



NATIONAL OIL CORPORATION OF KENYA

TENDER

**FOR SUPPLY OF BRANDED CARTONS FOR
LUBRICANTS PACKAGING**

NOCK/PRC/03(1129)

**NATIONAL OIL CORPORATION OF KENYA
AON MINET HOUSE, 7TH FLOOR
MAMLAKA ROAD, OFF NYERERE ROAD
P.O. BOX 58567 – 00200
NAIROBI**

**Email: tenders@nockkenya.co.ke
CC: procurement@nockkenya.co.ke**

May 2016

Tender Closing Date & Time: 3rd June 2016 at 1100hrs (East Africa Time)

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1 SECTION I – INVITATION TO TENDER

Date: May 2016

Tender Ref No. NOCK/PRC/03(1129)

Tender name: TENDER FOR SUPPLY OF BRANDED CARTONS FOR LUBRICANTS PACKAGING

- 1.1** National Oil Corporation of Kenya (**National Oil**) invites sealed tenders from interested and eligible candidates for Supply of Branded Cartons for Lubricants Packaging for a period of two (2) years framework contract
- 1.2** Interested tenderers may view/obtain/download tender documents at www.nationaloil.co.ke or obtain further information from and inspect the tender documents at :

Procurement Department

National Oil Corporation of Kenya

AON Minet House, Mamlaka Road off Nyerere Road

P.O Box Number 58567 – 00200,

NAIROBI

Tel: +254-20-6952000, Fax: +254-20-6952400

Email: tenders@nockkenya.co.ke;

CC: procurement@nockkenya.co.ke

during normal working hours.

- 1.3** The tender document downloaded from the website is free of charge The candidates who download the tender documents **must register their details with the National Oil Procurement Department via email** to the email addresses given above in order to receive any clarifications and/or addenda. Printed tender documents collected in hard copy attracts a non- refundable fee of Kenya Shillings one thousand only (Kshs 1,000) which is payable before the tender closing date and time, in form of cash deposits at the National Oil Bank Accounts as given below.

An official National Oil's receipt of payment of the Kshs 1,000 will be issued at the National Oil's Cashier's Office (upon verification of the deposit slip with the bank) on 7th Floor AON Minet House, Mamlaka Road off Nyerere Road, Nairobi.

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

- 1.4** Prices quoted should be net inclusive of all taxes and delivery costs, must be expressed in Kenya shillings and shall remain valid for a period of one hundred and twenty (120) days from the closing date of the tender.
- 1.5** As a mandatory, the tenderer is expected to submit the below documentations which will be used for preliminary evaluation (Clause 2.28) (non submission of the documents below will lead to the tenderer being disqualified from the evaluation process):
- i) Copy of Certificate of Incorporation or Registration.
 - ii) Copy of **valid** tax compliance certificate.
 - iii) Tender Security of Kenya Shillings twenty thousand (Kshs 20,000) in form of a bank guarantee or from an insurance duly recognized by the Public Procurement Oversight Authority (PPOA).
 - iv) Duly filled and signed confidential business questionnaire (Section VII).
 - v) Duly filled and signed Bidder's Declaration and Integrity Pact (Section VII).
- 1.6** Completed tender documents are to be enclosed in plain sealed envelopes, clearly labeled "**Tender for SUPPLY OF BRANDED CARTONS FOR LUBRICANTS PACKAGING Ref No. NOCK/PRC/03(1129)**" with the instructions "**Do not open before 3rd June 2016 at 1100hrs (East Africa Time)**" and be deposited in the tender box provided at

**5th Floor, AON Minet House
Mamlaka Road, off Nyerere Road
P.O Box 58567 – 00200
Nairobi**

addressed to:

**Chief Executive Officer
National Oil Corporation of Kenya
AON Minet House, 7th Floor
Mamlaka Road, off Nyerere Road
P.O Box 58567 – 00200
Nairobi**

to be received on or before **3rd June 2016 at 1100hrs (East Africa Time)**. Late tenders will not be accepted no matter the circumstances.

- 1.7** Tenders will be opened immediately thereafter in the presence of the tenderers and/or their representatives who choose to attend the opening at:

**The Boardroom
National Oil Corporation of Kenya
AON Minet House, 5th Floor
Mamlaka Road, off Nyerere Road
P.O Box 58567 – 00200
Nairobi**

FOR: Chief Executive Officer

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2.1 Eligible tenderers

- 2.1.1.** This Invitation to Tender is to interested tenderers eligible as described in the instructions to tenderers. Successful tenderers shall provide the products for the stipulated duration from the date of commencement (hereinafter referred to as the term) specified in the tender documents.
- 2.1.2.** The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender unless where specially allowed under Public Procurement and Asset Disposal Act, 2015.
- 2.1.3.** Tenderers shall provide the qualification information statement that the tenderer (including all members, of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the products under this Invitation for tenders.
- 2.1.4.** Tenderers involved in corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

2.2 Cost of tendering

- 2.2.1.** The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the procuring entity, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 2.2.2.** This tender document is not chargeable.

2.3 Contents of tender documents

- 2.3.1.** The tender document comprises of the documents listed below and addenda issued in accordance with clause 2.5 of these instructions to tenders.
- i) Instructions to tenderers
 - ii) General Conditions of Contract
 - iii) Special Conditions of Contract
 - iv) Schedule of Requirements
 - v) Details of service
 - vi) Form of tender
 - vii) Price schedules
 - viii) Contract form
 - ix) Confidential business questionnaire form
 - x) Tender security form
 - xi) Declaration form – statement that the tenderer will not partake in any corrupt, fraudulent or unethical activities or cause undue influence to the outcome of the tender.
- 2.3.2.** The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tender documents. Failure to furnish all information required by the tender documents or to

submit a tender not substantially responsive to the tender documents in every respect will be at the tenderers risk and may result in the rejection of its tender.

