



**COAST DEVELOPMENT AUTHORITY**

**Tender No: CDA65/2016-2017**

**TENDER FOR THE SUPPLY, INSTALLATION AND  
COMMISSIONING OF 1T/H MANGO FRUIT PROCESSING PLANT**

**FINANCED BY:**

**GOVERNMENT OF KENYA (GOK) TENDER**

**DOCUMENT**

**MARCH 2017**

## **2.ABBREVIATIONS AND ACRONYMS**

**CDS** Contract Data Sheet

**GCC** General Conditions of Contract

**PE** Procuring Entity

**IFT** Invitation for Tenders

**PPDA 2015** Public Procurement and Disposal Act, 2015

**PPDR 2006** Public Procurement and Disposal Regulations, 2006

**PPOA** Public Procurement Oversight Authority

**STD** Standard Tender Documents

**SOR** Statement of Requirements

**IT** Information Technology

**SP** Service Provider

**VAT** Value Added Tax

## INVITATION TO TENDER

### **Tender No. CDA/65/2016-2017: SUPPLY , INSTALLATION AND COMMISSIONING OF MANGO PROCESSING PLANT IN BOJI**

## **TENDER NOTICE**

The Coast Development Authority invites bids from eligible Suppliers for the Supply, Installation and Commissioning of A 1T/H Mango Processing Plant in Boji, Tana River County. The minimum eligibility requirement will comprise the following;

1. Bid security of 1% of the tender sum, in form of a bank guarantee from a reputable bank or a bid bond from insurance company registered with IRA and approved by PPOA.
2. Proof of work of similar magnitude undertaken in the last two years
3. Certified copies of tax compliance certificate, VAT and PIN certificate
4. Proof of Legal existence.

Tender documents with detailed specifications can be obtained from the CDA website [www.cda.go.ke](http://www.cda.go.ke), or the National Treasury supplier portal <https://suppliers.treasury.go.ke>

Complete tender documents in plain sealed envelope clearly marked with the tender name and tender number should be deposited in the tender box situated at the Reception of CDA HQ main building on or before **24th March, 2017 at noon.**

Tenders will be opened immediately thereafter in the presence of tenderers or their representatives who choose to attend.

MANAGING DIRECTOR

COAST DEVELOPMENT AUTHORITY

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## SECTION II : INSTRUCTION TO THE TENDERERS

### 1. Introduction

1.1 The Procuring Entity indicated in the Tender Data Sheet

(TDS) invites Tenders for the supply, delivery and commissioning of mango fruit processing plant as specified in the Tender Data Sheet and Section VII, Technical Specification. The successful tenderer will be expected to supply, deliver, instal and commission Mango fruit processing plant within the period stated in the Tender Data Sheet from the start date specified in the Tender Data Sheet.

1.2 The successful Tenderer will be expected to complete the

supply, delivery, installation and commissioning by the required

completion date specified in the Tender Data Sheet.

2.1 The Procuring Entity has set aside sufficient funds for the operations of the Procuring Entity named in the Tender Data Sheet during the Financial Year indicated in the Tender Data Sheet. It is intended that part of the proceeds of the funds will be applied to cover eligible payments under the contract for the supply, delivery, installation and commissioning of mango fruit processing plant as described in the Tender Data Sheet.

2.2 Payments will be made directly by the Procuring Entity (or by

financing institution specified in the Tender Data Sheet upon request of the Entity to so pay) for each call-off order and will be subject in all respects to the terms and conditions of the resulting contract placed by the Procuring Entity.

3.1 A Tenderer may be a natural person, private entity, government owned entity, subject to ITT sub-Clause 3.4 or any combination of them with a formal intent to enter into an agreement or under an existing agreement in the form of a joint venture, consortium or association. In the case of a joint venture, consortium or association, unless otherwise specified in the Tender Data Sheet, all parties shall be jointly and severally liable.

3.2 The invitation for Tenders is open to all suppliers as defined in

the Public Procurement and Asset Disposal Act, 2015 except as

provided hereinafter.

3.3 Local Tenderers shall satisfy all relevant licensing and/or registration requirements with the appropriate statutory bodies in Kenya. Foreign Tenderers who are selected as having submitted the lowest evaluated Tender the successful Tenderer shall register with the appropriate statutory body and shall be required to submit evidence of registration as an approved Service Provider in Kenya before signing the Contract.

3.4 A Tenderer shall not have a conflict of interest. All Tenderers found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest with one or more parties in this Tendering process, if he/she seeks or has a direct or indirect pecuniary interest with another Tenderer or has a direct or indirect pecuniary interest with a person that would conflict with that person's duties with respect to the procurement. Conflicts of interest would arise where Tenderers:

a) Are 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 equipments to be purchased under this Invitation for Tenders; or

b) Have controlling shareholders in common; or

c) Receive or have received any direct or indirect subsidy

from any of them; or

d) Have the same legal representative for purposes of this

Tender; or

e) Have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the Tender of another Tenderer, or influence the decisions of the Procuring Entity regarding this Tendering process;

or

f) Submit more than one Tender in this Tendering process, except as an alternative Tender as provided for under Clause 6. However, this does not limit the participation of subcontractors in more than one Tender, or as Tenderers and subcontractors simultaneously; or Participated as a consultant in the preparation of the design or technical specifications of the equipments and related services that are the subject of the Tender.

3.5 Tenderers shall not be eligible to submit a Tender if they have been debarred under Section 62 of the Act.

3.6 Tenderers shall provide such evidence of their continued

eligibility satisfactory to the Procuring Entity, as the Procuring

Entity shall reasonably request.

4.1 All equipments and related services to be supplied under the contract shall have their origin in eligible source countries, and all expenditures made under the contract will be limited to such equipments and services. For purpose of these Tender ineligible countries, if any, are listed in the Tender Data Sheet.

4.2 For the purposes of this Clause, the term “software” means any computer program containing a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result and includes but is not limited to firmware, a new and independent software application or an enhancement or modification to an existing software application, and “related services” includes services such as installation, training and maintenance.

4.3 For purposes of this Clause, “origin” means the place where the Equipment’s, Information technology software(s) are developed.

4.4 The nationality of the firm that develops, distributes, or sells the equipments and services shall not determine their origin.

4.5 To establish the eligibility of the equipment’s and software and the related services, Tenderers shall fill the country of origin declarations included in the Form of Tender.

4.6 If so required in the Tender Data Sheet, the Tenderer shall demonstrate that it has been duly authorized by the original manufacturer of the equipment to supply in Kenya, the equipments indicated in its Tender.

5.1 A firm shall submit only one Tender in the same Tendering process, either individually as a Tenderer or as a partner in a joint venture. However, this does not prevent a Tenderer from submitting an Alternative Tender as provided for under Clause

5.2 No firm can be a subcontractor while submitting a Tender individually or as a partner of a joint venture in the same Tendering process.

5.3 A firm, if acting in the capacity of subcontractor in any Tender, may participate in more than one Tender but only in that capacity.

5.4 A Tenderer who submits or participates in more than one Tender (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the Tenders in which the Tenderer has participated to be disqualified.

6.1 Tenderers shall submit offers that comply with the requirements of the Tender documents, including the basic Tenderer's technical design as indicated in the specifications and Schedule of Requirements. Alternatives will not be considered, unless specifically allowed for in the Tender Data Sheet. If so allowed, sub-Clause shall Prevail.

6.2 If so allowed in the Tender Data Sheet, Tenderers wishing to offer technical alternatives to the requirements of the Tender documents must also submit a Tender that complies with the requirements of the Tender documents, including the basic technical design as indicated in the specifications. In addition to submitting the basic Tender, the Tenderer shall provide all information necessary for a complete evaluation of the alternative by the Procuring Entity, including technical specifications, breakdown of prices, and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Tenderer conforming to the basic technical requirements shall be considered by the Procuring Entity.

7.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Procuring Entity shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.

8.1 The equipments required, Tendering procedures, and contract terms are prescribed in the Tender Documents. In addition to the Invitation for Tenders, the Tender documents which should be read in conjunction with any addenda issued in accordance with ITT clause 10.2 include:

Section II Instructions to Tenderers (ITT)

Section III Tender Data Sheet (TDS)

Section IV General Conditions of Contract (GCC)

Section V Contract Data Sheet (CDS)

Section VI Schedule of Requirements

Section VII Technical Specifications

Section VIII Forms - Tender

- Form of Tender
- Price schedule for equipments and Related

Services

- Form of Qualification Information
- Letter of Acceptance
- Form of Contract

Section IX Forms Security

- Tender Security Form
- Tender-Securing Declaration
- Performance Bond/Security Form
- Bank Guarantee for Advance Payments
- Manufacturers Authorization Form

Section X Integrity Undertaking by Tenderer on Anticorruption

Policy/ Code of Conduct and

Compliance Program

Section XI Form RB 1 Application to Public Procurement

Administrative Review Board

8.2 The number of copies to be completed and returned with the Tender is specified in the Tender Data Sheet.

8.3 The Procuring Entity is not responsible for the completeness of the Tendering Documents and their addenda, if they were not appropriately obtained directly from the Procuring Entity.

9.1 A prospective Tenderer requiring any clarification of the Tender



Documents may notify the Procuring Entity in writing or electronic mail, or facsimile at the Procuring Entity's address

indicated in the Tender Data Sheet prior to the deadline for the submission of Tenders prescribed in sub- Clause 22.1.

9.2 The Procuring Entity will within the period stated in the Tender Data Sheet respond in writing to any request for clarification provided that such request is received no later than the period indicated in the Tender Data Sheet prior to the deadline for the submission of Tenders prescribed in sub-Clause 22.1.

9.3 Copies of the procuring Entity's response will be forwarded to all Purchasers of the Tender documents, including a description of the inquiry, but without identifying its source.

9.4 Should the Procuring Entity deem it necessary to amend the Tender documents as a result of a clarification, it shall do so following the procedure under ITT Clause 10.

10.1 Before 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 document by issuing addenda.

10.2 Any addendum issued shall be part of the Tendering document pursuant to sub-Clause 8.1 and shall be communicated in writing to all who have obtained the Tender documents directly from the Procuring Entity. Prospective Tenderers shall acknowledge receipt of each addendum by writing electronic mail, telex or facsimile to the Procuring Entity.

10.3 In order to allow prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity, at its discretion, may extend the deadline for the submission of Tenders, pursuant to Sections 55(3) and 61(1) of the Act.

11.1 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 unless another language specified in the Tender Data Sheet. Supporting documents and printed literature furnished by the Tenderer may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the Tender Data Sheet, in which case, for purposes of interpretation of the Tender, the translation shall govern.

12.1 The Tender prepared by the Tenderer shall constitute the following components:

- a) Form of Tender /Tender and a Price Schedule completed in accordance with ITT Clauses 15, 16, and 17;
- b) Documentary evidence established in accordance with ITT Clause 14 that the Tenderer is eligible to Tender and is qualified to perform the contract if its Tender is accepted;
- c) Documentary evidence established in accordance with ITT sub-Clause 14.3(a) that the Tender has been authorized by the original equipment manufacturer to supply, install and commission such equipments into Kenya, where required and where the supplier is not the Original equipment manufacturer of those equipment;
- d) Documentary evidence established in accordance with ITT Clause 13 that the equipments and ancillary services to be supplied by the Tenderer are eligible and conform to the Tendering documents;
- e) Tender securing declaration or Tender security furnished in accordance with ITT Clause 19 and/or 19A;
- f) Written Power of Attorney authorizing the signatory of the Tender to commit the Tenderer, in accordance with

ITT Clause 20.2; and

g) Any other document required in the Tender Data Sheet.

13.1 Pursuant to ITT Clause 12, the Tenderer shall furnish, as

part of its Tender, documents establishing the eligibility

and conformity to the Tender documents of all equipment's, information technology software and related services which the Tenderer proposes to supply under the contract.

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

13.3 The documentary evidence of conformity of the equipments and related services to the Tender documents may be in the form of literature, drawings, and data, and shall consist of:

- a) a detailed description of the essential technical and performance characteristics of the IT software;
- b) an item-by-item commentary on the Procuring Entity's Technical Specifications demonstrating substantial responsiveness of the software and related services to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications; and
- c) Any other specific documentation requirement as stated in the Tender Data Sheet.

13.4 The Tenderer shall also furnish a list giving full particulars, including available sources and current prices of equipments, special apparatus, etc., necessary for the proper and continuing functioning of the factory equipments during the period specified in the Tender Data Sheet following commencement of the use of the plant by the Procuring Entity.

13.5 For purposes of the commentary to be furnished pursuant to sub-Clause 13.3(c) above, the Tenderer shall note that standards for equipments, as well as references to brand names designated by the Procuring Entity in its Technical Specifications, are intended to be descriptive only and not restrictive. The Tenderer may substitute alternative standards and/or brand names in its Tender, provided that it demonstrates to the Procuring Entity's satisfaction that the substitutions ensure substantial equivalence to those designated in the technical Specifications.

