

COMMUNICATIONS AUTHORITY OF KENYA



TENDER FOR HOSTING AND MAINTENANCE OF DISASTER RECOVERY (DR) SITE

CA/PROC/OT/44/2017-2018

**Head of Procurement
Communications Authority of Kenya
Waiyaki Way
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SECTION A:
**HOSTING AND MAINTENANCE OF DISASTER RECOVERY (DR) SITE-
CA/PROC/OT/44/2017-2018**

The Communications Authority of Kenya (CA) is the ICT industry regulator with responsibilities in telecommunications e-commerce, broadcasting, and postal/courier services. CA is also responsible for protecting the rights of ICT consumers and for managing the country's numbering and spectrum resources.

CA wishes to invite interested and eligible firms to quote for supply and delivery of printers, binder and laminating as detailed in the tender document.

You are invited to collect the tender documents from the Procurement Division, Communications Authority of Kenya- CA Centre, 3rd Floor Wing A, along Waiyaki Way, Nairobi, during normal working hours.

The tender document can also be accessed and downloaded from the IFMIS Supplier Portals: <http://supplier.treasury.go.ke> and the Authority's website: www.ca.go.ke. The firms that download the document must arrange to forward their particulars/contacts to the Head of Procurement, Communications Authority of Kenya through email address tenders@ca.goke before the closing date for records and for the purposes of receiving clarifications and/or addendums, if any.

Duly completed tender documents should be submitted in a plain, sealed envelope bearing the plain sealed envelopes, clearly marked **CA/PROC/OT/44/2017-2018 - "TENDER FOR HOSTING AND MAINTENANCE OF DISASTER RECOVERY (DR) SITE"** via the address below or deposited in our tender box located on the ground floor of the CA Centre, so as to reach on or before **30th May, 2018 at 2.30 p.m. East Africa Time.**

The Head of Procurement
Communications Authority of Kenya
P.O Box 14448
Nairobi 00800
Tel: +254 (020) 4242000
Mobile: +254 703-042000
Website: www.ca.go.ke

Bids shall be opened soon thereafter in the presence of the bidder's representative(s) who choose to attend at the Authority's Ground floor meeting room 2.

SECTION B: GENERAL INFORMATION

Introduction

1. Eligible Tenderers

- 1.1 This invitation to Tenders is open to all tenderers eligible as described in the tender documents. Successful tenderers shall complete the supply of goods by the intended completion date specified in the tender documents.
- 1.2 Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by CA to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods under this invitation for tenders.
- 1.3 Tenderers shall not be under a declaration of eligibility for corrupt and fraudulent practices.
- 1.4 Tenderers shall bid for the supply of items as per specifications (as outlined in the schedule of requirements) and the fabrication of the items as specified in the technical specifications.

2. Eligible Goods

- 2.1 All goods to be provided under this contract shall have their origin in eligible source countries.

3. Cost of Tendering

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

4. Contents

- 4.1 The tender document comprises the documents listed below and addenda issued in accordance with Clause 6 of these instructions to tenders.
 - (i) Invitation for Tenders
 - (ii) General Information
 - (iii) General Conditions of Contract
 - (iv) Special Conditions of Contract
 - (v) Schedule of Requirements
 - (vi) Technical Specifications
 - (vii) Tender Form and Price Schedules

- (viii) Bid Security Form
 - (ix) Contract Form
 - (x) Performance Security Form
 - (xi) Bank Guarantee form
 - (xii) Manufacturer's Authorization Form
- 4.2 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tender documents. Failure to furnish information required by the tender documents or to submit a tender not substantially responsive to the tender documents in every respect will be at the tenderers risk and may result in the rejection of its tender.

5. Clarification of Documents

- 5.1 A prospective tenderer requiring any clarification of the tender document may notify CA in writing or by cable (hereinafter, the term cable is deemed to include telex and facsimile) at the address indicated in the invitation for tenders. CA will respond in writing to any request for clarification of the tender documents, which it receives no later than seven (7) days prior to the deadline for the submission of tenders, prescribed by CA. Written copies of CA response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers that have received tender documents.

6. Amendment of Documents

- 6.1 At any time prior to the deadline for submission of tender, CA, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by amendment.
- 6.2 All prospective candidates who have received the tender documents will be notified of the amendment in writing or by cable, and will be binding on them.
- 6.3 In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, CA, at its discretion, may extend the deadline for the submission of tenders.

