



**NATIONAL OIL CORPORATION OF KENYA**

**PROVISION OF TRANSPORTATION AND FUEL  
DISTRIBUTION SERVICES (10M3 BOWSER) AT GDC  
BARINGO & MENENGAI SITES**

**NOCK/PRC/03(1402)2017-2018**

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

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

**June 2018**

**Tender Closing Date & Time: July 2, 2018 at 1000hrs (East  
African Time)**

| <b>TABLE OF CONTENTS</b> |   | <b>Page</b> |
|--------------------------|---|-------------|
| <b>1</b>                 | <b>SECTION I – INVITATION TO TENDER .....</b>             | <b>3</b>    |
| <b>2</b>                 | <b>SECTION II – INSTRUCTIONS TO TENDERERS.....</b>        | <b>5</b>    |
| <b>3</b>                 | <b>SECTION III – GENERAL CONDITIONS OF CONTRACT .....</b> | <b>20</b>   |
| <b>4</b>                 | <b>SECTION IV – SPECIAL CONDITIONS OF CONTRACT .....</b>  | <b>25</b>   |
| <b>5</b>                 | <b>SECTION V – SCHEDULE OF REQUIREMENTS .....</b>         | <b>27</b>   |
| <b>6</b>                 | <b>SECTION VI – DESCRIPTION OF SERVICES .....</b>         | <b>28</b>   |
| <b>7</b>                 | <b>SECTION VII – STANDARD FORMS.....</b>                  | <b>36</b>   |

# 1 SECTION I – INVITATION TO TENDER

Date: June 2018

**Tender Ref No. NOCK/PRC/03(1402)2017-2018**

**Tender name: TENDER FOR PROVISION OF TRANSPORTATION AND FUEL DISTRIBUTION SERVICES (BOWSER) AT THE GDC BARINGO AND MENENGAI SITE**

1.1 National Oil Corporation of Kenya invites sealed tenders from eligible candidates for the **Provision of Transportation & Fuel Distribution Services (Bowers) at the GDC Baringo and Menengai Sites** on a three year framework contract renewable annually based on performance.

1.2 Interested eligible tenderers may view/obtain/download tender documents at [www.nationaloil.co.ke](http://www.nationaloil.co.ke) or IFMIS supplier portal: [supplier.treasury.go.ke](http://supplier.treasury.go.ke). They may also obtain further information from and inspect the tender documents at :

**Procurement Department**  
**National Oil Corporation of Kenya**  
**Kawi House, South C**  
**Red Cross Road, Off Popo Road**  
**P.O Box 58567 – 00200**  
**NAIROBI**  
**Email: [tenders@nockkenya.co.ke](mailto:tenders@nockkenya.co.ke)**

during normal working hours.

1.3 The complete tender document are downloaded from the National Oil Corporation website [www.nationaloil.co.ke](http://www.nationaloil.co.ke) or IFMIS supplier portal: [supplier.treasury.go.ke](http://supplier.treasury.go.ke); free of charge. The tenderer should immediately forward their particulars for records and/or for the purposes of receiving any further clarifications/addenda to [tenders@nockkenya.co.ke](mailto:tenders@nockkenya.co.ke);

Printed tender documents collected in hard copy attracts a non- refundable fee of Kenya Shillings one thousand only (Kshs 1,000) which is payable before issuance of the tender document. Payment should in form of cash deposits at the National Oil Bank Accounts as given below.

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

- 1.4 Prices quoted should be net inclusive of all taxes and delivery costs, must be expressed in Kenya shillings and shall remain valid for a period of one hundred and twenty (120) days from the closing date of the tender.
- 1.5 Completed tender documents are to be enclosed in plain sealed envelopes, clearly labeled “**Tender for Provision of Transportation & Fuel Distribution Services (Bowers) at the GDC Baringo & Menengai Sites - Ref No. NOCK/PRC/03(1402)2017-2018**” with the instructions “**Do Not Open Before July 2, 2018 at 1000hrs (East Africa Time)**” and addressed to:

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

Must be deposited in the tender box provided at

**1<sup>st</sup> Floor, National Oil Corporation of Kenya  
Kawi House, South C  
Red Cross Road, Off Popo Road  
P.O Box 58567 – 00200  
NAIROBI**

to be received on or before **July 2, 2018 at 1000hrs (East African Time)**. *Late tenders will be rejected no matter the circumstances.*