2.4 Clarification of Documents

- 2.4.1.** A prospective candidate making inquiries of the tender document may notify the Procuring entity in writing or by post, fax or email at the entity's address indicated in the Invitation for tenders. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives no 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 who have received the tender documents.
- 2.4.2.** The procuring entity shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.

2.5 Amendment of documents

- 2.5.1.** At any time prior to the deadline for submission of tenders, the Procuring entity, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by issuing an addendum.
- 2.5.2.** All prospective tenderers who have obtained the tender documents will be notified of the amendment by post, fax or email and such amendment will be binding on them.
- 2.5.3.** In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, the Procuring entity, at its discretion, may extend the deadline for the submission of tenders.

2.6 Language of tender

The tender prepared by the tenderer, 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. Any printed literature furnished by the tenderer may be written in another language provided they are accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the tender, the English translation shall govern.

2.7 Documents Comprising the Tender

The tender prepared by the tenderer shall comprise the following components:

- a) A Tender Form and a Price Schedule completed in accordance with Section VII – Standard forms.
- b) Documentary evidence established in accordance with clause 2.11 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted.
- c) Tender security furnished in accordance with clause 2.12.
- d) Confidential business questionnaire.

2.8 Form of Tender

The tenderers shall complete the Form of Tender and the appropriate Price Schedule furnished in the tender documents, indicating the products to be offered.

2.9 Tender Prices

2.9.1. The tenderer shall indicate on the Price schedule the unit prices where applicable and total tender prices of the products it proposes to provide under the contract.

2.9.2. Prices indicated on the Price Schedule shall be the cost of the products quoted including if applicable, all customs duties and VAT and other taxes payable.

2.9.3. Prices quoted by the tenderer shall remain fixed during the term of the contract unless otherwise agreed by the parties. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to clause 2.22.

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

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

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

2.10 Tender currencies

2.10.1. Prices shall be quoted in Kenya Shillings unless otherwise specified in the appendix to in Instructions to Tenderers.

2.11 Tenderers eligibility and qualifications

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

2.11.2. The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall establish to the Procuring entity's satisfaction that the tenderer has the financial and technical capability necessary to perform the contract.

2.12 Tender security

2.12.1. The tenderer shall furnish, as part of its tender, a tender security for the amount and form specified in the Invitation to tender.

2.12.2. The tender security shall be not exceed two percent (2%) of the total contract price. It is to be within the range of (0.5% to 2%) of the total contract price.

2.12.3. The tender security is required to protect the Procuring entity against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to clause 2.12.7.

- 2.12.4.** The tender security shall be denominated in Kenya Shillings or in another freely convertible currency and shall be in the form of a bank guarantee.
- 2.12.5.** Any tender not secured in accordance with clause 2.12.1 and 2.12.3 will be rejected by the Procuring entity as non responsive, pursuant to clause 2.20.
- 2.12.6.** Unsuccessful tenderer's security will be discharged or returned as promptly as possible but not later than thirty (30) days after the expiration of the period of tender validity prescribed by the procuring entity.
- 2.12.7.** The successful tenderer's tender security will be discharged upon the tenderer signing the contract/issued with a Purchase Order, pursuant to clause 2.26.
- 2.12.8.** The tender security may be forfeited:
- a) If a tenderer **withdraws** its tender **during** the period of tender validity specified by the procuring entity on the Tender Form; or
 - b) In the case of a successful tenderer, *if* the tenderer fails to sign the contract/accept the Purchase Order in accordance with clause 2.26; or
 - c) If the tenderer rejects, correction of an error in the tender.

2.13 Validity of Tenders

- 2.13.1.** Tenders shall remain valid for one hundred and twenty (120) days or as specified in the invitation to tender after date of tender opening prescribed by the Procuring entity, pursuant to clause 2.18. A tender valid for a shorter period shall be rejected by the Procuring entity as nonresponsive.
- 2.13.2.** In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under clause 2.12 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

2.14 Format and Signing of Tender

- 2.14.1.** The tenderer shall prepare two copies of the tender, clearly / marking each "ORIGINAL TENDER" and "COPY OF TENDER," as appropriate. In the event of any discrepancy between them, the original shall govern.
- 2.14.2.** The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. All pages of the tender, except for unamended printed literature, shall be initialed by the person or persons signing the tender.
- 2.14.3.** The tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

2.15 Sealing and marking of tenders

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

- a) be addressed to the Procuring entity at the address given in the Invitation to Tender; or
- b) bear, tender number and name in the invitation to tender and the words: “**DO NOT OPEN BEFORE 3RD JUNE 2016 AT 1100HRS (EAST AFRICA TIME)**”.

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

2.15.3. If the outer and inner envelopes are not sealed and marked as required by clauses 2.15.1 and 2.15.2, the Procuring entity will assume no responsibility for the tender’s misplacement or premature opening.

2.16 Deadline for submission of tenders

2.16.1. Tenders must be received by the Procuring entity at the address specified in the Invitation to Tender, **no later than 3rd June 2016 at 1100hrs (East Africa Time)**.

2.16.2. The procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with clause 2.5, in which case all rights and obligations of the procuring entity and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

2.16.3. Bulky tenders which will not fit in the tender box shall be received by the procuring entity as given in the appendix to instructions to tenderers.

2.17 Modification and withdrawal of tenders

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

2.17.2. The tenderer’s modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of clause 2.15. A withdrawal notice may also be sent by cable, but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.