Preparation of Tenders

7. Language of Tender

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

8. Documents Comprising the Tender

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

- (a) A Tender Form and a Price Schedule completed in accordance with paragraph 9, 10 and 11 below including
- (b) Documentary evidence established in accordance with paragraph 12 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted.
- (c) Documentary evidence established in accordance with paragraph 13 that the goods and ancillary services to be supplied by the tenderer are eligible goods and services and conform to the tender documents; and
- (d) Bid Security furnished in accordance with paragraph 14

9. Tender Form

9.1 The tenderer shall complete the Tender Form and the appropriate Price Schedule furnished in the tender documents, indicating the goods to be supplied, a brief description of the goods, documentation certifying their country of origin, quantity, and prices.

10. Tender Prices

10.1 The tenderer shall indicate on the appropriate Price Schedule the unit prices and total tender price of the goods/ services it proposes to supply under the contract.

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

- (i) For purposes of the contract, taxes will be in-built. All prices of goods quoted EXW (ex works, ex factory, ex warehouse, ex showroom, or off the shelf as applicable) by the tenderers will be compared on the basis of the net values presented by the bidders and will be deemed to take into account the access to exemption (if there is to be exemption on taxes and duties, the bids will therefore be compared on the basis of the prices exclusive of the above mentioned duties and taxes).
- (ii) Charges for inland transportation, insurance, and other local costs incidental to delivery of the goods to their final destination; and

10.3 Prices quoted by the tenderer shall be fixed during the Tender's performance of the contract and not subject to variation on any account. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 22.

11. Tender Currencies

11.1 Prices shall be quoted in the following currencies: -

- (a) For goods that the tenderer will supply from within Kenya, the prices shall be quoted in Kenya Shillings; and
- (b) For goods that the tenderer will supply from outside Kenya, the prices shall be quoted in US Dollars or Euros.

12. Tenderers Eligibility and Qualifications

12.1 Pursuant to paragraph 1 (1.1 – 1.4) of Section C, the tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.

12.2 The documentary evidence of the tenderers eligibility to tender shall establish to CA's satisfaction that the tenderer, at the time of submission of its tender, is from an eligible source country as defined under paragraph (1.1 – 1.4) of Section C documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall establish to CA satisfaction:

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

13. Goods' Eligibility and Conformity to Tender Documents

13.1 Pursuant paragraph 2 of this Section, the tenderer shall furnish, as part of its tender, document establishing the eligibility and conformity to the tender documents of all goods, which the tenderer proposes to supply under the contract.

13.2 The documentary evidence of the eligibility of the goods shall consist of a statement in the Price Schedule of the country of origin of the goods and services offered which shall be confirmed by a Certificate of Origin issued at a time of shipment as stated above in paragraph 2.

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

- (a) A detailed description of the essential technical and performance characteristics of the goods;
 - (b) A list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the goods for a period of ten (10) years, following commencement of the use of the goods by CA; and
 - (c) A clause-by-clause commentary on CA's Technical Specifications demonstrating substantial responsiveness of the goods and services to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.
- 13.4 For purposes of the commentary to be furnished pursuant to paragraph 13.3(c) above, the tenderer shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designed by CA in its Technical Specifications, are intended to be descriptive only and not restrictive. The tenderer may substitute alternative standards, brand names, and/or catalogue numbers in its tender, provided that it demonstrates to CA's satisfaction that the substitutions ensure substantial equivalent to those designated in the Technical Specifications.
- 14. Bid Security/Bid bond (50,000.00)**
- 14.1** The tenderer is required to furnish, as part of its tender, a Bid Security.
- 14.2 The Bid Security is required to protect CA against the risk of Tenderer's conduct, which would warrant the security's forfeiture, pursuant to paragraph 14.7
- 14.3 The Bid Security shall be denominated in Kenya Shillings shall be in the form of a bank guarantee or bank draft issued by a reputable bank located in Kenya, in the form provided in the tender documents or Insurance Bond approved by PPRA and valid for thirty - (30) days beyond the validity of the tender.
- 14.4 Any tender not secured in accordance with paragraph 14.1 and 14.3 will be rejected by CA as non-responsive, pursuant to paragraph 22.
- 14.5 Unsuccessful Tenderer's Bid Security will be discharged or returned as promptly as possible as but not later than thirty (30) days after the expiration of the period of tender validity prescribed by CA.
- 14.6 The successful Tenderer's Bid Security will be discharged upon the tenderer signing the contract, pursuant to paragraph 30, and furnishing the performance security, pursuant to paragraph 31.
- 14.7 The Bid Security may be forfeited: -
- (a) If a tenderer withdraws its tender during the period of tender validity specified by CA on the Tender Form; or

- (b) In the case of a successful tenderer, if the tenderer fails;
 - (i) To sign the contract in accordance with paragraph 30
 - or
 - (ii) To furnish performance security in accordance with paragraph 31

15. Validity of Tenders

- 15.1 Tenders shall remain valid for 120 days or as specified in the tender documents after date of tender opening prescribed by CA, pursuant to paragraph 18. A tender valid for a shorter period shall be rejected by CA as non-responsive.
- 15.2 In exceptional circumstances, CA may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The Bid Security provided under paragraph 14 shall also be suitably extended.
- 15.3 A tenderer may refuse the request without forfeiting its Bid Security. A tenderer granting the request will not be required nor permitted to modify its tender.