- 1.6 Tenders will be opened immediately thereafter in the presence of the tenderers representatives who choose to attend the opening at

**The Meeting Room  
National Oil Corporation of Kenya  
Kawi House, South C  
Red Cross Road, Off Popo Road  
Nairobi**

**CHIEF EXECUTIVE OFFICER**

## **2 SECTION II – INSTRUCTIONS TO TENDERERS**

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

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

## **2.1 Eligible tenderers**

- 2.1.1.** This Invitation to tender is open to all tenderers eligible as described in the instructions to tenderers. Successful tenderers shall provide the services for the stipulated duration from the date of commencement (hereinafter referred to as the term) specified in the tender documents.
- 2.1.2.** The mandatory documentation as given under the Appendix to Instructions to Tenderers – clause 2.29 must be submitted as they will be used for confirmation of eligibility of the tenders.
- 2.1.3.** The tenderers are required to submit a duly filled and signed viewing certificate (Section VII – 9) that they will use in giving the prices.
- 2.1.4.** The procuring entity’s employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender unless where specially allowed under section 131 of the Act.
- 2.1.5.** Tenderers shall provide the qualification information statement that the tenderer (including all members, of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the services under this Invitation for tenders.
- 2.1.6.** Tenderers involved in corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

## **2.2 Cost of tendering**

- 2.2.1** The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the procuring entity, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 2.2.2** The price to be charged for the tender document shall not exceed KShs 1,000.
- 2.2.3** The procuring entity shall allow the tenderer to review the tender document free of charge before purchase.

## **2.3 Contents of tender documents**

- 2.3.1** The tender document comprises of the documents listed below and addenda issued in accordance with clause 2.5 of these instructions to tenders
- i) Instructions to tenderers
  - ii) General Conditions of Contract
  - iii) Special Conditions of Contract
  - iv) Schedule of Requirements
  - v) Details of service
  - vi) Form of tender
  - vii) Price schedules

- viii) Contract form
- ix) Confidential business questionnaire form
- x) Tender security form
- xi) Performance security form
- xii) Principal's or manufacturers authorization form
- xiii) Declaration form

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

## **2.4 Clarification of Documents**

**2.4.1** A prospective candidate making inquiries of the tender document may notify the Procuring entity in writing or by post, fax or email at the entity's address indicated in the Invitation for tenders. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives no later than seven (7) days prior to the deadline for the submission of tenders, prescribed by the procuring entity. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers who have received the tender documents".

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

## **2.5 Amendment of documents**

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

**2.5.2** All prospective tenderers who have obtained the tender documents will be notified of the amendment by post, fax or email and such amendment will be binding on them.

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

## **2.6 Language of tender**

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



## **2.7 Documents Comprising the Tender**

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

- a) A Tender Form and a Price Schedule completed in accordance with clauses 2.8, 2.9 and 2.10 below.
- b) Documentary evidence established in accordance with Clause 2.11 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted.
- c) Tender security furnished is in accordance with Clause 2.12.
- d) Confidential business questionnaire.

## **2.8 Form of Tender**

**2.8.1** The tenderers shall complete the Form of Tender and the appropriate Price Schedule furnished in the tender documents, indicating the services to be performed.

## **2.9 Tender Prices**

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

**2.9.2** Prices indicated on the Price Schedule shall be the cost of the services quoted including all customs duties and VAT and other taxes payable.

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

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

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

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

## **2.10 Tender Currencies**

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

## **2.11 Tenderers Eligibility and Qualifications**

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

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

## **2.12 Tender Security**

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

**2.12.2** The tender security shall be in the amount Kenya Shillings Two Hundred Thousand (200,000) in form of a Bank Guarantee drawn by a bank licensed and operating in Kenya or a guarantee from an Insurance Company duly recognized by the Public Procurement Regulatory Authority, in the format provided (Section VII \_ Standard Forms).

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

**2.12.4** The tender security shall be denominated in a Kenya Shillings or in another freely convertible currency and shall be in the form of:

- a) A bank guarantee.
- b) Cash.
- c) Such insurance guarantee approved by the Authority.
- d) Letter of credit

**2.12.5** Any tender not secured in accordance with clause 2.12.1 and 2.12.3 will be rejected by the Procuring entity as non responsive, pursuant to clause 2.20.