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

2.17.4. No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the tenderer’s forfeiture of its tender security, pursuant to clause 2.12.8.

- 2.17.5. The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 2.17.6. The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

2.18 Opening of tenders

- 2.18.1. The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, at the **Meeting Room, National Oil Corporation of Kenya, AON Minet House, 5th Floor, Mamlaka Road, off Nyerere Road, P.O Box 58567 – 00200, Nairobi on 3rd June 2016 at 1100hrs (East Africa Time)**. The tenderers' representatives who are present shall sign a register evidencing their attendance.
- 2.18.2. The tenderers' names, tender modifications or withdrawals, tender prices, discounts, and the presence or absence of requisite tender security and such other details as the Procuring Entity, at its discretion, may consider appropriate, will be announced at the opening.
- 2.18.3. The procuring entity will prepare minutes of the tender opening which will be submitted to the tenderers that signed the tender opening register and will have made the request.

2.19 Clarification of tenders

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

Comparison or contract award decisions may result in the rejection of the tenderers' tender.

2.20 Preliminary examination and responsiveness

- 2.20.1. The Procuring entity will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required securities have been furnished whether the documents have been properly signed, and whether the tenders are generally in order.
- 2.20.2. Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security may be forfeited. If there is a discrepancy between words and figures, the amount in words will prevail.

- 2.20.3.** The Procuring entity may waive any minor informality or nonconformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any tenderer.
- 2.20.4.** Prior to the detailed evaluation, pursuant to clause 2.22, the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these clauses, a substantially responsive tender is one which conforms to all the terms and conditions of the tender documents without material deviations. The Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.
- 2.20.5.** If a tender is not substantially responsive, it will be rejected by the Procuring entity and may not subsequently be made responsive by the tenderer by correction of the nonconformity.

2.21 Conversion to a single currency

- 2.21.1.** Where other currencies are used, the procuring entity will convert those currencies to Kenya shillings using the selling exchange rate on the date of tender closing provided by the central bank of Kenya.

2.22 Evaluation and comparison of tenders

- 2.22.1.** The procuring entity will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to clause 2.20.
- 2.22.2.** The comparison shall be of the price including all costs as well as duties and taxes payable on all the materials to be used in the provision of the products.
- 2.22.3.** The Procuring entity's evaluation of a tender will take into account, in addition to the tender price, the following factors, in the manner and to the extent indicated in clause 2.22.4 and in the technical specifications:
- a) Operational/installation plan proposed in the tender;
 - b) deviations in payment schedule from that specified in the Special Conditions of Contract;
- 2.22.4.** Pursuant to clause 2.22.3 the following evaluation methods will be applied:

a) Operational Plan.

The Procuring entity requires that the products under the Invitation for Tenders shall be provided at the time specified in the Schedule of Requirements. Tenderers offering to perform longer than the Procuring entity's required delivery time will be treated as non-responsive and rejected.

b) Deviation in payment schedule.

Tenderers shall state their tender price for the payment on a schedule outlined in the special conditions of contract. Tenders will be evaluated on the basis of this base price. Tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in tender price they wish to offer for such alternative

payment schedule. The Procuring entity may consider the alternative payment schedule offered by the selected tenderer.

2.22.5. The tender evaluation committee shall evaluate the tender within a maximum of 30 days from the date of opening the tender.

2.22.6. To qualify for contract awards, the tenderer shall have the following:-

- a) Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.
- b) Legal capacity to enter into a contract for procurement
- c) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing
- d) Shall not be debarred from participating in public procurement.

2.23 Contacting the procuring entity

2.23.1. Subject to clause 2.19, no tenderer shall contact the procuring entity on any matter relating to its tender, from the time of the tender opening to the time the contract is awarded.

2.23.2. Any effort by a tenderer to influence the procuring entity in its decisions on tender evaluation tender comparison or contract award may result in the rejection of the tenderers tender.

2.24 Award of contract

2.24.1. Post qualification

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

2.24.1.2. The determination will take into account the tenderer's financial and technical capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to clause 2.11.2, as well as such other information as the Procuring entity deems necessary and appropriate.

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

2.24.2. Award Criteria

2.24.2.1. Subject to clause 2.26 the Procuring entity will award the contract to the successful tenderer whose tender has been determined to be substantially responsive and has been determined to be the best responsive evaluated tender as per the evaluation criteria and pricing, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

2.24.2.2. The procuring entity reserves the right to accept or reject any tender and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby

incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the procuring entity's action. If the procuring entity determines that none of the tenderers is responsive; the procuring entity shall notify each tenderer who submitted a tender.

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

2.25 Notification of award

- 2.25.1. Prior to the expiration of the period of tender validity, the Procuring entity will notify the successful tenderer in writing that its tender has been accepted.
- 2.25.2. The notification of award will signify the formation of the Contract subject to the signing of the contract between the tenderer and the procuring entity pursuant to clause 2.26. Simultaneously the other tenderers shall be notified that their tenders have not been successful.
- 2.25.3. Upon the successful tenderer's accepting the award, the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to clause 2.12.6.

2.26 Signing of contract/Acceptance of Purchase Order

- 2.26.1. At the same time as the Procuring entity notifies the successful tenderer that its tender has been accepted, the Procuring entity will simultaneously inform the other tenderers that their tenders have not been successful.
- 2.26.2. Within fourteen (14) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Procuring entity.
- 2.26.3. The parties to the contract shall have it signed within thirty (30) days from the date of notification of contract award unless there is an administrative review request.
- 2.26.4. Failure of the successful tenderer to comply with the requirements of this clause or clause 2.27 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Procuring entity may make the award to the next lowest evaluated or call for new tenders.