16. Format and Signing of Tender

- 16.1 The tenderer shall prepare one original and one copy of the tender, clearly marking "ORIGINAL TENDER" and "COPY OF TENDER" as appropriate. In the event of any discrepancy between them, the original shall govern.
- 16.2 The original and copy of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. The latter authorization shall be indicated by written power-of-attorney accompanying the tender. All pages of the tender, except for un-amended printed literature, shall be initialed by the person or persons signing the tender.
- 16.3 The tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.
- 16.4 The tenderer shall also submit soft copies of the bid documents on a CD ROM for both financial and technical bids.

Submission of Tenders

17 Sealing and Marking of Tenders

- 17.1 The tenderer shall seal the original and copy of the tender in separate envelopes, duly marking the envelopes as "ORIGINAL" and "COPY". The envelopes shall then be sealed in an outer envelope.
- 17.2 The inner and outer envelopes shall:

(a) Be addressed to CA at the following address

**The Head of Procurement
Communications Authority of Kenya
P.O. Box 14448
Westlands 00800
Nairobi
KENYA**

Tel NO: 254-20-4242000

(b) Bear, the Tender Number and words: **“DO NOT OPEN BEFORE 30th May, 2018 at 2.30 p.m.**

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

17.4 If the outer envelope is not sealed and marked as required by paragraph 17.2, CA will assume no responsibility for the tender’s misplacement or premature opening.

18. Deadline for Submission of Tenders

18.1 Tenders must be received by CA at the address specified under paragraph 17.2 not later than **30th May, 2018 at 2.30 p.m.**

18.2 CA may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 6, in which case all rights and obligations of CA and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

19. Modification and Withdrawal of Tenders

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

19.2 The tenderer’s modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 17. A withdrawal notice may also be sent by cable, but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.

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

19.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the Tenderer’s forfeiture of its Bid Security, pursuant to paragraph 14.7.

Opening and Evaluation of Tenders

20. Opening of Tenders

- 20.1 CA will open all tenders in the presence of tenderers' representatives who choose to attend, at CA Headquarters 1st Floor meeting Room.

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

- 20.2 The tenderers' names, tender modifications or withdrawals, and the presence or absence of requisite Bid Security and such other details as CA, at its discretion, may consider appropriate, will be announced at the opening.
- 20.3 CA will prepare minutes of the tender opening.

21. Clarification of Tenders

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

22. Preliminary Examination

- 22.1 CA will examine the tenders to determine whether they are complete, whether any computation errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order.
- 22.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected and its Bid Security may be forfeited. If there is a discrepancy between words and figures, the amount in words will prevail.
- 22.3 CA may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any tenderer.
- 22.4 Prior to the detailed evaluation, pursuant to paragraph 23, CA will determine the substantial responsiveness of tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one which confirms to all the terms and conditions of the tender documents without material deviation, CA determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

22.5 If a tender is not substantially responsive, it will be rejected by CA and may not subsequently be made responsive by the tenderer by correction of the nonconformity.

23. Evaluation and Comparison of Tenders

23.1 CA will evaluate and compare the tenders, which have been determined to be substantially responsive, pursuant to paragraph 22.

23.2 The evaluation of a tender will include and will take into account: -

In the case of goods manufactured in Kenya or goods of foreign origin already located in Kenya, sales and other similar taxes, which will be payable on the goods if a contract is awarded to the tenderer, and

23.3 The comparison shall be based on the prices quoted for the goods to be supplied and delivered to CA including duties (for imported goods) and VAT.

23.4 The evaluation of a tender will take into account, in addition to the tender price and the price of incidental services, the following factors, in the manner and to the extent indicated in paragraph 23.5 and in the technical specifications:

- (a) Delivery schedule offered in the tender;
- (b) List of clients where the bidder has supplied and installed similar equipment

23.5 Pursuant to paragraph 23.4 the following evaluation methods will apply:

1) Stage 1: Mandatory Evaluations

Bidders will be evaluated based on the following mandatory requirements failure by bidders to meet these requirements will be disqualified a this stage.