**2.12.6** Unsuccessful tenderer's security will be discharged or returned as promptly as possible, but not later than thirty (30) days after the expiration of the period of tender validity prescribed by the procuring entity.

**2.12.7** The successful tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to clause 2.26, and furnishing the performance security, pursuant to clause 2.27.

**2.12.8** The tender security may be forfeited:

- a) If a tenderer **withdraws** its tender **during** the period of tender validity specified by the procuring entity on the Tender Form; or
- b) In the case of a successful tenderer, if the tenderer fails:
  - i) to sign the contract in accordance with clause 2.26; **or**
  - ii) to furnish performance security in accordance with clause 2.27.
- c) If the tenderer rejects, correction of an error in the tender.

## 2.13 Validity of Tenders

2.13.1 Tenders shall remain valid for 90 days or as specified in the invitation to tender after date of tender opening prescribed by the Procuring entity, pursuant to clause 2.18. A tender valid for a shorter period shall be rejected by the Procuring entity as nonresponsive.

2.13.2 In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under clause 2.12 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

## 2.14 Format and Signing of Tender

2.14.1 The tenderer shall prepare two copies of the tender, clearly / marking each "ORIGINAL TENDER" and "COPY OF TENDER," as appropriate. In the event of any discrepancy between them, the original shall govern.

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

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

## 2.15 Sealing and Marking of Tenders

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

The inner and outer envelopes shall:

- a) be addressed to the Procuring entity at the address given in the invitation to tender;
- b) bear, tender number and name in the invitation to tender and the words: "**Do Not Open Before July 2, 2018 at 1000hrs (East Africa Time)**".

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

2.15.3 If the outer envelope is not sealed and marked as required by clause 2.15.2, the Procuring entity will assume no responsibility for the tender's misplacement or premature opening.

## **2.16 Deadline for Submission of Tenders**

**2.16.1** Tenders must be received by the Procuring entity at the address specified under clause 2.15.2 **no later than July 2, 2018 at 1000hrs (East Africa Time).**

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

**2.16.3** Bulky tenders which will not fit in the tender box shall be received by the procuring entity as provided for in the appendix.

## **2.17 Modification and withdrawal of tenders**

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

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

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

**2.17.4** No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the Tenderer's forfeiture of its tender security, pursuant to clause 2.12.7.

**2.17.5** The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

**2.17.6** The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

## **2.18 Opening of Tenders**

**2.18.1** The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend at **1000hrs (East Africa Time) on July 2, 2018**, in the location specified in the invitation to tender. The tenderers' representatives who are present shall sign a register evidencing their attendance.

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

**2.18.3** The procuring entity will prepare minutes of the tender opening which will be submitted to the tenderers that signed the tender opening register and will have made the request.

## **2.19 Clarification of tenders**

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

## **2.20 Preliminary Examination and Responsiveness**

- 2.20.1** The Procuring entity will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required securities have been furnished whether the documents have been properly signed, and whether the tenders are generally in order.
- 2.20.2** Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security may be forfeited. If there is a discrepancy between words and figures, the amount in words will prevail.
- 2.20.3** The Procuring entity may waive any minor informality or nonconformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any tenderer.
- 2.20.4** Prior to the detailed evaluation, pursuant to clause 2.22, the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these clauses, a substantially responsive tender is one which conforms to all the terms and conditions of the tender documents without material deviations. The Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.
- 2.20.5** If a tender is not substantially responsive, it will be rejected by the Procuring entity and may not subsequently be made responsive by the tenderer by correction of the nonconformity.

## **2.21 Conversion to a single currency**

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

## **2.22 Evaluation and comparison of tenders**

**2.22.1** The procuring entity will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to clause 2.20.

**2.22.2** The comparison shall be of the price including all costs as well as duties and taxes payable on all the materials to be used in the provision of the services.

**2.22.3** The Procuring entity's evaluation of a tender will take into account, in addition to the tender price, the following factors, in the manner and to the extent indicated in clause 2.22.4 and in the technical specifications:

- a) operational plan proposed in the tender; and
- b) deviations in payment schedule from that specified in the Special Conditions of Contract;

**2.22.4** Pursuant to clause 2.22.3 the following evaluation methods will be applied:

a) ***Operational Plan.***

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

b) ***Deviation in payment schedule.***

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

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

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

- a) Score the minimum technical evaluation score as given in the evaluation criteria under the appendix to instructions to tenderers – clause 2.29.
- b) Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.
- c) Legal capacity to enter into a contract for procurement
- d) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing
- e) Shall not be debarred from participating in public procurement.