13.6 The required documents and other accompanying documents must be type written in English or as stated in Tender Data Sheet. In case any other language than English is used the pertinent translation into English shall be attached to the original version.

14.1 Pursuant to ITT Clause 12, the Tenderer shall furnish, as part of its Tender, documents establishing the Tenderer's eligibility to Tender and its qualifications to perform the contract if its Tender is accepted.

14.2 The documentary evidence of the Tenderer's eligibility to Tender shall establish to the Procuring Entity's satisfaction that the Tenderer, at the time of submission of its Tender, is from an eligible country as defined under ITT Clause 4.

14.3 The documentary evidence of the Tenderer's qualifications to perform the contract if its Tender is accepted shall establish to the Procuring Entity's satisfaction:

- a) that, in the case of a Tenderer offering to supply equipments under the contract which the Tenderer did not develop, the Tenderer has been duly authorized by the original equipment manufacturers to supply the specified

equipment in Kenya ;

b) The Tenderer has the financial, technical, and production capability necessary to perform the Contract, meets the qualification criteria specified in the Tender Data Sheet, and has a successful performance history in accordance with criteria specified in the Tender Data Sheet. If a prequalification process has been undertaken for the Contract, the Tenderer shall, as part of its Tender, update any information submitted with its pre-qualification;

c) that, in the case of a Tenderer not doing business within Kenya, the Tenderer is or will be (if awarded the contract) represented by an Agent in Kenya equipped and able to carry out the Supplier's maintenance obligations prescribed in the General Conditions of Contract and/or Technical Specifications; and

d) That the Tenderer meets the additional qualification criteria listed in the Tender Data Sheet.

14.4 When Tendering for more than one Contract under the lots, the Tenderer must provide evidence that it meets or exceeds the sum of all the individual requirements for the lots being applied for in regard to:-

a) Average annual turnover;

b) Particular experience including key production rates;

c) Financial means, etc.;

d) Personnel capabilities; and

e) Equipment/software capabilities.

In case the Tenderer fails to fully meet any of these criteria, it may be qualified only for those slices for which the Tenderer meets the above requirement.

15.1 The Tenderer shall fill the Form of Tender furnished in the Tendering Documents. The Tender Form must be completed without any alterations to its format and no substitute shall be accepted.

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

16.2 Unless otherwise indicated in the Tender Data Sheet, all items in

the Schedule of Requirements must be listed and priced separately in the Price Schedules. If a Price Schedule shows items listed but not priced, the Tender will be rejected as being substantially non-responsive. Items not listed in the Price Schedule shall be assumed to be not included in the Tender and the Tender will be rejected as being substantially non-responsive.

16.3 The Tender price to be quoted in the Tender Form in accordance with sub-Clause 16.1 shall be the total price of the Tender, excluding any discounts offered.

16.4 The Tenderer shall quote any unconditional discounts and the methodology for their application in the Tender Form in

accordance with sub-Clause 16.9.

16.5 The Tenderer shall indicate on the appropriate Price Schedule the unit prices (where applicable) and total Tender price of the equipment it proposes to supply under the contract

16.6 Prices indicated on the Price Schedule shall be entered separately in the following manner:

a) For equipments offered from within Kenya :

- i) The price of the equipment quoted including all customs duties and other taxes already paid or payable;
- ii) Taxes which will be payable on the equipment if the contract is awarded;
- iii) The price for inland transportation and other local costs incidental to delivery of the equipment to their final destination, if specified in the Tender DataSheet; and
- iv) The price of other (incidental) services, if any, listed in the Tender Data Sheet.

b) For equipments offered from abroad:

- i) The price of the equipment shall be quoted using the INCOTERMS specified in the Tender Data Sheet;
- ii) The price for inland transportation, insurance, and other local costs incidental to delivery of the equipment from the port of entry to their final destination, if specified in the Tender Data Sheet; and

The price of (incidental) services, if any, listed in the Tender Data Sheet.

16.7 Prices quoted by the Tenderer shall be fixed during the Tenderer's performance of the contract and not subject to variation on any account, unless otherwise specified in the Tender Data Sheet. A Tender submitted with an adjustable price quotation will be treated as non-responsive and shall be rejected, pursuant to ITT Clause 28. If, however, in accordance with the Tender Data Sheet, prices quoted by the Tenderer shall be subject to adjustment during the performance of the contract, a Tender submitted with a fixed price tender will not be rejected, but there will be no price adjustment in any resulting contract.

16.8 If so indicated in the Invitation for Tenders and Instructions to Tenderers, that Tenders are being invited for individual contracts (Lots) or for any combination of contracts (packages), Tenderers wishing to offer any price reduction for the award of more than one contract shall specify in their Tender the price reductions applicable to each package, or alternatively, to individual

contracts within a package.

16.9 Prices shall be quoted in the following currencies:

a) For equipment's and related services that the Tenderer will supply from within Kenya, the prices shall be quoted in Kenya Shillings, unless otherwise specified in the Tender Data Sheet.

b) For equipment's and related services that the Tenderer will supply from outside Kenya, or for imported parts or components of plant, equipment and related services originating outside Kenya, the Tender prices shall be quoted in the foreign currency specified in the Tender Data Sheet.

17.1 The rates of exchange to be used by the Tenderer in arriving at

the local currency equivalent and the proportions mentioned in sub-Clause 16.1 above shall be the selling rates for similar transactions established by the Central Bank of Kenya prevailing on the date specified in the Tender Data Sheet or, on the date of the Tender opening. These exchange rates shall be adjusted for all payments so that no exchange risk will be borne by the Tenderer. If the Tenderer uses other rates of exchange, the provisions of sub Clause 30.1 shall apply. In any case, payments will be computed using the rates quoted in the Tender.

17.2 Tenderers shall indicate details of their expected foreign currency requirements in the Tender.

17.3 Tenderers may be required by the Procuring Entity to clarify their foreign currency requirements and to substantiate that the amounts included in Lump Sum and in the Contract Data Sheet are reasonable and responsive

to sub-Clause 17.1.

17.4 Tenders shall remain valid for the period specified in the Tender Data Sheet after the Tender submission deadline prescribed by the Procuring Entity, pursuant to ITT Clause 22. A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.

18.1 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request that the Tenderers consent to an extension of the period of validity of their Tenders. The request and the Tenderers responses shall be made in writing electronic mail, telex and facsimile. The Tender security provided under ITT Clause 19 shall also be suitably extended. A Tenderer may refuse the request without forfeiting its Tender security or causing to be executed its Tender securing declaration. A tenderer agreeing to the request will not be required nor permitted to modify its tender, but will be required to extend the validity of its Tender security or Tender Securing declaration for the period of the extension, and in compliance

with ITT Clause 19 in all respects.

18.2

Fill and submit the Tender Securing Declaration as specified in the Tender Data Sheet in the format provided in Section IX.

19.1 The Tender securing declaration is required to protect the Procuring Entity against any of the risks set out in Clause 19.5 which would warrant the security's forfeiture.

19.2 The Tender security or Tender Securing Declaration shall be in

accordance with the Form of the Tender security or Tender Securing Declaration included in Section VIII or another form approved by the Procuring Entity prior to the Tender submission.

19.3 Any Tender not accompanied by a Declaration in accordance with sub-Clauses 19.1 shall be rejected by the Procuring Entity as non-responsive, pursuant to ITT Clause 28.

19.4 A Tenderer shall be suspended from being eligible for Tendering in any contract with the Procuring Entity for the period of time indicated in the Tender Securing Declaration:

- (a) If the Tenderer withdraws its Tender, except as provided in sub-Clauses 18.2 and 30.2; or
- (b) In the case of a successful Tenderer, if the Tenderer fails within the specified time limit to:
  - (i) Sign the contract, or
  - (ii) Furnish the required performance security.

19.5 In addition, pursuant to ITT Clause 12, if specified in the Tender Data Sheet, the Tenderer shall furnish as part of its Tender a Tender Security in original form and in the amount and currency specified in the Tender Data Sheet.

19A. Tender Security

19A.1 The Tender security shall be denominated in the currency of the Tender and shall be in one of the following forms:

- a) cash

- b) a bank guarantee;
- c) an insurance company guarantee issued by an insurance firm approved by the PPOA; or
- d) an irrevocable letter of credit.

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19A.2 Any Tender security must be valid for a period of at least 30 (Thirty) days after the expiry of the Tender Validity Period which is 90 (Ninety) days..

19A.3 The Tender security shall be payable promptly upon written demand by the Procuring Entity in case any of the conditions listed in sub-Clause 19.A.7 are invoked.

19A.4 Unsuccessful Tenderers' Tender security will be discharged or returned as promptly as possible as but not later than the expiration of the period of Tender validity prescribed by the Procuring Entity pursuant to ITT Clause 18.

19A.5 The successful Tenderer's Tender security will be discharged upon the Tenderer signing the contract pursuant to ITT Clause 38, and furnishing the performance security, pursuant to ITT Clause 39.

19A.6 The Tender security shall be forfeited if a Tenderer:

- a) Withdraws its Tender during the period of Tender validity specified in sub-Clause 18.1 except as provided for in sub-Clause 18.2; or
- b) Does not accept the correction of errors pursuant to sub-Clause 30.2; or
- c) In the case of a successful Tenderer, if the Tenderer fails:
  - i. To sign the contract in accordance with ITT Clause 38; or
  - ii. To furnish performance security in accordance with ITT Clause 39.

19 A.7 The Tenderer shall prepare an original and the number of copies of the Tender indicated in the Tender Data Sheet, clearly marking each "ORIGINAL" and "COPY," as appropriate. In the event of any discrepancy between them, the original shall prevail.

20.1 The original and the copy or 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 sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the Tender Data Sheet 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, except for un-amended printed literature, shall be initialled by the person or persons

signing the Tender.

20.2 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialled by the person or persons signing the Tender.

20.3 The Tenderer shall furnish information as described in the Form of Tender on commissions or gratuities, if any, paid or to be paid to agents relating to this Tender and to contract execution if the Tenderer is awarded the contract

21.1 The Tenderer shall seal the original and each copy of the Tender in separate envelopes, duly marking the envelopes as

“ORIGINAL” Technical & Financial Proposal and “COPY.” The envelopes shall then be sealed in an outer envelope securely sealed in such a manner that opening and resealing cannot be achieved undetected and marked Tender for supply, delivery, installation, testing and commissioning of a fruit processing plant at Hola.

21.2 The inner and outer envelopes shall:

- a) Be addressed to the Procuring Entity at the address given in the Tender Data Sheet; and
- b) Bear the tender name indicated in the Tender Data Sheet, the Invitation for Tenders (ITT) title and number indicated in the Tender Data Sheet, and a statement: “DO NOT OPEN BEFORE,” to be completed with the time and the date specified in the Tender Data Sheet, pursuant to sub-Clause 22.1.

21.3 In addition to the identification required in sub-Clause 21.2, 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” pursuant to ITT Clause 23 and for matching purpose under ITT Clause 24.

21.4 If all envelopes are not sealed and marked as required by sub-Clause 21.2, the Procuring Entity will assume no responsibility for the misplacement or premature opening of Tender.

22.1 Tenders shall be received by the Procuring Entity at the address

specified under sub-Clause 21.2 no later than the date and time

specified in the Tender Data Sheet.

22.2 The Procuring Entity may, in exceptional circumstances and at

its discretion, extend the deadline for the submission of Tenders

by amending the Tender documents in accordance with ITT Clause 9, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline will thereafter be subject to the new deadline.

22.3 The extension of the deadline for submission of Tenders shall

not be made later than the period specified in the Tender Data Sheet before the expiry of the original deadline.

23.1 The Procuring Entity shall not consider for evaluation any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT Clause 22.

23.2 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.

24.1 A Tenderer may modify or substitute or withdraw its Tender

after it has been submitted, provided that written notice of the

modification, including modification, substitution or withdrawal

of the Tender, is received by the Procuring Entity prior to the

deadline for submission of Tenders.

24.2 The Tenderer's modification, substitution or withdrawal notice

shall be prepared, sealed, marked, and dispatched in accordance

with the provisions of ITT Clauses 20 and 21 with the outer and

inner envelopes additionally marked "MODIFICATION",

"SUBSTITUTION", or "WITHDRAWAL" as appropriate.

The notice may also be sent by electronic mail or facsimile but followed by a signed confirmation copy, postmarked not later than the deadline for submission of Tenders.

24.3 Tenders may only be modified by withdrawal of one or more

pages of the original Tender and submission of replacement pages of the Tender in accordance with sub-clause 23.1.