No	Description
1	Certificate of Incorporation/Registration
2	The bidder must submit a CR12 Form obtained from Attorney General's office showing the shareholders of the firm
3	Valid and current KRA Tax Compliance Certificate
4	Bid security of Kshs 50,000 must be in form of Bank Guarantee from a reputable bank or an Insurance Bond from Insurance Company and approved by Public Procurement Regulatory Authority (PPRA
5	Audited accounts for the last 3 years (2014, 2015 and 2016).
6	Bidders are required to serialized the tender document in a format of 0001.....upto the last page as provided for in the PPDA Act 2015 section 74 (i)

Stage 2: Technical Evaluation

The rating procedure for the technical evaluation shall be Compliant/non-compliant as detailed below:

No	Item	Minimum Technical Specifications	Complied/ Not Complied	If complied, Bidders MUST provide explanation of compliance with reference to the documentation provided in the proposal with the specific page number and section of the reference
1.	Rack Space	To fit at least four (4) 42U racks		
2.	Connectivity	Two (2) links between CA Centre and the DR Site as follows: i. Primary 10 Mbps dedicated Internet Fiber link provisioned via Multiprotocol Label Switching (MPLS) infrastructure ii. Backup 10 Mbps Internet link provisioned via Multiprotocol Label Switching (MPLS) infrastructure		
3.	Notification of Downtime	CA's Administrators should be proactively and automatically notified in case of a downtime or a fault from the DR Site		
4.	Services Provided	Dedicated connectivity to the CA's equipment Allow for replication of data from the primary to the secondary site Provide for Reliability, Security and Redundancy At least 99.99% uptime Secure and controlled access to the DR Site Availability of Fire suppression equipment		

No	Item	Minimum Technical Specifications	Complied/ Not Complied	If complied, Bidders MUST provide explanation of compliance with reference to the documentation provided in the proposal with the specific page number and section of the reference
		Provide for a working area for CA's IT staff		
5.	Support	On-site systems and connectivity support by the service provider		
		24 hours support		
		Quality of Service (QoS) reporting provided by the Account Manager		
6.	Equipment Access in the DR Site	24*7 support and access to the DR Site by CA's authorized personnel		
7.	Security	Secure access with (Closed Circuit TV) CCTV cameras		
		Fire detection and control systems		
		Physical Security		
8.	Power Supply	Clean and reliable power supply with UPSes and Generators for Power Backup		
9.	Temperature control	Regulated temperature control for the IT equipment		

Any non-compliance to the specifications will lead to disqualification from proceeding to the financial evaluation stage.

Stage 3: Financial Evaluation.

The financial proposal should be detailed, **comprising of the unit and the total cost of all items proposed including payment of duties/taxes, inspection and transportation of the equipment to delivery at the CA Centre, Nairobi Kenya.** Use the format below while submitting your tender.

No	Item description	Qty	Unit cost	Total cost
1	Hosting of disaster recovery (DR) site	1		

2.	Maintenance of the Disaster recovery sites	1		
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The bids that qualify at the technical evaluation stage will be subjected to financial evaluation to determine the winner. The lowest cost bidder will be considered for award of tender.

24. Contacting Communications Authority of Kenya

24.1 Any communication to CA by a bidder in regard to this tender shall be in writing and any response by the latter regarding the same shall also be in writing

25. Post-qualification

25.1 CA 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.

25.2 The determination will take into account the Tenderer’s production capabilities. It will be based upon an examination of the documentary evidence of the Tenderer’s qualifications submitted, as CA deems necessary and appropriate.

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

26. Award Criteria

26.1 Subject to paragraph 10, 23 and 28 CA will award the contract to the successful tenderer(s) whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

27. Communications Authority of Kenya’s Right to Vary Quantities

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

28. CA Reserves Right to Accept or Reject Any or All Tenders

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

29. Notification of Award

- 29.1 Prior to the expiration of the period of tender validity, CA will notify the successful tenderer in writing that its tender has been accepted.
- 29.2 The notification of award will constitute the formation of the Contract
- 29.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 31, CA will promptly notify unsuccessful Tenderer and will discharge its Bid Security, pursuant to paragraph 14.

30. Signing of Contract

- 30.1 At the same time as CA notifies the successful tenderer that its tender has been accepted, it will send the tenderer the Contract Form provided in the tender document, incorporating all agreements between the parties.
- 30.2 Within thirty (30) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to CA.

31 Performance Security-5% of the contract sum

- 31.1 The bond will be issued by accordance with the Conditions of the Contract, in the Performance Security Form provided in the tender documents. The performance security shall be in the form of letter of credit issued by a reputable bank carrying on business within Kenya and acceptable to the Authority and the supplier,
- 31.2 Failure of the successful tenderer to comply with the requirement of paragraph 30 or paragraph 31 shall constitute sufficient grounds for the annulment of the award and forfeiture of the, in which event CA may make the award to the next lowest evaluated Candidate or call for new tenders.