2.27 Performance Security

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

2.28 Corrupt or fraudulent practices

- 2.28.1. The Procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts. A tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.
- 2.28.2. The procuring entity will reject a proposal for award if it determines that the tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;
- 2.28.3. Further, a tenderer who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

2.29 APPENDIX TO INSTRUCTIONS TO THE TENDERERS

The following information for procurement of services shall complement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provisions of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers

Instructions to tenderers	Particulars of appendix to instructions to tenderers
2.1	<p>Particulars of eligible tenderers (Mandatory requirements for preliminary evaluation) – non submission of any of the mandatory documents will lead to the tenderer been eliminated from the tender process</p> <p>i) Copy of Certificate of Incorporation or Registration. ii) Copy of valid current tax compliance certificate. iii) Tender Security of Kenya Shillings twenty thousand (Kshs 20,000) in form of a bank guarantee or from an insurance duly recognized by the Public Procurement Oversight Authority (PPOA). iv) Duly filled and signed confidential business questionnaire (Section VII). v) Duly filled and signed Bidder’s Declaration and Integrity Pact (Section VII).</p> <p>In addition the tenderer should meet the following</p> <ul style="list-style-type: none"> • Is not limited or debarred under any of the provisions of the Public Procurement and Asset Disposal Act, 2015 and the Public Procurement and Disposal Regulations, 2006 to enter into a Contract. • Must not be bankrupt or in the process of being wound-up and is not the subject of legal proceedings for the purposes hereof. • Provide information regarding current litigation(s) in which the tenderer is involved (if any). • The successful tenderer shall be required to provide a copy of CR 12 Form issued by Registrar of Company
2.12	Tender security

	Tender security is of Kenya Shillings twenty thousand (Kshs 20,000) .																					
2.16.3	<p>Bulky tenders</p> <p>Bulky tenders shall be received at the Managing Director’s office located on 7th Floor, AON Minet House, Mamlaka Road off Nyerere Road, Nairobi.</p>																					
2.22	<p>Evaluation of tenders</p> <ul style="list-style-type: none"> The tenderer will be required to pass the preliminary evaluation having submitted all the mandatory documentation before being considered for technical evaluation. The evaluation criteria below will be used to evaluate the technical responsiveness of the tender: <table border="1"> <thead> <tr> <th></th> <th>Evaluation criteria</th> <th>Score</th> </tr> </thead> <tbody> <tr> <td>a)</td> <td>Provision of Manufacturer’s Authorization or applicable documentary evidence as proof that tenderer is the manufacturer of corrugated cartons</td> <td>10</td> </tr> <tr> <td>b)</td> <td>Evidence of experience in supply of branded Cartons as packaging materials with effective provision of after sale support – provide at least five references of major clients.</td> <td>15</td> </tr> <tr> <td>c)</td> <td>Demonstration of capacity to supply branded cartons to National Oil and presentation of an efficient delivery schedule and condition to trigger delivery by the tenderer so as to fit within the proposed schedule.</td> <td>15</td> </tr> <tr> <td>d)</td> <td>Tenderer’s comments on the Terms of References/Specifications giving value adding proposition for the supply of branded cartons to National Oil for packaging of Lubricants.</td> <td>10</td> </tr> <tr> <td>e)</td> <td>Due Diligence: Physical visits to manufacturer factory and offices. Proof of ownership and/or Lease agreements of tenancy of the premises and council licenses must be presented</td> <td>30</td> </tr> <tr> <td></td> <td>TOTAL</td> <td>80</td> </tr> </tbody> </table> <p>To be considered technically responsive, the tenderer must score a minimum of 65 points out of the possible maximum 80 points.</p> <p>Tenderers who score the minimum 65 points and above, will have their financials – prices evaluated and the award will be to the best quoted tenderer (with the least overall total price – with no hidden charges)</p>		Evaluation criteria	Score	a)	Provision of Manufacturer’s Authorization or applicable documentary evidence as proof that tenderer is the manufacturer of corrugated cartons	10	b)	Evidence of experience in supply of branded Cartons as packaging materials with effective provision of after sale support – provide at least five references of major clients.	15	c)	Demonstration of capacity to supply branded cartons to National Oil and presentation of an efficient delivery schedule and condition to trigger delivery by the tenderer so as to fit within the proposed schedule.	15	d)	Tenderer’s comments on the Terms of References/Specifications giving value adding proposition for the supply of branded cartons to National Oil for packaging of Lubricants.	10	e)	Due Diligence: Physical visits to manufacturer factory and offices. Proof of ownership and/or Lease agreements of tenancy of the premises and council licenses must be presented	30		TOTAL	80
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2.27	<p>Performance Security</p> <p>The amount of Performance Security shall be 10% of the Contract Price in the format of the Performance Security Form provided in the tender document in the form of a bank guarantee drawn by a bank licensed and operating in Kenya or a foreign bank recognized by the Central Bank of Kenya.</p>																					
2.28	<p>Ethics</p> <p>In pursuance of this policy, the Procuring entity requires that all bidders concerned take measures to ensure that no transfer of gifts, payments or other benefits to officials of the Procuring entity and/or procurement/management staff with</p>																					

decision making responsibility or influence occurs. In this regard, the Procuring entity will require all tenderers to sign, as part of the tender documents, an Integrity Pact (Section VII – Standard forms). **Non-delivery of the Bidders Declaration and Integrity Pact (Section VII – Standard forms) duly undersigned by the chief executive or legal representative of the tendering party will result in exclusion of the bid/ quotation from the procurement process.**

The Procuring entity reserves the right to suspend or cancel a tender/quotation if corrupt practices of any kind are discovered at any stage of the award process. For the purpose of this provision, the terms set forth below shall have the following meaning:

- “corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of any officer involved in the procurement of goods and/or services, or the threatening of injury to a person, property or reputation in connection with the procurement process or in contract execution, in order to obtain or retain business or other improper advantage in the conduct of business; and
- “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring entity and/or the Government of Kenya, and includes collusive practices among bidders (prior to or after submission of tenders) designed to establish prices at artificial, non-competitive levels and to deprive the Procuring entity of the benefits of free and open competition.