Modifications submitted in any other way shall not be taken into account in the evaluation of Tenders. Each modified page must be marked "Modified" with the date of modification.

24.4 Tenderers may only offer discounts to or otherwise modify the prices of their Tenders by substituting Tender modifications in

accordance with this Clause or included in the original Tender submission.

24.5 No Tender may be withdrawn, replaced 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. Withdrawal of a Tender

during this interval shall result in the Tenderer's forfeiture of its



Tender security or execution of the Tender Securing Declaration, pursuant to the sub-Clause 19A.7 or 19.5.

25.1 The Procuring Entity will open all Tenders including

modifications, substitutions or withdrawal notices made pursuant to ITT Clause 24, in public, in the presence of Tenderers' or their representatives who choose to attend, and other parties with a legitimate interest in the Tender proceedings at the place, on the date and at the time, specified in the Tender Data Sheet. The Tenderers' representatives present shall sign a register as proof of their attendance.

25.2 Where it is stated in the Tender Data Sheet that technical and

financial proposals shall be submitted in separate envelopes, only

the technical envelope will be opened at the initial opening of

Tenders. The financial envelope will be opened following

technical evaluation and only in respect of those offers that pass

the technical evaluation. Envelopes marked "WITHDRAWAL" shall be opened and read out first. Tenders for which an acceptable notice of withdrawal has been submitted pursuant to ITT Clause 24 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.

Subsequently, all envelopes marked "MODIFICATION" shall

be opened and the submissions therein read out in appropriate detail. Thereafter all envelopes marked "SUBSTITUTION" shall be opened and the submissions therein read out in appropriate detail.

25.3 All other envelopes shall be opened one at a time. The

Tenderers names, the Tender prices, except where numerous

items are quoted separately, the total amount of each Tender and

of any alternative Tender (if alternatives have been requested or

permitted), any discounts, the presence or absence of Tender

security, Tender Securing Declaration and such other details as

the appropriate Tender Opening Committee may consider

appropriate, will be announced by the secretary of the Tender

Opening Committee at the opening. If technical evaluation

precedes the opening of financial offers, no prices will be read

out at the opening of the technical offers.

25.4 Tenders or modifications that are not opened and not read out

at the Tender opening shall not be considered further for evaluation, irrespective of the circumstances. In particular, any discount offered by a Tenderer which is not read out at Tender opening shall not be considered further.

25.5 Tenderers are advised to send in a representative with the knowledge of the content of the Tender who shall verify the information read out from the submitted documents. Failure to send a representative or to point out any un-read information by the sent Tenderer's representative shall indemnify the Procuring Entity against any claim or failure to read out the correct information contained in the Tenderers Tender.

25.6 No Tender will be rejected at Tender opening except for late Tenders which will be returned unopened to the Tenderer, pursuant to ITT Clause 23.

25.7 The Secretary of the tender opening committee shall prepare minutes of the Tender opening. The record of the Tender opening shall be recorded on Tender Opening Register and shall include, as a minimum: the name of the Tenderer and whether or not there is a withdrawal, substitution or modification, the Tender price per Lot if applicable, including any discounts and alternative offers and the presence or absence of a Tender Security or Tender Securing Declaration.

25.8 The Tenderers' representatives who are present shall be requested to sign the record. The omission of a Tenderer's representative's signature on the record shall not invalidate the contents and affect the record. A copy of the record shall be distributed to all the Tenderers.

25.9 A copy of the minutes of the Tender opening shall be furnished to individual Tenderers upon request.

26.1 Information relating to the examination, clarification, evaluation and comparison of Tenders and recommendation of contract award shall not be disclosed to Tenderers or any other persons not officially concerned with such process until the award to the successful Tenderer has been announced.

26.2 Any effort by a Tenderer to influence the Procuring Entity processing of Tenders or award decisions may result in the rejection of its Tender.

26.3 Notwithstanding sub-Clause 26.2 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.

27.1 To assist in the examination, evaluation and comparison of Tenders and post-qualification of the Tenderers, the Procuring Entity may, at its discretion, ask any Tenderer for a clarification of its Tender including breakdown of prices. Any clarification submitted by a Tenderer that is not in response to a request by the Procuring Entity shall not be considered.

27.2 The request for clarification and the response shall be in writing. No change 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 Tenders in accordance with ITT Clause 30.

27.3 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 Tender it should do so in writing.

28.1 Prior to the detailed evaluation of Tenders, the Procuring Entity

will determine whether:

- a) The tender has been submitted in the required format;
- b) Any tender security submitted is in the required form, amount and validity period;
- c) The tender has been signed by the person lawfully authorized to do so;
- d) The required number of copies of the tender have been submitted;
- e) The tender is valid for the period required;
- f) All required documents and information have been submitted; and
- g) Any required samples have been submitted.

The Procuring Entity's determination of a Tender's responsiveness will be based on the contents of the Tender itself.

28.2 A substantially responsive Tender is one which conforms to all the terms, conditions, and specifications of the Tender documents, without material deviation or reservation. A material deviation or reservation is one that:-

- a) Affects in any substantial way the scope, quality, or performance of the Services;
- b) Limits in any substantial way, inconsistent with the Tender documents, the Procuring Entity's rights or the Tenderer's obligations under the Contract; or
- c) If rectified, would affect unfairly the competitive position of other Tenderers presenting substantially responsive Tenders.

28.3 The Procuring Entity will confirm that the documents and information specified under ITT Clause 11, ITT Clause 12 and ITT Clause 13 have been provided in the Tender. If any of these documents or information is missing, or is not provided in accordance with the Instructions to Tenderers, the Tender shall be rejected.

28.4 The Procuring Entity may waive any minor informality, 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.

28.5 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.

29.1 The Procuring Entity shall examine the Tender to confirm that all terms and conditions specified in the General Conditions of Contract and the Contract Data Sheet have been accepted by the Tenderer without any material deviation or reservation.

29.2 The Procuring Entity shall evaluate the technical aspects of the Tender submitted in accordance with ITT Clause 12, to confirm that all requirements specified in Section VI – Schedule of Requirements of the Tender documents and Section VII – Technical Specifications have been met without material deviation or reservation.

29.3 If after the examination of the terms and conditions and the technical evaluation, the Procuring Entity determines that the Tender is not substantially responsive in accordance with ITT Clause 28, it shall reject the Tender.

30.1 Tenders determined to be substantially responsive will be checked for any arithmetic errors. Errors will be corrected as follows:-

- a) If there is a discrepancy between unit prices and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected, unless in the opinion of the Procuring Entity there is an obvious misplacement of the decimal point in the unit price, in which the total price as quoted shall govern and the unit price shall be corrected;
- b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
- c) Where there is a discrepancy between the amounts in figures and in words, the amount in words will govern.

30.2 The amount stated in the Tender will be adjusted by the Procuring Entity in accordance with the above procedure for the correction of errors and, with, the concurrence of the Tenderer, shall be considered as binding upon the Tenderer. If the Tenderer does not accept the corrected amount, its Tender shall be rejected, and the Tender security shall be forfeited or the Tender securing declaration may be executed in accordance with sub-Clause 19A.7 or 19.5.

30.3 Where applicable and as stated in the Tender Data Sheet, the Procuring Entity will convert all Tender prices expressed in the amounts in various foreign currencies in which the Tender prices are payable to Kenya Shillings at the selling exchange rate established for similar transactions by the Central Bank of Kenya or a commercial bank in Kenya.

30.4 The currency selected for converting Tender prices to a common base for the purpose of evaluation, along with the source and date of the exchange rate, are specified in the Tender Data Sheet.

30.5 The Procuring Entity shall evaluate and compare only the Tenders determined to be substantially responsive, pursuant to ITT Clause 28.

30.6 The Procuring Entity's evaluation of a Tender will include and take into account:

- a) In the case of plant and equipment manufactured in Kenya or equipments of foreign origin already located in Kenya, VAT and other similar taxes, which will be payable on the equipment if a contract is awarded to the Tenderer;
- b) In the case of plant and equipment of foreign origin offered from abroad, customs duties and other similar import taxes including value added taxes which will be payable on the software if the contract is awarded to the Tenderer; and
- c) Any allowance for price adjustment during the period of execution of the contract, if provided in the Tender.

30.7 The comparison shall be between the price of the equipment

offered from within Kenya, such price to include all costs, as well as duties and taxes paid or payable on components incorporated or to be incorporated in the plant, and the landed cost (CIF named port of destination or CIP border point, or CIP named place of destination) making up the price of the equipment offered from Kenya.

30.8 In evaluating the Tenders, the evaluation committee will, in addition to the Tender price quoted in accordance with sub-Clause 16.1, take account of one or more of the following factors as specified in the Tender Data Sheet.

30.9 For the evaluation criteria specified in the Tender Data Sheet pursuant to sub-Clause 30.8, one or more of the following quantification methods will be applied, as detailed in the TenderData Sheet:

a) Inland transportation from EXW/port of entry/border point and

incidentals. Inland transportation and other incidental costs for delivery of the plant & equipment from EXW/port of entry/borderpoint to Project Site named in the Tender Data Sheet will be computed for each Tender by the PE on the basis of published tariffs by the rail or road transport agencies and/or other appropriate sources. To facilitate such computation, Tenderer shall furnish in its Tender the estimated dimensions and shipping weight and the approximate EXW/CIF (or CIP border point) value of each package. The above cost will be added by the PE to EXW/CIF/CIP border point price.

b) Delivery schedule.

i) The Procuring Entity requires that the equipment's and plants under the Invitation for Tenders shall be delivered at the time specified in the Schedule of Requirements. The estimated time of arrival of the equipment at the Project Site will be calculated for each Tender after allowing for reasonable international and inland transportation time. Treating the Tender resulting in such time of arrival as the base, a delivery "adjustment" will be calculated for other Tenders by applying a percentage, specified in the Tender Data Sheet, of the EXW/CIF/CIP price for each week of delay beyond the base, and this will be added to the Tender price for evaluation. No credit shall be given for early delivery.

ii) The equipment(s) covered under this invitation are required to be delivered within an acceptable range of weeks specified in the Schedule of Requirement. No credit will be given for earlier deliveries, and Tenders offering delivery beyond this range will be treated as non-responsive. Within this acceptable range, an adjustment per week, as specified in the Tender Data Sheet, will be added for evaluation to the Tender price of Tenders offering deliveries later than the earliest delivery period specified in the Schedule of Requirements.

(iii) The equipment(s) covered under this invitation are required to be delivered in partial shipments, as specified in the Schedule of Requirements. Tenders offering deliveries earlier or later than the specified deliveries will be adjusted in the evaluation by adding to the Tender price a factor equal to a percentage, specified in the TenderData Sheet, of EXW/CIF/CIP price per week of variation from the specified delivery schedule.

c) Deviation in payment schedule.

i) Tenderers shall state their Tender price for the payment schedule outlined in the CDS. 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.

ii) The CDS stipulates the payment schedule offered by the Procuring Entity. If a Tender deviates from the schedule and if such deviation is considered acceptable to the Procuring Entity, the Tender will be evaluated by calculating interest earned for any earlier payments involved in the terms outlined in the Tender as compared with

those stipulated in this invitation, at the rate per annum specified in the Tender Data Sheet.

d) After sales service facilities in Kenya

The cost to the PE of establishing the minimum service facilities as outlined in the Tender Data Sheet or elsewhere in the Tendering documents, if quoted separately, shall be added to the Tender price.

e) Operating costs

Since the operating and maintenance costs of the equipment's under procurement form a major part of the life cycle cost of the equipment, these costs will be evaluated in accordance with the criteria specified in the Tender Data Sheet or in the Technical Specifications.

f) Performance and productivity of the equipment.

Tenderers shall state the guaranteed performance or efficiency in response to the Technical Specification. For each drop in the performance or efficiency below the norm of 100, an adjustment for an amount specified in the Tender Data Sheet will be added to the Tender price, representing the capitalized cost of additional operating costs over the life of the equipment, using the methodology specified in the Tender Data Sheet or in the Technical Specifications. Equipments offered shall have a minimum productivity specified under the relevant provision in the Technical Specifications to be considered responsive. Evaluation shall be based on the cost per unit of the actual productivity of the equipment offered in the Tender, and adjustment will be added to the Tender price using the methodology specified in the Tender Data Sheet or in the Technical Specifications.

g) Total cost of ownership

The Procuring Entity will take account of the total cost of ownership of the items being supplied.

(h) Specific additional criteria.

Other specific additional criteria to be considered in the evaluation and the evaluation method shall be detailed in the Tender Data Sheet and/or the Technical Specifications.

30.10 If these Tender documents allow Tenderers to quote separate prices for different Lots, and the award to a single Tenderer of multiple Lots, the methodology of evaluation to determine the lowest evaluated Lot combinations, including any discounts offered in the Form of Tender, is specified in the Tender Data Sheet.