32. Corrupt Fraudulent Practices and Extra-ordinary Commercial Costs

- 32.1 CA requires that tenderers observe the highest standard of ethics during the procurements process and execution of contracts. In pursuance of this policy, CA: -
- (a) defines, for the purposes of this provision, the terms set forth below as follows: -
- (i) "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and
- (ii) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of CA, and includes collusive practice among tenderer (prior to or after tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive CA of the benefits of free and open competition;

- (iii) “Extra-ordinary commercial costs” mean any Authority not mentioned in the main contract or which does not result from at least an independent and valid agreement referring to such contract, any Authority to be paid in a tax haven, any Authority paid to a beneficiary which is ambiguously identified or to a company that could be considered as a sham company.
 - (iv) Any effort by a bidder to influence CA in its decisions on tender evaluation, tender comparison, or contract award may result in the rejection of the tenderer’s bid proposal.
- (b) Demands that the bidding firm declares that,
- (i) the negotiations, the making and the performance of the contract has not or will not give rise to the collection of Extra-ordinary commercial costs, and
 - (ii) It has not proposed, and will not propose, directly or indirectly, any benefits (offers, promises of gifts, gifts.), which constitute or could constitute the offence of corruption within the meaning of the OECD Convention of December 17, 1997 with respect to measures against corruption of foreign public officials.
- (c) Will proceed as follows in case of any detected corrupt or fraudulent practice;
- (i) The proposals will be rejected if it is determined that the tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.

32.2 Furthermore, tenderers shall be aware of the provision stated in the General Conditions of Contract.

SECTION C: GENERAL CONDITIONS OF CONTRACT

1. Definitions

1.1 In the Contract, the following terms shall be interpreted as indicated:

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

2. Application

2.1 These General Conditions shall apply in all Contracts made by CA for the procurement of goods.

3. Country of Origin

3.1 For purposes of this Clause, “origin” means the place where the Goods were mined, grown, or produced.

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

4. Standards

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

5. Use of Contract Documents and Information

- 5.1 The Candidate shall not, without CA'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 CA in connection therewith, to any person other than a person employed by the tenderer in the performance of the Contract.
- 5.2 The tenderer shall not, without CA's prior written consent, make use of any document or information enumerated in paragraph 5.1 above.
- 5.3 Any document, other than the Contract itself, enumerated in paragraph 5.1 shall remain the property of CA and shall be returned (all copies) to CA on completion of the Tenderer's performance under the Contract if so required by CA.

6. Patent Rights

- 6.1 The tenderer shall indemnify CA against all third party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof in Kenya.

7. Performance Security-5% of the contract sum

- 7.1 Within thirty (30) days of receipt of the notification of award or at contract sign off, the successful tenderer shall furnish to CA the performance security in the amount specified in Special Conditions of Contract.
- 7.2 The proceeds of the performance security shall be payable to CA as compensation for any loss resulting from the Tenderer failure to complete its obligations under the Contract.
- 7.3 The performance security shall be dominated in the currency of the Contract, or in a freely convertible currency to CA and shall be in the form of a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in Kenya and acceptable to CA, in the form provided in the tender documents.
- 7.4 The performance security will be discharged by CA and returned to the Candidate not later than thirty (30) days following the date of completion of the Tenderer's performance obligations under the Contract, including any warranty obligations, under the Contract.

8. Inspection and Tests

- 8.1 CA or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Contract Specifications. CA shall notify the tenderer in writing, in a timely manner, of the identity of any representatives retained for these purposes.
- 8.2 The inspections and tests may be conducted on the premises of the tenderer or its subcontractor(s), at a point of delivery, and/or at the Goods' final destination. If conducted on the premises of the tenderer or its subcontractor(s), all reasonable

facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to CA.

- 8.3 Should any inspected or tested Goods fail to conform to the Specifications, CA may reject the Goods, and the tenderer shall either replace the rejected Goods or make alterations necessary to meet specification requirements free of cost to CA.
- 8.4 CA's right to inspect, test and, where necessary, reject the Goods after the Goods' arrival shall in no way be limited or waived by reason of the Goods having previously been inspected, tested, and passed by CA or its representative prior to the Goods' delivery.
- 8.5 Nothing in paragraph 8 shall in any way release the tenderer from any warranty or other obligations under this Contract.

9. Packing

- 9.1 The tenderer shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract.
- 9.2 The packing marking and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract.

10. Delivery and Documents

- 10.1 Delivery of the Goods shall be made by the tenderer in accordance with the terms specified by CA in its schedule of Requirements and the Special Conditions of Contract.

11. Insurance

- 11.1 The Goods supplied under the Contract shall be fully insured against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery in the manner specified in the Special Conditions of Contract.