## **2.23 Contacting the procuring entity**

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

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

## **2.24 Award of Contract**

### **a) Post qualification**

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

**2.24.2** The determination will take into account the tenderer's financial and technical capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to clause 2.1.2, as well as such other information as the Procuring entity deems necessary and appropriate.

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

### **b) Award Criteria**

**2.24.4** Subject to clause 2.27 the Procuring entity will award the contract to the successful tenderer whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

**2.24.5** The procuring entity reserves the right to accept or reject any tender and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the procuring entity's action. If the procuring entity determines that none of the tenderers is responsive; the procuring entity shall notify each tenderer who submitted a tender.

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

## **2.25 Notification of award**

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

**2.25.2** The notification of award will signify the formation of the Contract subject to the signing of the contract between the tenderer and the procuring entity pursuant to clause 2.26. Simultaneously the other tenderers shall be notified that their tenders have not been successful.

**2.25.3** Upon the successful Tenderer's furnishing of the performance security pursuant to clause 2.27, the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to clause 2.12.

## **2.26 Signing of Contract**

**2.26.1** At the same time as the Procuring entity notifies the successful tenderer that its tender has been accepted, the Procuring entity will simultaneously inform the other tenderers that their tenders have not been successful.

**2.26.2** Within fourteen (14) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Procuring entity.

**2.26.3** The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

## **2.27 Performance Security**

**2.27.1** Within fourteen (14) days of the receipt of notification of award from the Procuring entity, the successful tenderer shall furnish the performance security in accordance with the Conditions of Contract, in the Performance Security Form provided in the tender documents, or in another form acceptable to the Procuring entity.

**2.27.2** Failure of the successful tenderer to comply with the requirement of clause 2.26 or clause 2.27.1 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 or call for new tenders.

## **2.28 Corrupt or Fraudulent Practices**

**2.28.1** The Procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts. A tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.

**2.28.2** The procuring entity will reject a proposal for award if it determines that the tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;

**2.28.3** Further, a tenderer who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.



## APPENDIX TO INSTRUCTIONS TO THE TENDERERS

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

| Instructions to Tenderers | Particulars of appendix to instructions to tenderers  |
|---------------------------|---|
| 2.1                       | <p><b>Particulars of eligible tenderers</b></p> <p>This Invitation to tender is open to all tenderers eligible as described in the instructions to tenderers. Successful tenderers shall provide the services for the stipulated duration from the date of commencement (hereinafter referred to as the term) specified in the tender documents.</p> <p>To be eligible to tender, in addition to the requirements given, the tenderer if previously contracted by National Oil to offer similar services, <b>must not</b> have had any negative evaluation for poor performance.</p>  |
| 2.10                      | The currency to be used is Kenya Shillings.   |
| 2.12                      | <p>Kenya Shillings Two Hundred Thousand (200,000) is to be submitted in form of a bank/Insurance guarantee in the format provided. (Section VII _ Standard Forms)</p> <p><b><i>NB: For enterprises owned by Youth, Women and Persons with Disability, a duly filled and signed Tender Securing Declaration Form in the format given in (Standard Forms) and a certificate of Registration with the National Treasury as a Special Group, shall be provided in place of the Tender Security.</i></b></p>   |
| 2.22                      | <p><b>Evaluation and comparison of tenders</b></p> <p><b>a) Preliminary Evaluation</b></p> <p>Tenderers will be required to pass the preliminary evaluation having submitted all the mandatory documentation before being considered for technical evaluation.</p> <p><b><i>The tenderer shall provide the following mandatory requirements which shall be used for the preliminary evaluation (failure to submit the mandatory requirements will lead to disqualification from the tender process).</i></b></p> <ul style="list-style-type: none"> <li>• Copy of Certificate of Registration/Incorporation</li> <li>• Copy of valid Tax Compliance Certificate</li> <li>• Tender Security of Kenya Shillings Two Hundred Thousand (200,000) in form of a Bank Guarantee drawn by a bank licensed and operating in Kenya or a guarantee from an Insurance Company duly recognized by the Public Procurement Regulatory Authority, in the format provided (Section VII _ Standard Forms)</li> <li>• Duly filled Confidential Business Questionnaire(Section VII - Standard Forms)</li> <li>• Duly filled Bidder's Declaration and Integrity Pact (Section VII –</li> </ul> |