31.1 In the evaluation of tenders the Procuring Entity shall apply exclusive preference to citizens of Kenya where:

- a) The funding is 100% from the Government of Kenya or a Kenyan body;
- b) The amounts are below the prescribed threshold of KShs.50 million (or KShs.200 million for procurements of works).

31.2 To qualify for the preference the candidate shall provide evidence of eligibility by:

- a) Proving Kenyan citizenship by production of a Kenyan Identity Card; or
- b) Providing proof of being a "citizen contractor" as defined in the Act, i.e. being a natural person or an incorporated company wholly owned and controlled by persons who are citizens of Kenya.

31.3 In the event of the Minister for Finance prescribing additional preference and/or reservation schemes, details will be given in the Tender Data Sheet

32.1 If specified in the Tender Data Sheet Post-qualification shall be undertaken.

32.2 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, in accordance with the criteria listed in sub-Clause 13.3.

32.3 The determination will take into account the Tenderer's financial, technical, and production capabilities. It will be based upon an examination of the documentary/physical evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to sub-Clause 13.3, as well as such other information as the Procuring Entity deems necessary and appropriate. Factors not included in these Tender documents shall not be used in the evaluation of the Tenderers' qualifications.

32.4 An affirmative determination will be a pre requisite 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.

33.1 Subject to ITT Clause 32, the Procuring Entity will award the Contract to the Tenderer whose Tender has been determined to be substantially responsive to the Tender documents and who has offered the lowest Evaluated Tender Price, provided that such Tenderer has been determined to be:

- a) Eligible in accordance with the provisions of ITT Clause 3;
- b) Is determined to be qualified to perform the Contract satisfactorily; and
- c) Successful negotiations have been concluded, if any.

33.2 If, pursuant to sub-Clause 13.4, this Contract is being let on a "license and package" basis, the lowest evaluated Tender price will be determined when evaluating this Contract in conjunction with other Contracts to be awarded concurrently, taking into account any discounts offered by the Tenderers for award of more than one Contract.

34.1 Notwithstanding ITT Clause 33, the Procuring Entity reserves the right to accept or reject any Tender, and to reject all Tenders at any time prior to notification of contract award, without thereby incurring any liability to the affected Tenderer or Tenderers.

34.2 Notice of the rejection of all Tenders shall be given promptly to all Suppliers that have submitted Tenders.

34.3 The Procuring Entity shall upon request communicate to any Tenderer the grounds for its rejection of its Tenders, but is not required to justify those grounds.

35.1 The Procuring Entity reserves the right at the time of contract award to increase or decrease the quantity of equipment's or related services originally specified in these Tender documents (schedule of requirements) provided this does not exceed by the percentage indicated in the Tender Data Sheet, without any change in unit price or other terms and conditions of the Tender and Tender documents.

36.1 The Tenderer whose Tender has been accepted will be notified of the award by the Procuring Entity prior to expiration of the Tender validity period by e-mail, or facsimile and confirmed by registered letter. This letter (hereinafter and in the Conditions of Contract called the "Letter of Acceptance") will state the sum that the Procuring Entity will pay the Service provider in consideration of the provision and maintenance of the Service(s) as prescribed by the Contract (hereinafter and in the Contract called the "Contract Price").

36.2 The notification of award will constitute the formation of the Contract, subject to the Tenderer furnishing the Performance Security (if required) in accordance with ITT Clause 39 and signing of the contract in accordance

with sub-Clause 38.2.

36.3 At the same time as the person submitting the successful tender is notified, the Procuring Entity will notify each unsuccessful Tenderer, the name of the successful Tenderer and the Contract amount and will discharge the Tender security or Tender securing declaration of the Tenderers.

36.4 If, after notification of award, a Tenderer wishes to ascertain the grounds on which its Tender or application for pre-qualification was unsuccessful, it should address its request to the accounting officer that authorized the award of contract. The accounting officer shall, within fourteen days after a request, provide written reasons as to why the tender, proposal or application to be prequalified was unsuccessful. However, failure to take this opportunity to clarify the grounds for rejection does not affect the Tenderer's right to seek immediate review by the Public Procurement Administrative Review Board under Clause 45.

37.1 Limited negotiations may be undertaken with the evaluated Tender under Direct procurement method relating to the following areas:

- a) A minor alteration to the technical details of the statement of requirements;
- b) Reduction of quantities for budgetary reasons, where the reduction is in excess of any provided for in the solicitation documents;
- c) A minor amendment to the contract data sheet;
- d) Finalising payment arrangements;
- e) Delivery arrangements;
- f) The methodology; or Clarifying details that were not apparent or could not be finalised at the time of Tendering

37.2 Where negotiation fails to result into an agreement, the Procuring Entity may invite the next ranked Tenderer for negotiations. Where negotiations are commenced with the next ranked Tenderer, the Procuring Entity shall not reopen earlier negotiations.

38.1 Promptly after notification, the Procuring Entity shall send the successful Tenderer the agreement and Contract Data Sheet, incorporating all agreements between the parties obtained as a result of Contract negotiations.

38.2 Within twenty eight (28) days of receipt of the Contract Agreement form, the Successful Tenderer shall sign and date the Contract and return it to the Procuring Entity. No contract is formed between the person submitting the successful tender and the procuring entity until the written contract is entered into.

39.1 Within twenty one (21) days, but no earlier than fourteen (14) days, after receipt of the Letter of Acceptance, the successful Tenderer shall deliver to the Procuring Entity a Performance Security in the amount and in the form stipulated in the Tender Data Sheet and the Contract data sheet, denominated in the type and proportions of currencies in the Letter of Acceptance and in accordance with the Conditions of Contract.

39.2 If the Performance Security is provided by the successful Tenderer in the form of a Bank Guarantee or Insurance Bond, it shall be issued either:

- a) At the Tenderer's option, by a bank or insurance firm located in Kenya, or a foreign bank or insurance firm through a correspondent bank or insurance firm located in Kenya,<sup>32</sup>

or

- b) With the consent of the Procuring Entity, directly by a foreign bank acceptable to the Procuring Entity.



39.3 Failure of the successful Tenderer to comply with the requirement of sub-Clause 39.1 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 Tenderer or call for new Tenders.

40.1 If provided for in the Tender Data Sheet, the Procuring Entity will provide an Advance Payment on the Contract Price as stipulated in the General Conditions of Contract.

40.2 The Advance Payment request shall be accompanied by an Advance Payment Security (Guarantee) in the form provided in Section IX. For the purpose of receiving the Advance Payment, the Tenderer shall make and estimate of, and include in its Tender, the expenses that will be incurred in order to commence Delivery of the equipment.

#### 41. Adjudicator

41.1 Where so provided in the Tender Data Sheet, the Procuring Entity may propose the person named in the Tender Data Sheet to be appointed as Adjudicator under the Contract, at an hourly fee specified in the Tender Data Sheet, plus reimbursable expenses. If the Tenderer disagrees with this proposal, the Tenderer should so state in the Tender. If, in the Letter of Acceptance, the Procuring Entity has not agreed on the appointment of the Adjudicator, the Adjudicator shall be appointed by the Appointing Authority designated in the Contract Data Sheet at the request of either party.

42.1 The Government requires that Procuring entities (including beneficiaries of Government funded projects and procurement) as well as Tenderers/Suppliers/Contractors under Government financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. It is the responsibility of the procuring entity to require that Tenderers, suppliers, and contractors and their subcontractors observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy:

a) For the purpose of this provision, the following

definitions are provided:-

i) "Corrupt practice" includes the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement or disposal process or in contract execution;

i) "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 and includes collusive practices amongst Tenderers prior to or after Tender submission designed to establish Tender prices at artificial non-competitive levels and deprive the procuring entity of the benefits of free and open competition;

ii) "Collusive practice" means an arrangement between two or more suppliers, contractors and subcontractors designed to achieve an improper purpose, including to influence improperly the actions of a procuring entity (PE) prior to or after Tender submission, designed to establish Tender prices at artificial non-competitive levels and to deprive the PE of the benefit of free and open competition;

iii) "Coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly a supplier, contractor or subcontractor or the property of either to influence improperly the actions of a PE;

iv) "Obstructive practice" means deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and /or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation.

b) A procuring entity (PE) has the right to require that Tenderers, suppliers, and contractors and their subcontractors permit persons duly appointed by Ethics and Anti Corruption Authority/Public Procurement Oversight Authority to inspect their accounts and records and other documents relating to the Tender submission and contract performance,

c) The Procuring Entity will reject a proposal for award if it determines that the Tenderer recommended for award has engaged in any of the above practices in competing for the contract;

d) In pursuit of the policy defined in sub-Clause 44.1 the Procuring Entity will cancel the portion of the funds allocated to a contract for supply of plant and equipment, or services if it is at any time determines that corrupt or fraudulent practices were engaged in by representatives of the procuring entity or approving authority or of a beneficiary of the funds during the procurement or the execution of that contract, without the procuring entity or approving authority having taken timely and appropriate action satisfactory to the Government of Kenya to remedy the situation

e) The Director-General may, on the advice of the Advisory

Board, debar a person from participating in procurement

proceedings on the ground that the person has committed

an offence under the Public procurement and Asset

Disposal Act, 2015, or any other Act, or on other grounds

as specified in the relevant Sections of the Act. A

debarment shall be for a period of time of not less than

five years. Before a person is so debarred, he/she will be

given an opportunity to make representations to the

Director-General and may request the Review Board to

review the debarment.

42.2 The Government of Kenya reserves the right, where a firm has

been found by a foreign country, international organization or other foreign organization to have engaged in corrupt or fraudulent practice, to declare that such a firm is ineligible, for a specified period to be awarded a public financed Contract in Kenya.

42.3 Any communications between the Tenderer and the Procuring

Entity related to matters of alleged fraud or corruption must be

made in writing.

43.1

A Tenderer who claims to have suffered or to risk suffering, loss or damage or injury as a result of breach of a duty imposed on a Procuring Entity or an approving authority by the Public Procurement and Asset disposal Act 2015 on the procurement proceedings or processes, may seek administrative review as prescribed by the Act. The following matters, however, shall not be subject to the administrative review:

- a) The choice of procurement method;
- b) A decision by the procuring entity to reject all tenders, proposals or quotations;
- c) Where a contract is signed in accordance to the Public Procurement and Asset Disposal Act, 2015; and
- d) Where an appeal is frivolous.

44.1 The Tenderer shall submit an application for review in the number of copies and pay fees as prescribed by regulations within fourteen (14) days of the occurrence of the breach complained of where the request is made before the making of an award or within fourteen (14) days of the notification under the Act

45.1 Any application for administrative review shall be submitted in writing to the Secretary, Public Procurement Administrative Review Board on Form RB 1 (which may be downloaded from the PPOA website) at the address shown in the Tender Data sheet. The secretary to the review board shall immediately after filing of the request under the Act, serve a copy thereof on the procuring entity or Director-General as the case may be.

45.2 The application for administrative review shall be in accordance with the requirements of Regulations, including:

- a) Reasons for the complaint, including any alleged breach of the Act or Regulations;
- b) An explanation of how the provisions of the Act, Regulation or provision has been breached or omitted, including the dates and name of the responsible public officer, where known;
- c) Statements or other evidence supporting the complaint where available as the applicant considers necessary in support of its request;
- d) Remedies sought; and
- e) Any other information relevant to the complaint.

46.1 The Administrative Review Board shall within thirty days after receipt of an application for administrative review deliver a written decision which shall indicate:

- a) Whether the application is upheld in whole, in part or rejected;
- b) The reasons for its decision;
- c) The corrective measures to be undertaken; and
- d) Order payment of costs as between parties to review.

46.2 The decision of the Administrative Review Board shall be final unless the Tenderer institutes an appeal with High Court under section 100 (1) of the Act

47.1 The Tenderer not satisfied with the decision of the Procurement Administrative Review Board may appeal to the High Court within fourteen days after the decision is made and the decision of the High Court will be final.