Any attempt by a candidate or bidder to obtain confidential information, enter into unlawful agreements with competitors or influence the committee of the Procuring entity during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of his/her candidacy or tender and may result in administrative penalties (e.g. suspension).

When putting forward a tender, the candidate or tenderer shall declare that he is not affected by any potential conflict of interest and has no particular link with other tenderers or parties involved in the project. Should such a situation arise during performance of the contract, the tenderer must immediately inform Procuring entity.

The contractor/tenderer must at all times act impartially and as a faithful adviser in accordance with the code of conduct of his profession. He shall refrain from making public statements about the project or services without the Procuring entity's prior approval. He may not commit the Procuring entity in any way without its prior written consent.

For the duration of the contract the contractor/tenderer and its staff shall respect human rights and undertake not to offend the political, cultural and religious morals of the Republic of Kenya.

The contractor/tenderer may accept no payment connected with the contract other

	<p>than that provided for therein. The contractor/tenderer and its staff must not exercise any activity or receive any advantage inconsistent with their obligations to the Procuring entity.</p> <p>The contractor/tenderer shall refrain from any relationship likely to compromise its independence or that of its staff. If the contractor/tenderer ceases to be independent, the Procuring entity may, regardless of injury, terminate the contract without further notice and without the contractor/tenderer having any claim to compensation.</p> <p>All tenders will be rejected or contracts terminated if it emerges that the award or execution of a contract has given rise to unusual commercial expenses.</p>
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3 SECTION III – GENERAL CONDITIONS OF CONTRACT

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3.1 Definitions

In this contract the following terms shall be interpreted as indicated:

- a) “The contract” means the agreement entered into between the Procuring entity and the tenderer as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- b) “The Contract Price” means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations.
- c) “The product” means items to be provided by the contractor including materials and incidentals which the tenderer is required to provide to the Procuring entity under the Contract.
- d) “The Procuring entity” means the organization sourcing for the products under this Contract.
- e) “The contractor means the individual or firm providing the products under this Contract.
- f) “GCC” means general conditions of contract contained in this section
- g) “SCC” means the special conditions of contract
- h) “Day” means calendar day

3.2 Application

These General Conditions shall apply to the extent that they are not superceded by provisions of other part of contract.

3.3 Joint drafting

The parties have participated jointly in the negotiation and drafting of this agreement. In the event an ambiguity or question of intent or interpretation arises, this agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this agreement.

3.4 Effectiveness of contract

This Contract shall come into effect on2016.

3.5 Commencement of supply of the products

The Tenderer shall begin supply of the products immediately the Contract becomes effective or at such other date as may be specified.

3.6 Standards

The products provided under this Contract shall conform to the seven standards mentioned in the Schedule of requirements.

3.7 Patent right's

The tenderer shall indemnify the Procuring entity against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the products under the contract or any part thereof.

3.8 Inspections and tests

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

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

3.8.3 Should any inspected or tested services fail to conform to the Specifications, the Procuring entity may reject the products, and the tenderer shall either replace the rejected services or make alterations necessary to meet specification requirements free of cost to the Procuring entity.

3.8.4 Nothing in clause 3.9 shall in any way release the tenderer from any warranty or other obligations under this Contract.

3.9 Payment

The method and conditions of payment to be made to the tenderer under this Contract shall be as specified in SCC.

3.10 Prices

Prices charged by the contractor for services performed under the Contract shall not, with the exception of any Price adjustments authorized in SCC, vary from the prices given by the tenderer in its tender or in the procuring entity's request for tender validity extension as the case may be. No variation in or modification to the terms of the contract shall be made except by written amendment signed by the parties.

3.11 Assignment

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

3.12 Termination for Default

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

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

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

3.13 Termination of insolvency

The procuring entity may at any time terminate the contract by giving written notice to the contractor if the contractor becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the contractor, provided that such termination will not produce or affect any right of action or remedy, which has accrued or will accrue thereafter to the procuring entity.

3.14 Termination for convenience

3.14.1 The procuring entity by written notice sent to the contractor may terminate the contract in whole or in part, at any time for its convenience. The notice of termination shall specify that the termination is for the procuring entity convenience, the extent to which performance of the contractor of the contract is terminated and the date on which such termination becomes effective.

3.14.2 For the remaining part of the contract after termination the procuring entity may elect to cancel the products and pay to the contractor on agreed amount for partially completed services.

3.15 Resolution of disputes

The procuring entity's and the contractor shall make every effort to resolve amicably by direct informal negotiations any disagreement or dispute arising between them under or in connection with the contract.

If after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute either party may require that the dispute be referred for resolution to the formal mechanisms specified in the SCC.

3.16 Governing language

The contract shall be written in the English language. All correspondence and other documents pertaining to the contract, which are exchanged by the parties, shall be written in the same language.

3.17 Force Majeure

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

3.18 Applicable law

The contract shall be interpreted in accordance with the laws of Kenya unless otherwise specified in the SCC.

3.19 Notices

Any notices given by one party to the other pursuant to this contract shall be sent to the other party by post or by fax or E-mail and confirmed in writing to the other party's address specified in the SCC

A notice shall be effective when delivered or on the notices effective date, whichever is later.