12. Payment

- 12.1 The method and conditions of payment to be made to the tenderer under this Contract shall be specified in Special Conditions of Contract (SCC).
- 12.2 Payments shall be made promptly by CA as specified in the Contract.
- 12.3 The Supplier's request(s) for payment shall be made to the Purchaser in writing, accompanied by an invoice describing, as appropriate, the Goods delivered and Services performed, and by documents submitted pursuant to GCC Clause 10, and upon fulfillment of other obligations stipulated in the Contract.

12.4 The Supplier shall make payments promptly to the Purchaser, but in no case payments later than thirty- (30) days after submission of an invoice or claim.

12.5 The currency or currencies in which payment is made to the Supplier under this Contract shall be specified in SCC.

13. Prices

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

14. Assignment

14.1 The tenderer shall not assign, in whole or in part, its obligations to perform under this Contract, except with CA's prior written consent.

15. Subcontracts

15.1 The tenderer shall notify CA in writing of all Subcontracts awarded under this Contract if not already specified in the tender. Such notification, in the original tender or later, shall not relieve the tenderer from any liability or obligation under the Contract.

16. Termination for Default

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

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

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

17. Liquidated Damages

17.1 If the tenderer fails to deliver any or all of the goods within the period(s) specified in the contract, CA shall, without prejudice to its other remedies under the Contract, deduct from the contract prices liquidated damages sum equivalent to 0.5% per month

of the price of the delayed goods up to a maximum deduction of 10%. After this the tenderer may consider termination of the contract.

18. Resolution of Disputes

- 18.1 CA and the tenderer shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the contract.
- 18.2 If, after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute, either party may require adjudication in an agreed national or international forum, and/or international arbitration.

19. Language and Law

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

20. Incidental Services

- 20.1 The Supplier may be required to provide any or all the following services, including additional services, if any, specified in SCC:
 - (a) Performance or supervision of on-site assembly and/or start-up of the supplied Goods;
 - (b) Furnishing of tools required for assembly and/or maintenance of the supplied Goods
 - (c) Furnishing of a detailed operations and maintenance manual for the Authority appropriate unit of the supplied Goods;
 - (d) Performance maintenance and/or repair of the supplied Goods, for a period of time agreed by the parties, provided that this service shall not relieve the Supplier of any warranty obligations under this Contract; and
 - (e) Training of the CA personnel, at the Supplier's plant and/or on site, in start-up, operation, maintenance, and/or repair of the supplied Goods. The supplier shall offer training for additional modules.
- 20.2 Prices charged by the Supplier for incidental services, if not included in the Contract Price for the Goods, shall be agreed upon in advance by the parties and shall not

exceed the prevailing rates charged to other parties by the Supplier for similar services.

21. Spare Parts

21.1 As specified in SCC, the Supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the Supplier:

- (a) Such spare parts as the CA may choose to purchase from the Supplier, provided that this choice shall not relieve the Supplier of any warranty obligations under the Contract; and
- (b) In the event of termination of production of the spare parts:
 - (i) Advance notification to the CA of the pending termination, in sufficient time to permit the CA to procure needed requirements; and
 - (ii) Following such termination, furnishings at no cost to the CA, the specifications of the spare parts, if requested.

21.2 The Contractor agrees that the spare parts recommended by him for operation and quoted in Section E shall be in supply for the operation and maintenance of the Goods as per provision of subsequent paragraphs of this Clause.

21.3 All the spares for the equipment under the Contract will strictly conform to the Specification given herein and other relevant documents and will be identical to the corresponding main equipment/components supplied under the Contract and shall be fully interchangeable.

22. Warranty

22.1 The Supplier warrants that the Goods supplied under the Contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the Contract. The Supplier further warrants that all Goods supplied under this Contract shall have no defect, arising from design, materials, or workmanship (except them the design and/or material is required by the CA specifications) or from any act or omission of the Supplier, that may develop under normal use of the supplied Goods in the conditions prevailing in the country of final destination.

22.2 This warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the Contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

22.3 The CA shall promptly notify the Supplier in writing of any claims arising under this warranty.

- 22.4 Upon receipt of such notice, the Supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective Goods or parts thereof, without costs to the CA other than, where applicable, the cost of inland delivery of the repaired or replaced Goods or parts from EXW or the port or place of entry to the final destination.
- 22.5 If the Supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the CA 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 CA may have against the Supplier under the Contract.

23. Force Majeure

- 23.1 The tenderer shall not be liable for forfeiture of its performance, security, 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.
- 23.2 For purposes of this clause, "Force Majeure" means an event beyond the control of the Supplier and not involving the Supplier's fault or negligence and not foreseeable. Such events may include, but are not restricted to, acts of the CA in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 23.3 If a Force Majeure situation arises, the Supplier shall promptly notify the CA in writing of such condition and the cause thereof. Unless otherwise directed by the CA 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.