47.2 The Secretary to the Administrative Review Board may be contacted at the address shown in the Tender Data Sheet.

### **SECTION III: GENERAL CONDITIONS OF CONTRACT**

**1. Definitions** 1.1 In this Contract, the following terms shall be interpreted as indicated:

- a) “The Contract” means the agreement entered into between the Procuring Entity and the Supplier, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- b) “Completion” means the fulfilment of the related services by the Supplier in accordance with the terms and conditions set forth in the contract
- c) “The Contract Price” means the price payable to the Supplier as specified under the Contract, subject to such additions and adjustment here to or deduction there from as may be made pursuant to the contract for the full and proper performance of its contractual obligations.
- d) “Delivery” means the provision of a non exclusive and non transferable licence of the Information technology software which the Supplier is required to provide under the Contract to the Procuring Entity.
- f) “The Related Services” means those services ancillary to the supply of the Information technology software, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training and other such obligations of the Supplier covered under the Contract.
- g) “Software” includes but is not limited to software design, development, implementation support and/or management of any computer based information systems.
- h) “GCC” means the General Conditions of Contract contained in this section.
- i) “CDS” means the Contract Data Sheet.
- j) “The Procuring Entity” means the entity purchasing the equipments and related service, as named in **CDS**.
- k) “The Supplier” means the individual private or public 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, and includes the legal successors or permitted assigns of the supplier.
- l) “The Project Site” where applicable, means the place or places named in **CDS**.
- m) “Day” means calendar day.
- n) “Effective Date” means the date on which this Contract becomes effective pursuant to GCC Clause
- o) “Eligible Country” means the countries and territories eligible for participation in procurements financed by the specified institution.
- p) “End User” means the organization(s) where the Information technology software will be used, as named in the **CDS**.
- q) “Origin” means the place where the equipment(s) were developed or from which the Services are supplied.
- r) “Force Majeure” means an event or situation beyond the control of the Supplier and not involving the Supplier’s fault or negligence and not foreseeable, is unavoidable, and is not due to negligence or lack of care on the part of the Supplier. Such events may include, but are not restricted to, acts of the Procuring Entity in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine, restrictions, acts of terrorism piracy and freight embargoes.

s)“corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution and includes, inter alia, bribery and extortion or coercion which involves threats of injury to person, property or reputation, and

t)“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 Purchaser, and includes collusive practices among Tenderers (prior to or after Tender submission)

**2. Application** 2.1 These General Conditions shall apply to the extent that they are not superseded by provisions of other parts of the Contract.

### **3. Governing Language**

3.1 The Contract and all correspondence and documents relating to the contract exchanged by the Supplier and the Procuring Entity shall be written in English, unless another language **specified in CDS**. Subject to GCC Clause 3.1, the version of the Contract written in the specified language shall govern its interpretation.

**4. Applicable Law** 4.1 The contract shall be governed and interpreted in accordance with the laws of Kenya, unless otherwise **specified in CDS**.

### **5. Country of Origin and Nationality of Supplier**

5.1 The “origin” means the place where the equipments) are developed. The nationality of the firm that develops, distributes, or sells the equipment and services shall not determine their origin.

**6. Standards** 6.1 The equipments supplied under this Contract shall conform to the standards mentioned in the Technical Specifications, and, when no applicable standard is mentioned, to the authoritative standards appropriate to Kenya. Such standards shall be the latest issued by the concerned institution.

### **7. Use of Contract Documents and Information, Inspection and Audit by the Government of Kenya**

7.1 The Supplier shall not, without the Procuring Entity’s prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring Entity in connection therewith, to any person other than a person employed by the Supplier in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance.

7.2 The Supplier shall not, without the Procuring Entity’s prior written consent, make use of any document or information enumerated in GCC Clause 7.1 except for purposes of performing the Contract.

7.3 Any document, other than the Contract itself, enumerated in GCC Clause 7.1 shall remain the property of the Procuring Entity and shall be returned (all copies) to the Procuring Entity on completion of the Supplier’s performance under the Contract if so required by the Procuring Entity.

7.4 The Supplier shall permit the Government of Kenya and/or donor agencies involved in financing the project to inspect the Supplier’s accounts and records relating to the performance of the Supplier and to have them audited by auditors appointed by the Government of Kenya and/or the appropriate donor agencies, if so required by the Government of Kenya and/or the appropriate donor agencies.

### **8. Patent and Copy Rights**

8.1 The Supplier shall indemnify the Procuring Entity against all third party claims of infringement of patent, trademark, copyright or industrial design rights arising from use of the equipment or any part thereof in Kenya.

8.2 The patent right 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 patent right in such materials shall remain vested in such third party.

## **9. Performance Security**

9.1 Within twenty one (21) days of receipt of the notification of Contract award, the successful Tenderer shall furnish to the Procuring Entity the performance security in the amount **specified**

**in CDS.**

9.2 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.

9.3 The performance security shall be denominated in the currency of the Contract, or in a currency acceptable to the Procuring Entity and shall be in one of the following forms:

a) A bank guarantee,

b) an irrevocable letter of credit, or

c) an insurance bond issued by a reputable insurance company approved by Public Procurement Oversight Authority in the form provided in the Tendering documents or another form acceptable to the Procuring Entity; or

d) A banker's cheque.

9.4 The performance security will 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 otherwise **specified in CDS.**

## **10. Inspections and Test**

10.1 The Procuring Entity or its representative shall have the right to inspect and/or to test the equipments to confirm their conformity to the Contract specifications at no extra cost to the Procuring

Entity. **CDS** and the Technical Specifications shall specify what inspections and tests shall be carried out. The Procuring Entity shall notify the Supplier in writing, in a timely manner, of the identity of any representatives retained for these purposes.

10.2 The inspections and tests may be conducted on the premises of the Supplier or its subcontractor(s), at point of delivery, and/or at the equipment final destination. If conducted on the premises of the Supplier 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.

10.3 Should any inspected or tested equipments fail to conform to the Specifications, the Procuring Entity may reject the equipments, and the Supplier shall replace the rejected equipments to meet specification requirements free of cost to the Procuring Entity.

10.4 The Procuring Entity's right to inspect, test and, where necessary, reject equipments after the equipment's arrival in the Procuring Entity's country shall in no way be limited by reason of the

equipment having previously been inspected, tested, and passed by the Procuring Entity or its representative prior to the equipment shipment from the country of origin.

10.5 Nothing in GCC Clause 10 shall in any way release the supplier from any warranty or other obligations under this Contract.

## **11. Performance Guarantees**

11.1 If, for reasons attributable to the Supplier, the minimum level of the Functional Guarantees are not met either in whole or in part, the Supplier should be required at its cost and expense to make any such changes, modifications or additions to the New Facility or any part thereof as may be necessary to meet at least the minimum level of the Functional Guarantees. The Supplier should notify the Procuring Entity of completion of the necessary changes, modifications or additions, and should request the Procuring Entity to repeat the applicable Tests and Inspection until the minimum level of the Functional Guarantees has been met. If the Supplier eventually fails to meet the minimum level of Functional Guarantees, the Procuring Entity may consider termination of the Contract.

## **12. Packing**

12.1 The supplier shall provide such packing of the equipments as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the software's final destination.

12.2 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 CDS**, and in any subsequent instructions ordered by the Procuring Entity.

## **13. Delivery and Documents**

13.1 Delivery of the equipments shall be made by the Supplier in accordance with the terms specified in the Schedule of Requirements. The details of insurance and transportation shall be as provided by the INCOTERM DDP or such other INCOTERM and/or other documents to be furnished by the Supplier are **specified in CDS**.

13.2 For purposes of the Contract, "DDP", "CIP", "CIF", "FCA", "FOB", "EXW" and other trade terms used to describe the obligations of the parties shall have the meanings assigned to them by the current edition of INCOTERMS published by the International Chamber of Commerce, Paris. 13.3 Documents to be submitted by the Supplier are **specified in CDS**.

## **14. Incidental Services**

14.1 The Supplier may be required to provide any or all of the following services, including additional services, if any, **specified in CDS**:

- a) Performance or supervision of on-site assembly and/or start up of the supplied equipments;
- b) Furnishing of tools required for assembly and/or start up of the supplied equipment's
- c) Furnishing of a detailed operations manual for each appropriate unit of the supplied software;
- d) Performance or supervision of the supplied equipment, 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 and/or operation of the supplied equipment.

## 15. Warranty

15.1 The Supplier warrants that the equipment supplied under the Contract are of the most recent or current models and that they incorporate all recent improvements in design unless provided otherwise in the Contract. The Supplier further warrants that all equipments supplied under this Contract shall have no defect, arising from design or workmanship (except when the design is required by the Procuring Entity, specifications) or from any act or omission of the Supplier, that may develop under normal use of the supplied equipments in the conditions prevailing in the Republic of Kenya.

15.2 This warranty shall remain valid for a period specified in the **CDS** after the equipment, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the Contract, or for a period specified in the **CDS** after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless **specified otherwise in CDS**.

15.3 The Procuring Entity shall promptly notify the Supplier in writing of any claims arising under this warranty.

15.4 Upon receipt of such notice, the Supplier shall, within the period **specified in CDS** and with all reasonable speed, repair or replace the defective equipment or parts thereof, without costs to the Procuring Entity other than, where applicable, the cost of inland delivery of the repaired or replaced equipments or parts from EXW or the port or place of entry to entry to the final destination.

15.5 If the Supplier, having been notified, fails to remedy the defect(s) within the period **specified in CDS**, the Procuring Entity may proceed to take 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.

## 16. Payment

16.1 The method and conditions of payment to be made to the Supplier under this Contract shall be **specified in CDS**.

16.2 The Supplier's request(s) for payment shall be made to the Procuring Entity in writing, accompanied by an invoice describing, as appropriate, the equipment delivered and services performed, and by documents submitted pursuant to GCC Clause 13, and upon fulfilment of other obligations stipulated in the Contract.

16.3 Payments shall be made promptly by the Procuring Entity, within thirty (30) days after submission of a valid invoice or claim by the Supplier, or such other period as **specified in the CDS**. If the Procuring Entity makes a late payment, the Supplier shall be paid interest on the late payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the rate as **specified in the CDS**.

16.4 The currency or currencies in which payment is made to the Supplier under this Contract shall be **specified in CDS** subject to the following general principle: payment will be made in the currency or currencies in which the payment has been requested in the Supplier's Tender.

## 17. Prices

17.1 The contract price shall be as specified in the Contract Agreement Subject to any additions and adjustments thereto or deductions there from, as may be made pursuant to the Contract.

17.2 Prices charged by the Supplier for equipment's delivered and 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 CDS**.



## **18. Change Orders**

18.1 If the Procuring Entity at any time wishes to make changes within the general scope of the Contract to any one or more of the following:, by a written order given to the Supplier pursuant to

GCC Clause 21,

- a) Drawings, designs, or specifications, where equipment 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/or
- d) The Services to be provided by the Supplier, he may request the Supplier to provide a quotation on the effect of the change on the time and the cost of the contract.

18.2 Any quotation for additional cost or time by the Supplier for adjustment under this clause must be presented within thirty (30)days from the date of the Supplier's receipt of the Procuring Entity's request for change order.

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

18.4 If the Procuring Entity accepts the Supplier's quotation he will issue a formal Change Order in writing. The Supplier will not be eligible to claim reimbursement for any change to the contract unless he is in receipt of such formal written instruction.

18.5 All variations must collectively not exceed 10% of the original contract quantity for goods and/or incidental services. Any price variation must be based on the consumer price index or the Central Bank of Kenya inflation rate.

## **19. Contract Amendments**

19.1 Subject to GCC Clause 18, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

**20. Assignment** 20.1 Neither the Procuring Entity nor the Supplier shall assign, in whole or in part, obligations under this Contract, except with the prior written consent of the other party.

## **License**

21.1 In consideration of the license fee and of the Procuring Entity's agreement to abide by the terms and conditions of the Supplier's license agreement, the Supplier will grant the Procuring Entity a non-exclusive, non-transferable, perpetual license to use the software.

## **22. ESCROW**

22.1 The parties shall enter into such (if any) escrow arrangements in relation to the Source Code to some or all of the Software as are **specified in the CDS**.

**23. Subcontracts** 23.1 The Supplier shall notify the Procuring Entity in writing of all subcontracts awarded under this contract if not already specified in the Tender. Such notification, in the original Tender or later, shall not relieve the Supplier from any liability or obligation under the contract.

23.2 The Supplier shall not enter into any contract or contracts that result in the Supplier exceeding the maximum percentage of subcontracting permitted by the Procuring Entity in respect of the Design-Build Services and the Operations Services, as set out in the **CDS**. Except with respect to the Subcontractors named in the Supplier's Tender, the Supplier shall not enter into a significant contract (i.e. exceeding the maximum percentage of subcontracting) with any Subcontractor without the prior consent of the Procuring Entity, which should not be unreasonably withheld

23.3 The Supplier should remain responsible for the observance by Subcontractors of the terms and conditions of the Contract and should ensure that all relevant terms of the Contract are included in its contracts with Subcontractors

23.4 Subcontracts must comply with the provision of GCC Clause 5.

## **24. Delays in the Supplier's Performance**

24.1 Delivery of the equipment and performance of Services shall be made by the Supplier in accordance with the time schedule prescribed by the Procuring Entity in the Schedule of Requirements.