3.20 Confidentiality

- i. "Confidential Information" shall, for the purposes of this Agreement, include without limitation any financial, strategic, technical, commercial, geological and scientific information, know-how, trade secrets and data in whatever form, communicated to the Tenderer or acquired by the Ministry of Energy or National Oil during the course of the tenderer carrying out his duties as contemplated in this Agreement.
- ii. The Tenderer agrees that he will not, during the course of carrying out his duties as contemplated in this Agreement or thereafter into perpetuity, disclose the Confidential Information to any third party for any reason or purpose whatsoever without the prior written consent of the Ministry of Energy or National Oil, save in accordance with the provisions of this Agreement.
- iii. The Tenderer agrees not to utilize, exploit or in any other manner whatsoever use the Confidential Information disclosed pursuant to the provisions of this Agreement and the terms of any subsequent Agreement made by parties, for any purpose whatsoever without the prior written consent of the Ministry of Energy or National Oil.
- iv. The Tenderer undertakes not to use the Confidential Information for any purpose other than that for which it is disclosed; and in accordance with the provisions of this Agreement and any subsequent Agreement made by parties.

- v. The Tenderer shall be held liable for disclosing confidential information unless he proves that:
 - a) Such information and data was in the public domain prior to such disclosure;
 - b) Such information and data has become part of the public domain through no fault of the Tenderer, or
 - c) Such disclosure was required by any written Kenyan law.

3.21 Corrupt gifts and payments of commission

- i. The Client is an institution that fosters zero tolerance to fraud and corruption. The Tenderer hereby agrees to avoid fraud and corruption and to report any suspected fraud, corruption, or any activity that jeopardizes the integrity of the Client and its staff to its – Corruption Prevention and Integrity Committee (COPIC).
- ii. The Tenderer shall not;
 - a) Offer or give or agree to give to any person in the service of the Client any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other Contract with the Client or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract with the Client.
 - b) Enter into this or any other contract with the Client in connection with which commission or consideration has been paid or agreed to be paid by it or on his behalf or to his knowledge, unless before the Contract is made particulars of any such commission or consideration and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing by the Client.

Any breach of this Condition by the Tenderer or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Tenderer) shall be an offence under the provisions of the Public Procurement and Asset Disposal Act 2015.

3.22 Expiration of contract

Unless terminated earlier pursuant to Clause, this Contract shall terminate on after satisfactory completion of services and submission of a report by the Tenderer as required by this contract.

4 SECTION IV – SPECIAL CONDITIONS OF CONTRACT

Notes on Special Conditions of Contract

The clauses in this section are intended to assist the procuring entity in providing contract specific information in relation to corresponding clauses in the general conditions of contract.

The provisions of section IV complement the general conditions of contract included in section III, specifying contractual requirements linked to the special circumstances of the procuring entity and the procurement of services required. In preparing section IV, the following aspects should be taken into consideration.

- a) Information that complements provisions of section III must be incorporated.
- b) Amendments and/or supplements to provision of section III, as necessitated by the circumstances of the specific service required must also be incorporated.

Where there is a conflict between the provisions of the special conditions of contract and the provisions of the general conditions of contract the provisions of the special conditions of contract herein shall prevail over the provisions of the general conditions of contract.

4.1 Special Conditions of Contract (SCC) shall supplement the general conditions of contract, wherever there is a conflict between the General Conditions of Contract (GCC) and the SCC, the provisions of the SCC herein shall prevail over those in the GCC.

4.2 Special conditions of contract with reference to the general conditions of contract.

General conditions of contract reference	Special conditions of contract
2.27	<i>Performance Security</i> The amount of Performance Security shall be 10% of the Contract Price in the format of the Performance Security Form provided in the tender document in the form of a bank guarantee drawn by a bank licensed and operating in Kenya or a foreign bank recognized by the Central Bank of Kenya.
3.9	<i>Payment</i> The proposed payment is to be within 30 days upon receipt of invoice at National Oil and confirmation of satisfactory receipt of the products. The tenderers should clearly highlight the payment terms in their response.
3.15	<i>Resolution of Disputes</i> The provisions of the arbitration act of the laws of Kenya shall apply.

5 SECTION V – SCHEDULE OF REQUIREMENTS

Notes for preparing the schedule of requirements

The schedule of requirements for the products shall be included in the tender documents by the procuring entity and shall cover at the minimum a description of the goods and services to be supplied and the delivery schedule.

The objectives of schedule of requirements is to provide sufficient information to enable tenderers prepare their tenders efficiently and accurately, in particular, the price schedule, for which information is provided.

In addition, the schedule of requirements, together with the price schedule, should serve as a base in the event of quantity variations at the time of award of contract pursuant to instructions to tenderers clause 2.24.

The date or period of delivery should be carefully specified, taking into account the date prescribed herein from which the procuring entity's delivery obligations start (notice of award).

This part will include any deliverables under the order to the successful tenderer.

Number	Description	Quantity	Delivery Time Start _____ End _____
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6 SECTION VI – DESCRIPTION OF PRODUCT

National Oil Corporation of Kenya (National Oil) is looking for a supplier of cartons for packaging of lubricants.

The objective of the tender is to have a successful competent supplier of the cartons for packaging of lubricants who will enhance National Oil's customer experience of exceeding expectations.

The specifications of the tanks are as below:

TERMS OF REFERENCE

1. The carton manufacturer to also ensure cost all inclusive of all charges, transport and applicable taxes for delivery in Nairobi
2. Label the cartons materials supplied according the artwork given by the corporation.
3. Mandatory site visit by National Oil
4. Store one month's requirement for National Oil at the suppliers' warehouse.