24. Delays in Supplier's Performance

- 24.1 Delivery of the Goods and performance of services shall be made by the Supplier in accordance with the time schedule prescribed by the Purchaser.
- 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 Goods and performance of Services, the Supplier shall promptly notify the CA 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 CA 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 the General conditions of contract (GCC) Clause 23, 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 17, unless an extension of time is agreed upon pursuant to GCC Clause 24.2 without application of liquidated damages

SECTION D: SPECIAL CONDITIONS OF CONTRACT

Special Conditions of Contract supplement in 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 General Conditions is indicated in parentheses.

1. Definitions (GCC Clause I)

GCC 1.1 (d) The Purchaser is “CA” **Communications Authority of Kenya**

GCC 1.1 (f) The Project Site is **CA CENTRE, Waiyaki Way, Nairobi**

2. Country of Origin (GCC Clause 3)

3. Inspection and Tests (GCC Clause 8)

The following inspection procedures and tests are required by the CA;

The Supplier shall get goods inspected and submit a test certificate and also supplier’s guarantee/warranty certificate that the goods conforms to laid down specifications.

The CA may inspect and/or test any or all the goods to confirm their conformity to the contract, prior to dispatch from the Supplier’s premises.

If the goods fail to meet the laid down specifications the supplier shall take immediate steps to remedy the deficiency or replace the defective goods to the satisfaction of the CA.

4. Payments (GCC Clause 12)

GCC 12.1 Payment shall be made in the currency specified in the contract. Payments shall be made in US Dollars within thirty (30) days of presentation of Invoice supported by a certificate from the CA declaring that the goods have been delivered and that all other contracted services have been performed.

GCC 12.5 Payments shall be made in US Dollars, Euros or Kenya Shillings

5. Prices (Clause 13)

GCC 13.1 Prices payable to the Supplier as stated in the Contract shall be firm and not subject to adjustment during performance of contract.

6. Incidental Services (GCC Clause 20)

GCC 13.2 The incidental services to be provided are as under. The costs shall be included in the contract price:

(a) Furnishing of the tools required for maintenance of the supplied goods

(b) Furnishing of detailed operation and maintenance manuals for goods.

7. Spare Parts (GCC Clause 21)

GCC 21.1 All services mentioned therein are required:

GCC 21.3 Add as Clause 21.3 to the GCC the following:

“Suppliers shall carry sufficient inventories to assure ex-stock supply of consumable spares for the Goods. Other spare parts and components shall be supplied as promptly as possible but in any case within six months of placement of order and issuing of Local Purchase Order.”

8. Warranty (Clause 22)

(a) GCC 22.2 In partial modification of the provision, the warranty period shall be for one year (12 months) from date of acceptance of the goods, whichever occurs earlier.

(b) Add as Clause 22.3 to the GCC for following:

“Upon receipt of such notice, the supplier shall within the period specified in SCC, repair or replace the defective goods or parts thereof, free of cost at the ultimate destination. The Supplier shall take over the replaced parts/goods at the time of their replacement. No claim whatsoever shall lie on the CA for the replaced parts/goods thereafter.

In the event of any correction of defects or replacements of defective material during the warranty period, the warranty for the corrected/replaced material shall be extended to a further period of 12 months.

c) GCC 22.4 & 22.5 the Period for correction of defects in the warranty period is 15 days.

d) Make such changes, modifications, and/or additions to the Goods 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 GCC 4.

e) The supplier should quote separately for post warranty maintenance contract.

f) Bidders are required to attach brochures for the items quoted.

g) Your quotation must have a validity period of at least **120 days** from the closing date.

SECTION E: TECHNICAL SPECIFICATIONS AND REQUIREMENTS

No.	Item	Minimum Technical Specifications	Complied/Not Complied	If complied, Bidders MUST provide explanation of compliance with reference to the documentation provided in the proposal with the specific page number and section of the reference
1.	Rack Space	To fit at least four (4) 42U racks		
2.	Connectivity	<p>Two (2) links between CA Centre and the DR Site as follows:</p> <p>iii. Primary 10 Mbps dedicated Internet Fiber link provisioned via Multiprotocol Label Switching (MPLS) infrastructure</p> <p>iv. Backup 10 Mbps Internet link provisioned via Multiprotocol Label Switching (MPLS) infrastructure</p>		
3.	Notification of Downtime	CA's Administrators should be proactively and automatically notified in case of a downtime or a fault from the DR Site		
4.	Services Provided	<p>Dedicated connectivity to the CA's equipment</p> <p>Allow for replication of data from the primary to the secondary site</p> <p>Provide for Reliability, Security and Redundancy</p>		