24.2 If at any time during performance of the Contract, the Supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the equipment and/or performance of related services, the supplier shall promptly notify the Procuring Entity in writing of the fact of the delay, its likely duration and its cause(s). 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, with or without liquidated damages, in which case the extension shall be ratified by the parties by amendment of Contract.

24.3 Except as provided under GCC Clause 27, a delay by the Supplier in the performance of its delivery obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 25, unless an extension of time is agreed upon pursuant to GCC Clause 24.2 without the application of liquidated damages.

## **25. Liquidated Damages**

25.1 Subject to GCC Clause 27, if the Supplier fails to deliver any or all of the equipment or to perform the Services within the period(s) specified in the Contract, the Procuring Entity shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage **specified in CDS** of the delivered price of the delayed equipment 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 CDS**. Once the maximum is reached, the Procuring Entity may consider termination of the Contract pursuant to GCC Clause 26.

## **26. Termination for Default**

26.1 The Procuring Entity or the Supplier, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the concerned party may terminate the Contract if the other party causes a fundamental breach of the Contract.

26.2 Fundamental breaches of Contract shall include, but shall not be limited to the following:

- a) The Supplier fails to deliver any or all of the equipment within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring Entity pursuant to GCC Clause 24; or
- b) The Supplier fails to perform any other obligation(s) under the Contract;
- c) The supplier has abandoned or repudiated the contract.
- d) The Procuring Entity or the Supplier is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- e) A payment is not paid by the Procuring Entity to the Supplier within 60 days of the due date for payment;
- f) The Procuring Entity gives Notice that the equipment delivered with a defect is a fundamental breach of Contract and the Supplier fails to correct it within a reasonable period of time determined by the Procuring Entity; and
- g) The supplier, in the judgment of the Procuring Entity, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

26.3 In the event the Procuring Entity terminates the Contract in whole or in part, pursuant to GCC Clause 26.1, the Procuring Entity may procure, upon such terms and in such manner as it deems appropriate, equipment or related services similar to those undelivered, and the supplier shall be liable to the Procuring Entity for any excess costs for such similar equipments(s) or Services.

However, the Supplier shall continue performance of the Contract to the extent not terminated.

26.4 If the Procuring Entity terminates the Contract pursuant to GCC Clause 26.2 (g) above the amount of Liquidated Damages specified in the Contract Data Sheet shall immediately become due from the Supplier to the Procuring Entity.

## **27. Termination for Insolvency**

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

**28 Force Majeure** 28.1 Notwithstanding the provisions of GCC Clauses 24, 25, and 26, 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. Such events may include, but are not restricted to, acts of God, acts of the Procuring Entity in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine, restrictions, acts of terrorists and freight embargoes.

29.2 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.

**30 Upgrade** 30.1 At any point during performance of the Contract, should technological advances be introduced by the Supplier for equipment originally offered by the Supplier in its bid and still to be delivered, the Supplier shall be obligated to offer to the Purchaser the latest versions of the available equipments having equal or better performance or functionality at the same or lesser unit prices

**31. Disputes** 31.1 If any dispute or difference of any kind whatsoever shall arise between the Procuring Entity and the Supplier in connection with or arising out of the Contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

31.2 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 for adjudication.

31.3 If either party believes that a decision taken by the other was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the decision.

### **32. Procedure for Disputes**

32.1 The Adjudicator stated in the **CDS** shall give a decision in writing within 28 days of receipt of a notification of a dispute.

32.2 The Adjudicator shall be paid by the hour at the rate specified in the **CDS**, together with reimbursable expenses of the types specified in the **CDS**, and the cost shall be divided equally between the Procuring Entity and the Supplier, whatever decision is reached by the Adjudicator. Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision will be final and binding.

32.3 The arbitration shall be conducted in accordance with the arbitration procedure published by the institution named and in the place shown in the **CDS**.

### **33. Replacement of Adjudicator**

33.1 Should the Adjudicator resign or become incapacitated, or should the Procuring Entity and the Supplier agree that the Adjudicator is not functioning in accordance with the provisions of the Contract a new Adjudicator will be jointly appointed by the Procuring Entity and the Supplier. In case of disagreement between the Procuring Entity and the Supplier, within 30 days, the Adjudicator shall be designated by the Appointing Authority designated in the **CDS** at the request of either party, within 14 days of receipt of such request.

### **34. Limitation of Liability**

34.1 Except in cases of criminal negligence or willful conduct, and in the case of infringement pursuant to GCC Clause 8,

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 and the total Performance Incentive compensation, provided that this limitation shall not apply to the cost of repairing or replacing defective software or to any obligation of the Supplier to indemnify the Procuring Entity with respect to patent infringement.

**35. Notices** 35.1 Any notice given by one party to the other pursuant to this Contract shall be sent to the other party in writing or by facsimile or e-mail and confirmed in writing or by facsimile or e-mail to the other party's address **specified in CDS**. The term "in writing" means communicated in written form with proof of receipt.

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

### **36. Taxes and Duties**

36.1 The Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed inside and outside the Republic of Kenya.

36.2 If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in the Republic of Kenya the Procuring Entity shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

## SECTION III DATA SHEET (SPECIAL CONDITIONS OF THE TENDER)

### Contract Data Sheet

The following Contract Data Sheet shall supplement the General Conditions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract. The corresponding clause number of the GCC is indicated in parentheses. **CDS ClauseNumber GCCClauseNumber Amendments of, and Supplements to, Clauses in the General Conditions of Contract**

#### A. Definitions (GCC Clause 1)

1. 1 The Procuring Entity is: **Coast Development Authority]**

#### Department of

2. 1(j) The Supplier is: *[Name and address]*

3. 1(k) The Project is: **Supply,Delivery,Installation, Testing and Commissioning of mango Processing Plant**

#### Governing Language (GCC Clause 3)

4.1 The Governing Language if not English shall be: **English**

#### Applicable Law (GCC Clause 4)

5.1 The Applicable Law shall be: **Laws of Kenya**

#### Country of Origin (GCC Clause 5)

6. 1 Country of Origin is .....

#### Performance Security (GCC Clause 9)

7. 1 The amount of performance security, as a percentage of the Contract Price, shall be: **N/A**

8.1 After delivery and acceptance of the equipment, the performance security shall be discharged in **less than 30 days but not later than 30 days following the date of completion**

#### Inspections and Tests (GCC Clause 10)

9. 10.1 Inspection and tests prior to delivery of equipment's and at final acceptance are as follows:

Quality inspection, if applicable, shall be carried out prior to delivery of the equipment by the Manufacture(s) at the supplier's own expense and responsibility in terms of the items specified in the specifications. The supplier shall submit the inspection certificate issued by himself which

should be attached with the certificate(s) of the Manufacture(s) to the Procuring Entity in order to ensure that the equipment(s) are developed in compliance with the contract.

*If applicable, specify other tests and inspections that will be carried out.*

#### Packing (GCC Clause 12)

##### 10.1

*The equipment shall be packed properly in accordance with standard packing specified by the Procuring Entity in the Technical Specification.*

## **Delivery and Documents (GCC Clause 13)**

**11. 13.1 For Equipments supplied from abroad: (choose as applicable) Upon delivery, the Supplier shall notify the Procuring Entity by facsimile or e-mail the full details of the shipment, including Contract number, description of the equipments, quantity, the vessel, the bill of lading number and date, port of loading, date of shipment, port of discharge, etc. The Supplier shall mail the following documents to the Procuring Entity:**

- (i.) One original plus four copies of the Supplier's invoice showing the software's description, quantity, unit price, and total amount ;**
- (ii.) Original and four copies of the negotiable, clean, on-board bill of lading/airway bill/road consignment note marked "freight prepaid" and four copies of non negotiable bill of lading or equivalent;**
- (iii.) One original plus four copies of the packing list identifying contents of each package;**
- (iv.) Manufacturer's or Supplier's warranty certificate;**
- (v.) Inspection certificate, issued by the nominated inspection agency, and the Supplier's factory inspection report; and**
- (vi.) Certificate of country of origin issued by relevant authority in the country of origin in duplicate. The above documents shall be received by the Procuring Entity at least one week before arrival of the equipment at the port or place of arrival and, if not received, the Supplier will be responsible for any consequent expenses.**

***/Other similar documents should be listed, depending upon the INCOTERM retained./***

**12. 13.3 For Equipments from within Kenya: Upon delivery of the equipment's to the transporter, the Supplier shall notify the Procuring Entity and mail the following documents to the Procuring Entity:**

- (i.) One original plus four copies of the Supplier's invoice showing the equipment description, quantity, unit price, and total amount;**
- (ii.) Delivery note, railway receipt, or truck receipt;**
- (iii.) Manufacturer's or Supplier's warranty certificate;**
- (iv.) Inspection certificate issued by the nominated inspection agency, and the Supplier's factory inspection report; and**
- (v.) Certificate of country of origin issued by the relevant authority in the country of origin in duplicate.**

***The above documents shall be received by the Procuring Entity before arrival of the equipment and, if not received, the Supplier will be responsible for any consequent expenses.***

## **Incidental Services (GCC Clause 14)**

**13. 14.1 Incidental services to be provided are:**

***[Selected services covered under GCC Clause 14 and/or other should be specified with the desired features. The price quoted in the Tender price or agreed with the selected Supplier shall be included in the Contract Price.]***

## **Warranty (GCC Clause 15)**

**14. 15.2** GCC 15.2—In partial modification of the provisions, the warranty period shall be \_\_N/A\_\_ hours of operation or \_\_12\_\_ months from date of acceptance of the equipment or (\_\_N/A\_\_) months from the date of shipment, whichever occurs earlier. The Supplier shall, in addition, comply with the performance and/or consumption guarantees specified under the Contract. If, for reasons attributable to the Supplier, these guarantees are not attained in whole or in part, the Supplier shall, at its discretion, either:

(a) Make such changes, modifications, and/or additions to the equipment or any part thereof as may be necessary in order to attain the contractual guarantees specified in the Contract at its own cost and expense and to carry out further performance tests in accordance with CDS 9,

**or**

(b) Pay liquidated damages to the Procuring Entity with respect to the failure to meet the contractual guarantees. The rate of these liquidated damages shall be 0.20 per cent per day of undelivered materials/software value up to the sum equivalent to the amount of ten percent of the contract value.

**15.** The period for correction of defects in the warranty period is: **1month.**

#### **Payment (GCC Clause 16)**

**16. 16.1** The method and conditions of payment to be made to the Supplier under this Contract shall be as follows:

**Payment for equipment and services supplied from abroad:** Payment of foreign currency portion shall be made in (USD ) in the following manner:

(i) **Advance Payment:** 20 percent of the Contract Price shall be paid within thirty (30) days of signing of the Contract, and upon submission of claim and a bank guarantee for equivalent amount valid until the equipment are delivered and in the form provided in the Tender documents or another form acceptable to the Procuring Entity.

(ii) **On Shipment:** 20 percent of the Contract Price of the equipment shipped shall be paid through irrevocable confirmed letter of credit opened in favour of the Supplier in a bank in its country, upon submission of documents specified in CDS Clause 11.

(iii) **On Acceptance:** 20 percent of the Contract Price of the equipment received shall be paid within thirty (30) days of receipt of the equipment upon submission of claim supported by the acceptance certificate issued by the Procuring Entity. Payment of local currency portion shall be made in

*[Kshs.]* within thirty (30) days of presentation of claim supported by a certificate from the Procuring Entity declaring that the software have been delivered and that all other contracted services have been performed

#### **.Payment for equipment and services supplied from within the Kenyan Republic:**

Payment for equipment and services supplied from within the Kenyan Republic shall be made in Kenyan Shillings, as follows:

(i) **Advance Payment:** 20 percent of the Contract Price shall be paid within thirty (30) days of signing of the Contract against a bank guarantee for the equivalent amount and in the form provided in the Tender documents or another form acceptable to the Procuring Entity.

(ii) **On Delivery:** 20 percent of the Contract Price shall be paid on receipt of the equipment and upon submission of the documents specified in CDS Clause 12.



(iii) **On Acceptance:** The remaining **60** percent of the Contract Price shall be paid to the Supplier within thirty (30) days after the date of the acceptance certificate for the respective delivery issued by the Procuring Entity.

**17.1** Period for payment following a valid invoice: **30 days**. Rate to be used for paying the Supplier's interest on the late payment made by Procuring Entity shall be the Central Bank of Kenya rate.

#### **Prices (GCC Clause 17)**

**18.1** Prices shall be adjusted in accordance with provisions in the Attachment to CDS.

*[To be inserted **only** if price is subject to adjustment.]*

#### **Escrow**

**19.1** (if any) escrow arrangements in relation to the Source Code

#### **Subcontracts (GCC Clause 23)**

**20.1** Maximum percentage of Subcontracting is *[insert percentage]*

#### **21 Liquidated Damages (GCC Clause 25)**

**21.1** Applicable rate: 0.1 to 0.2 per cent per day of undelivered materials/good's value. Maximum deduction: is equal to the performance security.