DETAILED TECHNICAL REQUIREMENTS

This section sets the list of principal requirements for the packaging manufacturer. The detailed requirements have been separated as follows:

▪ Carton manufacturer's requirements

Please use the following options to indicate that your company is capable and willing to provide the products and solutions that are listed:

- i) FC – Fully Compliant – The manufacturer provides the product and solution without any modification.
- ii) PC – Partially Compliant – The manufacturer does produce the product or support the solution but has a proposed solution. If proposed solution is supplied by a third party, include detail and authorization for the same.
- iii) AS – Alternate Solution – The product and solution requires modification in order to meet requirement.
- iv) NM – Not Met – The manufacturer does not provide the solution.

Please tick the appropriate column to indicate one of the responses listed above for each item. If manufacturer does not indicate a response to a requirement it will be assumed that the manufacturer has not met the requirements. Manufacturers are requested to add as many comments as they feel relevant in the Manufacturer's comments section.

Vendors should adhere to the format of the document and not manipulate the columns or rows in any way. Vendors should be aware that if they do change the format of their

response they might be excluded from progressing further through our selection process.

D	KEY CARTON MANUFACTURERS REQUIREMENTS.	FC	PC	AS	NM	Comments by Manufacturer
1	Does your company manufacture corrugated carton boxes?					
2	Does your company supply corrugated carton boxes to the Kenyan Oil industry.					
3	Is your company ISO 9001:2000 certified or having any other equivalent certification (Please specify)?					

The Cartons to be supplied should meet the below mandatory specifications

No.	3 PLY CORRUGATED CARTONS AND DIVIDERS PACK SIZE	DIMENSIONS	COMMENTS BY MANUFACTURER
1.	4 X 5L	526 x 234 x 310mm	
2.	4 x 4L	393 x 245 x 301 mm	
3.	12 X 1L	375 x 240 x 223 mm	
4.	32 X 1/2 LT	364 x 230 x 346 mm	
5.	Divider 32x ½ L	359 x 225 mm	
6.	64 X 1/4 LT	349 x 311 x 288 mm	
7.	Divider 64x ¼ L	344 x 306 mm	
8.	6 x 3 kg	600 x 410 x 190mm	
9.	12x1 kg	390 x 270 x 290 mm	
10.	40 x1/2kg	620 x 500 x 200mm	

7 SECTION VII – STANDARD FORMS

Notes on standard forms

1. The tenderer shall complete and submit with its tender the form of tender and price schedules pursuant to Instructions to Tenderers in clause 2.9 and in accordance with the requirements included in the special conditions of contract.
2. When requested by the appendix to the Instructions to Tenderers, the tenderer should provide the tender security, either in the form included herein or in another form acceptable to the procuring entity pursuant to Instructions to Tenderers in clause 2.12.
3. The contract form, the price schedules and the schedule of requirements shall be deemed to form part of the contract and should be modified accordingly at the time of contract award to incorporate corrections or modifications agreed by the tenderer and the procuring entity in accordance with the instructions to tenderers or general conditions of contract.
4. The principal's or manufacturer's authorization form should be completed by the principal or the manufacturer, as appropriate in accordance with the tender documents.

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7.1 FORM OF TENDER

Date _____

Tender No. _____

To.....

.....

[Name and address of procuring entity]

Gentlemen and/or Ladies:

1. Having examined the tender documents including, where applicable, Addenda Nos. *[insert numbers]*, of which is hereby duly acknowledged, we, the undersigned, offer to provide
.....
[description of products/services]
in conformity with the said tender documents for the sum of
.....
[total tender amount in words and figures]
or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.
2. We undertake, if our Tender is accepted, to provide the products in accordance with the products schedule specified in the Schedule of Requirements.
3. If our Tender is accepted, we will obtain the tender guarantee in a sum equivalent to _____ percent of the Contract Price for the due performance of the Contract, in the form prescribed by (Procuring entity).
4. We agree to abide by this Tender for a period of *[number]* days from the date fixed for tender opening of the Instructions to tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
5. Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.

Dated this _____ day of _____ 2016

[signature]

[In the capacity of]

duly authorized to sign tender for and on behalf of _____

7.2 PRICE SCHEDULE OF PRODUCTS

Name of Tenderer _____ Tender Number _____ Page ____ of _____

3 PLY CORRUGATED CARTONS AND DIVIDERS

NB: Weight of the empty 3 Ply Corrugated Carton should be provided and should meet the minimum weight of 280 grammes

	PACK SIZE	DIMENSIONS	Unit	Unit price	Applicable taxes if any	Total Unit cost (Unit price + Applicable Taxes)
1	4 X 5L	526 x 234 x 310 mm				
2	4 x 4L	393 x 245 x 301 mm				
3	12 X 1L	375x 240 x 223 mm				
4	32 X 1/2 LT	364 x 230 x 346 mm				
5	Divider 32x 1/2 L	359 x 225 mm				
6	64 X 1/4 LT	349 x 311 x 288 mm				
7	Divider 64x 1/4 L	344 x 306 mm				
8	6x3 kg	600x410x190mm				
9	12x1kg	390x270x290mm				
10	40x1/2kg	620x500x200mm				

Note: The price schedule should capture each and every item chargeable by the tenderer.

