. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer 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.*