#### **22 Procedure for Disputes (GCC Clause 31)**

**22.1** The Adjudicator shall be *[insert: name of the Adjudicator]*

**22.2** Rate of the Adjudicator fees shall be *[insert: rate]*

**22.3** Arbitration institution shall be *[insert: institution]*

Place for carrying out Arbitration *[insert: full address of the place/location]*

#### **23 Replacement of Adjudicator (GCC Clause 33)**

**23.1** Appointing Authority for the Adjudicator *[ insert: Authority]*

## SECTION V: SCHEDULE OF REQUIREMENTS

### MANGO JUICE PROCESSING PLANT

<b>Function:</b>	To extract pulp from mangoes for hot-fill bulk and packaging solutions
<b>Process capacity:</b>	Up to 1500kg/hour (fruit input). Up to 1000 litres/hour output of end product (pulp). <i>Pulp can be diluted, but capacities will vary.</i>
<b>Capacity basis:</b>	Processing of uniform mangoes. Capacities will vary depending on fruit type and condition.
<b>Process summary:</b>	Washing and inspection (manual sorting), fruit juice extraction, blending & holding (1000 litres), pasteurization and hot filling.
<b>Packaging:</b>	Hot filling into bottles or bulk liners.
<b>Power supply:</b>	3 phase, 380 V, 50 Hz supply (generator set included)
<b>Electrical load:</b>	15 kW total
<b>Water consumption:</b>	30 litres/min (intermittent)
<b>Water treatment:</b>	Purification to suit wash down.
<b>Design:</b>	To ensure efficiency and simplicity of operation, cleaning & maintenance. Skid mounted, pre-erected and pre-commissioned before shipment to ensure minimal installation work and rapid commissioning at site.
<b>Comprising:</b>	

ITEM NO.	TITLE/MODEL	SPECIFICATION	FUNCTION/ CAPACITY	KW	QTY
1.0	<b>WASHING &amp; PREPARATION SYSTEM</b>	Comprising:-			
1.1	<b>WASHING BIN</b>	Sturdy 200 litre glass reinforced plastic trough (food grade)	For initial rinse & secondary wash		3
1.2	<b>PRE-WASH INSPECTION TABLE</b>	Stainless steel construction - with fruit guides. Angled for controlled feeding into tanks	To feed fruit into washing tank with initial inspection		1
1.3	<b>FRUIT WASHER</b>	Stainless steel construction - inlet hopper, main body and discharge chute. Food grade cleated belting with frequency inverter. Final rinse - shower head sprays.	To receive fruit, allowing manual inspection & washing  1000 kg/hr	0.37	1
1.31	<b>OUTLET CHUTE</b>	Outlet spout, removable.	From washer to pulper for mango		1
1.32	<b>WATER FILTER</b>	Stainless steel filter housing c/w replaceable bags (nominal 250, 100, 50, 25, 10 and 1 micron size available).	To filter recirculating wash water	—	2
1.33	<b>PUMP</b>	All stainless steel housing and impeller construction.	To recirculate water from fruit washer through to the filter	0.55	1
1.34	<b>SET WATER PIPEWORK</b>	Bends and connections made from galvanised steel and plastic.	To connect from pump to washer	—	1
2.0	<b>MANGO PROCESSING LINE</b>	Comprising:-		<b>KW</b>	<b>QTY</b>
2.1	<b>ROTARY PULPER/ SIEVER</b>	All stainless steel body. Removable stainless steel perforated steel screens:- 5mm. Rotary paddle with hygienic brushes. Feed hopper Collecting tray below for juice.	To extract juice and pulp from mango  Up to 1000kg/hr	5.5	2
2.11	<b>SUPPORT FRAME</b>	Stainless steel support frame.	For rotary pulper/siever		2
2.12	<b>PULPER SCREEN</b>	All stainless steel construction - 1mm,	For rotary		2



3mm

pulper/siever

<b>2.13 PUMP</b>	Impellor pump head, suitable for suspended solids, in stainless steel. Direct drive from motor with variable speed control.	To transfer pulp between pulper sievers	1.1	1	
<b>2.2 COLLECTION BIN</b>	Sturdy 200 litre glass reinforced plastic trough (food grade)	To collect fruit skin/pips from pulper/siever		4	
<b>3.0 BLENDING SYSTEM</b>	Comprising:-		<b>kW</b>	<b>QTY</b>	
<b>3.1 PUMP</b>	Impellor pump head, suitable for suspended solids, in stainless steel. Direct drive from motor with variable speed control.	To feed pulp/ juice to tanks	1.1	1	
<b>3.2 BLENDING TANKS</b>	Cylindrical type with spinning type base for ease of cleaning/drainage. Top cover with access door. Discharge pipe and valve. Geared motor stainless steel agitator. Stainless steel tank construction with hygienic welds.	To collect juice after extraction and act as reserve before pasteuriser 250 litre each	0.37	4	
<b>3.3 PUMP</b>	Impellor pump head, suitable for suspended solids, in stainless steel. Direct drive from motor with variable speed control.	To feed juice from tanks to pasteuriser	1.1	1	
<b>3.4 SET JUICE PIPEWORK</b>	Bends and connections made from stainless steel and food grade plastic.	Connecting equipment	–	1	
<b>4.0 PASTEURIZING SYSTEM</b>	Comprising:-		<b>kW</b>	<b>QTY</b>	
<b>4.1 HEAT EXCHANGER/ PASTEURIZER</b>	All stainless steel construction. Tube in tube type heat exchanger with outer hot water coil and inner juice coil. Automatic temperature control. With control valve feed pump, interconnecting pipework and recirculation pump. Oil fired hot water boiler, 120 kw, hot water circulation pump.	To pasteurize the juice (inactivate enzymes and micro-organisms) for hot filling 1500 litre/hr	2.2	1	
<b>4.2 SET WATER PIPEWORK</b>	Bends and connections made from galvanised steel and plastic, with valves.	Water ring-main system	–	1	
<b>5.1 BULK FILLING</b>	Comprising:-		<b>kW</b>	<b>QTY</b>	

<b>5.2 FILLING NOZZLE</b>	Flexible heat-insulated hygienic piping with filling gun.	To hot-fill into bulk containers from 20-200L	-	1
<b>6.0 PLANT SERVICES</b>	Comprising:-		<b>kW</b>	<b>QTY</b>
<b>6.1 CONTROL PANEL</b>	Totally enclosed, dust proof cabinet, with starter gear to suit the listed motors, each with on/ off buttons and clearly labelled. Individual circuit breakers and overloads. Main isolator and outgoing terminals.	To operate the plant	-	1
<b>6.2 WATER TREATMENT PLANT</b>	Progressive cascade filters: primary 316 stainless steel vessels with removable/washable filter bags and cartridge filtration system. 4 x 400litre tanks Self priming scavenge and pressure pumps with level control UV lamp sterilisation chamber with control system. Galvanised steel framework.	To treat the incoming water for use on washing fruit, cooling and wash-down of plant  30l/min	1	1

<b>6.3 WATER TANKS</b>	Food grade plastic, with support frame	To provide a reserve of water 3500 litre		2
<b>6.4 QUALITY CONTROL ITEMS</b>	PH meter and other instruments for quality control, water testing, bottles, beakers etc., gloves	To service the plant		1
<b>6.5 WATER RING MAIN</b>	Bends and connections made from galvanised steel and plastic, with valves.	For wash down and to serve washer	—	1
<b>6.6 AIR COMPRESSOR</b>	Compressor, gauges, pressure regulator	For control valves	—	1
<b>6.61 PUMP</b>	All stainless steel housing and impeller construction. Centrifugal type.	To pressurise ring main	0.37	1
<b>6.62 WASH DOWN ACCESSORIES</b>	Guns, brushes, flexible hoses with quick connectors	To thoroughly wash plant		1
<b>6.7 SET OF SUNDRY ITEMS</b>	To be defined	To service the plant	—	1
<b>7.0 SKID PACKAGE</b>	Comprising:-		<b>KW</b>	<b>QTY</b>
<b>7.1 SKID FRAME</b>	Robust frame with raised non-slip durbar plate floor - all galvanised construction. Brackets for pipework/wiring and support for control panel. Approx. size: 12m x 2.3m x 2.6m. Raised walkway over part of deck.	For the support and mounting of all the main processing equipment and ancillary equipment	-	1
<b>7.2 PREASSEMBLY</b>	Preassembly of the listed equipment on the modular frame system, including connection of pipework for water, steam and juice.	To allow shipment of complete installed plant	-	1
<b>7.3 CABLING</b>	Open lead from control panel and between panel and motors.	Prewiring of the equipment to the panels	—	1

<b>8.0 SPARE PARTS</b>	Comprising:-		<b>kW</b>	<b>QTY</b>
<b>8.1 STRATEGIC SPARE PARTS</b>	Electrical and mechanical parts.	For emergency standby		1
<b>8.2 CONSUMABLE SPARE PARTS</b>	Screens, UV bulbs, filters, etc.	Consumable parts		1

**TOTAL Cost:**-----



## SECTION VI: FORMS OF TENDER

### A. Form of Tender

Tender No:

Date:

To: Sir/Madam:

Having examined the Tendering documents including Addenda Nos. *[insert addenda numbers]*, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to supply and deliver **[Fruit Processing Plant and Equipment ]** 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.

We undertake, if our Tender is accepted, to deliver the Plant and Equipment in accordance with the delivery schedule specified in the Schedule of Requirements.

If our Tender is accepted, we undertake to provide a performance security in the form, in the amounts and within the times specified in the Tender Documents.

We agree to abide by this Tender for the Tender validity period which is 90 (Ninety) days and as specified in Clause 17.1 of the Tender Data Sheet, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

We are not participating, as Tenderers, in more than one Tender in this Tendering process, other than alternative offers in accordance with the Tendering Documents.

Our firm, its affiliates or subsidiaries – including any subcontractors or suppliers for any part of the contract – has not been declared ineligible by the Government of Kenya under Kenyan laws.

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.

We understand that you are not bound to accept the lowest or any Tender you may receive. We certify/confirm that we comply with the eligibility requirements as per ITT Clause 3 of the Tender documents

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

*(Name)*

\_\_\_\_\_

*[Signature] [In the capacity of]*

Duly authorized to sign Tender for and on behalf of \_\_\_\_\_

**Price Schedules for Plant and equipments and Related Services Offered from Abroad  
(International Sources)**

Name of Tenderer ..... IFT Number ..... Page ..... of .....

1	2	3	4	5	6	7	8	9	10	11
Item	Description Country of origin	Quantity Licence	Quantity	Licence Type	Licence Fee	Duration	Renewal	Maintenance	Total Price	Delivery Offered

Name ..... in the capacity of  
.....

Signature of  
Tenderer.....  
.....

Duly authorized to sign the Tender for and on behalf of  
.....

Dated on ..... day of ..... 20  
.....

*Note:* In case of discrepancy between unit price and total, the unit price shall prevail.

## **Tender Securing Declaration**

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

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

Tender No.: *CDA 65/2016-2017*

Alternative No.: *N/A*

To: *COAST DEVELOPMENT AUTHORITY*

We, the undersigned, declare that:

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

We accept that our future ability to tender shall be jeopardized if we are in breach of our obligation(s) under the Tender conditions, because we:

(a) Have withdrawn our Tender during the period of Tender validity specified in the Form of Tender; or

(b) Having been notified of the acceptance of our Tender by the Purchaser during the period of Tender validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the ITT.

We understand this Tender Securing Declaration shall expire if we are not the successful Tenderer, upon the earlier of

- (i) our receipt of your notification to us of the name of the successful Tenderer; or
- (ii) twenty-eight days after the expiration of our Tender.

Signed: *[insert signature of person whose name and capacity are shown]* In the capacity of *[insert legal capacity of person*

*signing the Tender Securing Declaration]*

Name: *[insert ]*

Duly authorized to sign the Tender for and on behalf of: *[insert ]*

Dated on \_\_\_\_\_ day of \_\_\_\_\_ *[insert ]*

Corporate Seal (where appropriate)

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

**Confidential Business Questionnaire**

**1. Individual Tenderers or Individual Members of Joint Ventures**

1.1 Legal status of Tenderer: *[attach copy]*

Place of registration: *[insert]*

Principal place of business: *[insert]*

Power of attorney of signatory of Tender: *[attach]*

1.2 Total annual volume of Services performed in *(insert period)* years, in the internationally traded currency specified in the Tender Data Sheet: *[insert]*

1.3 Services performed as prime Supplier on the provision of Services of a similar nature and volume over the last *(insert period)* years. The values should be indicated in the same currency used for Item 1.2 above. Also list details of work under way or committed, including expected completion date.