1. *The prices quoted should be inclusive of all applicable charges that feed into the overall unit price. The tenderer can amend the price schedule to fit any additional applicable charges which should clearly be specified (with no major deviations from this price schedule) – **hidden charges are not acceptable** and if they arise during the contract period, then the supply contract will be terminated.*
2. *Prices quoted should be inclusive of all applicable taxes if the particular item is taxable.*
3. *Where there are additional services/products offered and are to be provided, then the tenderer should attach a separate price schedule.*

Name & Signature of tenderer (authorized signatory)

Company Stamp _____

CONTRACT FORM

THIS AGREEMENT made the _____ day of _____ 20____ between..... [name of procurement entity] of [country of Procurement entity] (hereinafter called “the Procuring entity”) of the one part and [name of tenderer] of [city and country of tenderer] (hereinafter called “the tenderer”) of the other part.

WHEREAS the procuring entity invited tenders for certain materials and spares. Viz..... [brief description of materials and spares] and has accepted a tender by the tenderer for the supply of those materials and spares in the sum of [contract price in words and figures]

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

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

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

Signed, sealed, and delivered by _____ the _____ (for the Procuring entity).

Signed, sealed, delivered by _____ the _____ (for the tenderer)

in the presence of_____.

7.3 CONFIDENTIAL BUSINESS QUESTIONNAIRE

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

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

<p>Part 1 General</p> <p>Business Name</p> <p>Location of Business Premises</p> <p>Plot No,..... Street/Road</p> <p>Postal address Tel No. Fax Email.....</p> <p>.....</p> <p>Nature of Business</p> <p>Registration Certificate No.....</p> <p>Maximum value of business which you can handle at any one time – KShs.....</p> <p>Name of your bankers</p> <p>.....</p> <p>Branch.....</p>
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<p>Part 2 (a) – Sole Proprietor</p> <p>Your name in full.....Age.....</p> <p>Nationality.....Country of Origin.....</p> <p>Citizenship details</p> <p>.....</p>																				
<p>Part 2 (b) – Partnership</p> <p>Given details of partners as follows</p> <table border="1"> <thead> <tr> <th>Name</th> <th>Nationality</th> <th>Citizenship details</th> <th>Shares</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>	Name	Nationality	Citizenship details	Shares	1.	2.	3.	4.
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4.																	
<p>Part 2 (c) – Registered Company</p> <p>Private or Public</p> <p>State the nominal and issued capital of company</p> <p>Nominal KShs.</p> <p>Issued KShs.</p> <p>Given details of all directors as follows</p> <table border="1"> <thead> <tr> <th>Name</th> <th>Nationality</th> <th>Citizenship details</th> <th>Shares</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>	Name	Nationality	Citizenship details	Shares	1.	2.	3.	4.
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<p>Date.....Signature of Candidate.....</p>																				

7.4 TENDER SECURITY FORM

Whereas [name of the tenderer]

(hereinafter called “the tenderer”) has submitted its tender dated..... [date of submission of tender] for the provision of [name and/or description of the services]

(hereinafter called “the Tenderer”).....

KNOW ALL PEOPLE by these presents that WE.....

Of.....having registered office at [name of procuring entity] (hereinafter called “the Bank”) are bound unto

[name of procuring entity] (hereinafter called “the procuring entity”) in the sum of

for which payment well and truly to be made to the said Procuring entity, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this _____ day of 20 _____.

THE CONDITIONS of this obligation are:

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

we undertake to pay to the Procuring entity up to the above amount upon receipt of its first written demand, without the Procuring entity having to substantiate its demand, provided that in its demand the Procuring entity will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions. This guarantee will remain in force up to and including thirty (30) days after the period of tender validity, and any demand in respect thereof should reach the Bank not later than the above date.

[signature of the bank]

7.5 PERFORMANCE SECURITY FORM

To:

.....

[name of the Procuring entity]

WHEREAS..... [name of tenderer]

(hereinafter called “the tenderer”) has undertaken, in pursuance of Contract No. _____ [reference number of the contract] dated _____20____to

supply.....

[Description services](Hereinafter called “the contract”)

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

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

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the tenderer, up to a total of
[amount of the guarantee in words and figures],

and we undertake to pay you, upon your first written demand declaring the tenderer to be in default under the Contract and without cavil or argument, any sum or sums within the limits of
[amount of guarantee] as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the _____ day of 20__

Signature and seal of the Guarantors

[name of bank or financial institution]

[address]

[date]

7.6 BANK GUARANTEE FOR ADVANCE PAYMENT

To.....

[name of tender].....

Gentlemen and/or Ladies:

In accordance with the payment provision included in the special conditions of contract, which amends the general conditions of contract to provide for advance payment,

.....

[name and address of tenderer][hereinafter called “the tenderer”] shall deposit with the Procuring entity a bank guarantee to guarantee its proper and faithful performance under the said clause of the contract in an amount of
[amount of guarantee in figures and words].

We, the

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

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

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

Yours truly,

Signature and seal of the Guarantors

[name of bank or financial institution]

[address]

[date]

7.7 BIDDER'S DECLARATION AND INTEGRITY PACT

BIDDER'S DECLARATION

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

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

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

Names in full: [.....]

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

[.....]

Place and date: [.....]

INTEGRITY PACT

Bidder's Oath to fulfill the Integrity Pact

Accepting that transparent business management and fair public administration are key to social development and national competitiveness, and in an effort to purge corruption and apply sanctions to corrupt businesses, and in full support of the worthy goals of this Integrity Pact, concerning the present tender for: _____, all personnel of _____ and its sub-contractors and agents hereby agree that:

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

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

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

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

Dated: _____

Signed by: _____
(Chief Executive/Managing Director)

Full Name printed: _____

7.8 LETTER OF NOTIFICATION OF AWARD

Address of Procuring Entity

To: _____

RE: Tender No. _____

Tender Name _____

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

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

(FULL PARTICULARS) _____

SIGNED FOR ACCOUNTING OFFICER