		At least 99.99% uptime		
		Secure and controlled access to the DR Site		
		Availability of Fire suppression equipment		
		Provide for a working area for CA's IT staff		
5.	Support	On-site systems and connectivity support by the service provider		
		24 hours support		
		Quality of Service (QoS) reporting provided by the Account Manager		
6.	Equipment Access in the DR Site	24*7 support and access to the DR Site by CA's authorized personnel		
7.	Security	Secure access with (Closed Circuit TV) CCTV cameras		
		Fire detection and control systems		
		Physical Security		
8.	Power Supply	Clean and reliable power supply with UPSes and Generators for Power Backup		
9.	Temperature control	Regulated temperature control for the IT equipment		

SECTION F. TENDER FORM AND PRICE SCHEDULES (To be completed and sealed together with financial proposal)

(i) Form of Tender

Date:Tender No:

**To: The Head of Procurement
Communications Authority of Kenya
P.O. Box 14448
WESTLANDS 00800
Nairobi
Kenya**

Gentlemen and/or Ladies:

1. Having examined the tender documents including addenda Nos.: (Insert numbers), the receipt of which is hereby acknowledged, we, the undersigned, offer to supply and deliver

(Description of goods)

in conformity with the said tender documents for the sum of

(Total tender amount in words and figures)

or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

2. We undertake, if our Tender is accepted, to deliver the goods in accordance with the delivery schedule specified in the Schedule of Requirements.
3. If our Tender is accepted, we will obtain the guarantee of a bank in a sum equivalent to 5 per cent of the Contract Price for the due performance of the Contract, in the form prescribed by Communications Authority of Kenya.
4. We agree to abide by this Tender for a period of (number) days from the date fixed for tender opening of the Instructions to tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
5. Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.

6. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this Day of.....20.....

.....
Signature

.....
(In the capacity of)

Duly authorized to sign tender for and on behalf of

.....
.....
.....

(ii) Price Schedule for Goods

Name of Tenderer..... Tender No:
page..... of

1.	2.	3.	4.	5.	6.	7.
Item	Description	County of Origin	Qty	Unit Price	Total Price per item (cols. 4 x 5)	Unit Price of other incidental services payable

Signature of tenderer

Note: In case of discrepancy between Unit Price and total, the Unit Price shall prevail

SECTION G: CONTRACT FORM

THIS AGREEMENT made the _____ day of _____ 2018 between **Communications Authority of Kenya** (hereinafter called “the Employer”) of the one part and

_____ (hereinafter called “the Supplier”) of the other part:

WHEREAS the Employer invited tenders for certain goods and ancillary services, viz., Supply and delivery of spectrum analyzers and has accepted a tender by the supplier for the provision of the services in the sum of

_____ (words) _____ [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 General Conditions of Contract;
 - (d) The Special Conditions of Contract; and
 - (e) The Employer’s Notification of Award and Contractors letter of Acceptance.
3. In consideration of the payments to be made by the Employer to the Supplier, the Contractor hereby covenants with the Employer to provide the services in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Supplier in consideration of the provision of the services, 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.

5. The supplier undertakes to perform the services with the highest standards of proficiency and ethical competence and integrity.

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

SIGNED FOR AND ON BEHALF OF THE COMMUNICATIONS AUTHORITY OF KENYA

DIRECTOR-GENERAL)

In the presence of:)

_____)
AUTHORITY SECRETARY)

SIGNED FOR AND ON BEHALF OF

DIRECTOR)

In the presence of:)

_____)
COMPANY SECRETARY

SECTION H: PERFORMANCE SECURITY FORM -5% of the contract sum

To: COMMUNICATIONS AUTHORITY OF KENYA

WHEREAS (*Name of tenderer*) hereinafter called the “tenderer”) has undertaken, in pursuance of Contract No..... (*Reference number of the contract*) dated 20 To supply
.....
(*description of goods*) (hereinafter called “the Contract”).

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

AND WHEREAS we have agreed to give the tenderer a guarantee:
THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the tenderers, up to a total of). _____.

(amount of the guarantee in words and figures), and we undertake to pay you, upon your first written demand declaring the tenderer to be in default under the Contract and without cavil or argument, any sum of sums within the limits of

..... (amount of guarantee) as foresaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the day of 20

Signature and seal of Guarantors

.....
(*Name of bank or financial institution*)

.....
(*Address*)

.....
(*Date*)

SECTION I: MANUFACTURER’S AUTHORISATION FORM(NOT REQUIRED)

To: COMMUNICATIONS AUTHORITY OF KENYA

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

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

.....
(Signature for and on behalf of Manufacturer)

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