Project name and country	Name of Procuring Entity and contact person	Type of Services provided and year of completion	Value of Contract
a)			
b)			

1.4 Major items of Supplier's Equipment proposed for carrying out the Services. List all information requested below. Refer also to Clause 13.3(c) of the Instructions to Tenderers.

Item of equipment/ software	Description, and make of software	Components (new, good, poor) and number available	Owned, leased (from whom?), or to be purchased (from whom?)
a)			

b)			
----	--	--	--

1.5 Proposed subcontracts and firms involved. Refer to Clause 23 of General Conditions of Contract.

Sections of the Services	Value of Subcontract	Subcontractor (name and address)	Experience in providing similar Services
a)			
b)			

1.6 Financial reports for the last (*insert period*) years: balance sheets, profit and loss statements, auditors' reports, etc. List below and attach copies.

1.7 Evidence of access to financial resources to meet the qualification requirements: cash in hand, lines of credit, etc. List below and attach copies of support documents. We certify/confirm that we comply with eligibility requirements as per ITT Clause 3 of the Tender documents.

1.8 Name, address, and telephone, telex, and facsimile numbers of banks that may provide references if contacted by the Procuring Entity.

1.9 Information regarding any litigation, current or within the last (*insert period*) years, in which the Tenderer is or has been involved.

Other party(ies)	Cause of dispute	Details of litigation award	Amount involved
a)			

b)			
----	--	--	--

1.10 Information regarding Occupation Health and Safety Policy and Safety Records of the Tenderer.

1.11 Statement of compliance with the requirements of Clause 3.4 of the Instructions to Tenderers.

1.12 Proposed Program (service work method and schedule). Descriptions, drawings, and charts, as necessary, to comply with the requirements of the Tender documents.

**2. Joint Ventures**

2.1 The information listed in 1.10 - 1.12 above shall be provided for each partner of the joint venture.

2.2 The information in 1.13 above shall be provided for the joint venture.

2.3 Attach the power of attorney of the signatory (ies) of the Tender authorizing signature of the Tender on behalf of the joint venture.

2.4 Attach the Contract among all partners of the joint venture (and which is legally binding on all partners), which shows that;

(a) All partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;

(b) One of the partners will be nominated as being in charge, authorized to incur liabilities, and receive instructions for and on behalf of any and all partners of the joint venture; and

(c) The execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

**3. Additional Requirements**

3.1 Tenderers should provide any additional information required in the Tender Data Sheet and to fulfil the requirements of Clause 12.1 of the Instructions to Tenderers, if applicable.

We, the undersigned declare that

(a) The information contained in and attached to this form is true and accurate as of the date of Tender submission

*Or [delete statement which does not apply]*

(b) The originally submitted pre-qualification information remains essentially correct as of date of submission

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

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

Name of Tenderer:

Address:



## **Integrity Declaration**

### **UNDERTAKING BY TENDERER ON ANTI – CORRUPTION POLICY / CODE OF CONDUCT AND COMPLIANCE PROGRAMME**

1. Each Tenderer must submit a statement, as part of the Tender documents, in the given format which must be signed personally by the Chief Executive Officer or other appropriate senior corporate officer of the Tendering company and, where relevant, of its subsidiary in the Kenya. If a Tender is submitted by a subsidiary, a statement to this effect will also be required of the parent company, signed by its Chief Executive Officer or other appropriate senior corporate officer.

2. Tenderers will also be required to submit similar No-bribery commitments from their subcontractors and consortium partners; the Tenderer may cover the subcontractors and consortium partners in its own statement, provided the Tenderer assumes full responsibility.

3.

a) Payment to agents and other third parties shall be limited to appropriate compensation for legitimate services.

b) Each Tenderer will make full disclosure in the Tender documentation of the beneficiaries and amounts of all payments made, or intended to be made, to agents or other third parties (including political parties or electoral candidates) relating to the Tender and, if successful, the implementation of the contract.

c) The successful Tenderer will also make full disclosure [quarterly or semi-annually] of all payments to agents and other third parties during the execution of the contract.

d) Upon completion of the performance of the contract, the successful Tenderer will formally certify that no bribes or other illicit commissions have been paid. The final accounting shall include brief details of the equipment's and services provided that they are sufficient to establish the legitimacy of the payments made.

e) Statements required according to subparagraphs (b) and (d) of this paragraph will have to be certified by the company's Chief Executive Officer, or other appropriate senior corporate officer.

4. Tenders which do not conform to these requirements shall not be considered.

5. If the successful Tenderer fails to comply with its No-bribery commitment, significant sanctions will

apply. The sanctions may include all or any of the following:

a) Cancellation of the contract;

b) Liability for damages to the Procuring Entity and/or the unsuccessful competitors in the Tendering process.

6. Tenderers shall make available, as part of their Tender, copies of their anti-Bribery Policy/Code of Conduct, if any, and of their-general or project - specific - Compliance Program.

7. The Government of Kenya has made special arrangements for adequate oversight of the procurement

process and the execution of the contract, and has invited civil society and other competent Government Departments to participate in the oversight. Those charged with the oversight responsibility will have full access to all documentation submitted by Tenderers for this contract, and to which in turn all Tenderers and other parties involved or affected by the project shall have full access (provided, however, that no proprietary information concerning a Tenderer may be disclosed to another Tenderer or to the public).

**ANTI-CORRUPTION DECLARATION COMMITMENT/ PLEDGE**

I/We/Messrs.....

of Street, Building, P O Box.....

.....

Contact/Phone/E mail.....

Declare that Public Procurement is based on a free and fair competitive Tendering process which should

not be open to abuse.

I/We .....

declare that I/We will not offer or facilitate, directly or indirectly, any inducement or reward to any public

officer, their relations or business associates, in connection with

Tender name.....

Tender No .....

for or in the subsequent performance of the contract if I/We am/are successful.

Authorized Signature.....

Name and Title of Signatory.....

**Letter of Acceptance**

[Letterhead paper of the Procuring Entity]

[date]

To: [name and address of the Supplier]

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 Sheet] for the Contract Price of the equivalent of [amount in numbers and

words] [name of currency], as corrected and modified in accordance with the Instructions to Tenderers is

hereby accepted by us and it is our intention to proceed to make a written contract in accordance with the

Public Procurement and Asset disposal Act 2015 after the 14 day period of notification has expired. 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.

You may proceed with the said Contract in accordance with the Contract documents once the written contract has been signed.

Please return the attached Contract dully signed

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

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

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

Attachment: Contract: \_\_\_\_\_

## **Form of Contract**

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ between *[name and address of PE]* of

Kenya (hereinafter called “the Purchaser”) of the one part and *[name of Tenderer]* of *[city and country of*

*Tenderer]* (hereinafter called “the Supplier”) of the other part:

WHEREAS the Purchaser invited Tenders for Supply,Delivery,Installation ,Testing and Commissioning a

fruit process plant and equipment , viz related services and has accepted a Tender by the Supplier for the

supply ,delivery,installation,testing and commissioning of a fruit processing plant and related equipment’s

in the sum of *[contract price in words and figures]* (hereinafter called “the Contract Price”).

### **NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:**

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to

them in the Conditions of Contract referred to.

2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz.:

(a) The Tender Form and the Price Schedule submitted by the Tenderer;

(b) The Schedule of Requirements;

(c) The Technical Specifications;

(d) The General Conditions of Contract;

(e) The Contract Data Sheet; and

(f) The Purchaser’s Notification of Award.

3. In consideration of the payments to be made by the Purchaser to the Supplier as hereinafter mentioned, the Supplier hereby covenants with the Purchaser to supply, deliver, installation and commissioning of fruit processing equipment and to remedy defects therein in conformity in all respects with the provisions of the Contract

4. The Purchaser hereby covenants to pay the Supplier in consideration of plant, equipment and related services and the remedying of defects therein, the Contract Price or such other sum as may become

payable under the provisions of the contract at the times and in the manner prescribed by the contract.

IN WITNESS where of the parties hereto have caused this Agreement to be executed in accordance with

their respective laws the day and year first above written.

Signed, sealed, delivered by \_\_\_\_\_ the \_\_\_\_\_ (for the Purchaser)

Witness to the signatures of the Procuring Entity: \_\_\_\_\_

Signed, sealed, delivered by \_\_\_\_\_ the \_\_\_\_\_ (for the Supplier)

Witness to the signatures of the supplier: \_\_\_\_\_

**SECTION VII: FORMS OF SECURITY**

**A. Tender security (Bank/Insurance Company Guarantee) (Optional)**

Bank/insurance co letterhead

Whereas ..... [Name of the tenderer]

(Here in after called “the tenderer”) has submitted its tender dated ..... [Date of submission of tender] for the supply,delivery installation,testing and commissioning of fruit processing plant and equipment [Name and/or description of the equipment] (here in after called “the Tender”)

..... KNOW ALL PEOPLE by these presents that WE  
..... of ..... having our registered office at .....

(Here in after called “the Bank/Insurance Company”), are bound unto ..... [Name of procuring entity} (Here in after called “the Procuring Entity”) in the sum of ..... for which payment well and truly to be made to the said Procuring Entity, the Bank/Insurance Company binds itself, its successors, and assigns by these presents.Sealed with the Common Seal of the said Bank/Insurance Company this day of

20 .THE CONDITIONS of this obligation are:-

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

Instructions to tenderers;

We undertake to pay to the Procuring entity up to the above amount upon receipt of its first written demand, without the Procuring entity having to substantiate its demand, provided that in its demand the

Procuring entity will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

This tender guarantee will remain in force up to and including thirty (30) days after the period of tender

validity, and any demand in respect thereof should reach the Bank/Insurance Company not later than the

above date.

[Signature of the Bank/Insurance Company]\_\_\_\_\_

[Seal]



**Performance Bank/Insurance Company Guarantee [Unconditional]**

To .....

[Name of Procuring entity]

WHEREAS ..... [Name of tenderer] (here In after called “the tenderer”)

has undertaken , in pursuance of Contract No. [Reference number of the contract] dated 20 to supply

..... [description of goods] (hereinafter called “the Contract”).

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

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

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

This guarantee is valid until the day of 20

Signed and seal of the Guarantors

[Name of Bank/Insurance Company]

[Address]

[Date]

**Bank /Insurance Company Guarantee for Advance Payment (Optional )**

To .....

[name of Procuring entity]

[name of tender] .....

Gentlemen and/or Ladies:

In accordance with the payment provision included in the Contract Data Sheet, 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/Insurance Company 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/Insurance Company], as instructed by the tenderer, agree unconditionally and irrevocably to guarantee as primary obligator and not as surety merely, the payment to

the Procuring entity on its first demand without whatsoever right of objection on our part and without its

first claim to the tenderer, in the amount not exceeding ..... [amount of guarantee in figures and words]

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

waive notice of any such change, addition, or modification.

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

Yours truly,

Signature and seal of the Guarantors

[name of Bank/Insurance Company]

[address]

[date]

**Manufacturer Authorization Form (Optional)**

To: *[name of the Purchaser]*

WHEREAS *[name of the Manufacturer]* who are established and reputable manufacturer of, and have the

rights to manufacture, *[name and/or supply and install fruit processing plant and equipment]* having factories at

*[address of factory]*

do hereby authorize *[name and address of Agent]* to submit a Tender, and subsequently negotiate and sign the

Contract with you against IFT No. *[reference of the Invitation to Tender]* for the above equipment manufactured by us.

We hereby extend our full guarantee and warranty as per Clause 16 of the General Conditions of Contract

for the equipment offered for supply by the above firm against this Invitation for Tenders.

---

*[signature for and on behalf of Manufacturer]*

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

person competent and having the power of attorney to bind the Manufacturer. It should be included by the Tenderer in its Tender.

**SECTION VII: APPLICATION TO PUBLIC PROCUREMENT REVIEW BOARD**

**FORM RB 1**

**REPUBLIC OF KENYA**

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

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

BETWEEN

.....APPLICANT

AND

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

Request for review of the decision of the..... (*Name of the Procuring Entity*) of  
.....dated

the...day of .....20.....in the matter of Tender No.....of .....20...

**REQUEST FOR REVIEW**

I/We.....,the above named Applicant(s), of address: Physical  
address.....Fax

No.....Tel. No.....Email ....., hereby request the Public Procurement Administrative  
Review Board

to review the whole/part of the above mentioned decision on the following grounds , namely:-

- 1.
- 2.

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

- 1.
- 2.

SIGNED ..... (Applicant)

Dated on.....day of ...../...20...

**FOR OFFICIAL USE ONLY**

Lodged with the Secretary Public Procurement Administrative Review Board on ..... day of  
.....20.....

SIGNED

BoardSecretary