| Instructions to Tenderers | Particulars of appendix to instructions to tenderers  |            |                     |       |    |  |           |    |  |           |    |  |           |    |  |           |    |   |           |    |   |           |  |              |            |
|---------------------------|---|------------|---------------------|-------|----|--|-----------|----|--|-----------|----|--|-----------|----|--|-----------|----|---|-----------|----|---|-----------|--|--------------|------------|
|                           | <p>Standard Forms).</p> <ul style="list-style-type: none"> <li>Properly bound, paginated tender document (each page of the tender submission must have a number and the numbers must be in chronological order).</li> </ul> <p><b>b) Technical Evaluation</b></p> <p>The evaluation criteria below will be used to evaluate the technical responsiveness of the tenders:</p> <table border="1" data-bbox="424 622 1474 1901"> <thead> <tr> <th data-bbox="424 622 528 667">No.</th> <th data-bbox="528 622 1366 667">Evaluation criteria</th> <th data-bbox="1366 622 1474 667">Score</th> </tr> </thead> <tbody> <tr> <td data-bbox="424 667 528 891">a)</td> <td data-bbox="528 667 1366 891"><b>Fleet Size</b> – Each bidder must have at least two (2) fuel bowsers of 10,000 liters not more than three (3) years old. The trucks to be solely owned by the bidder. In each case proof of ownership must be included with the bid. To be verified during due diligence site visit(provide copies of logbooks as proof of ownership)</td> <td data-bbox="1366 667 1474 891"><b>20</b></td> </tr> <tr> <td data-bbox="424 891 528 1077">b)</td> <td data-bbox="528 891 1366 1077"><b>Fleet Insurance requirements and compliance:</b> All trucks must have comprehensive Insurance cover with Goods in Transit and Fidelity Insurance covers or a commitment letter from an Insurance company to provide the covers required upon award. In each case proof must be included with the bid.</td> <td data-bbox="1366 891 1474 1077"><b>20</b></td> </tr> <tr> <td data-bbox="424 1077 528 1263">c)</td> <td data-bbox="528 1077 1366 1263"><b>Evidence of ownership of a workshop/garage.</b><br/>In the event that the bidder has outsourced this activity, a legally bidding agreement between the bidder and the service provider for the period covering this procurement must be submitted with the tender document</td> <td data-bbox="1366 1077 1474 1263"><b>10</b></td> </tr> <tr> <td data-bbox="424 1263 528 1408">d)</td> <td data-bbox="528 1263 1366 1408"><b>Age of fleet</b> – Bowsers listed for this tender shall not be more than 3 years and must be mechanically sound. As part of evaluation, the Corporation may require to inspect the fleet, in whole or in part to ascertain the mechanical status.</td> <td data-bbox="1366 1263 1474 1408"><b>20</b></td> </tr> <tr> <td data-bbox="424 1408 528 1742">e)</td> <td data-bbox="528 1408 1366 1742"><b>Fleet operation</b> – For purposes of this tender, the bidder must submit a list of drivers assigned to operate the fleet. A summary on each driver must be included showing years of driving experience, age, any defensive driving training undertaken and any other relevant information. For purposes of this tender, the preferred driving experience is at least 7 years. Copies of licenses, certificates of good conduct and any other certificates of training for the drivers must be included as proof.</td> <td data-bbox="1366 1408 1474 1742"><b>15</b></td> </tr> <tr> <td data-bbox="424 1742 528 1854">f)</td> <td data-bbox="528 1742 1366 1854">Comprehensive Health, Safety and Environment policy. EHS policy to be signed by CEO. Attach sample active check lists, procedure manuals and any other relevant EHS documentation</td> <td data-bbox="1366 1742 1474 1854"><b>15</b></td> </tr> <tr> <td data-bbox="424 1854 528 1901"></td> <td data-bbox="528 1854 1366 1901"><b>TOTAL</b></td> <td data-bbox="1366 1854 1474 1901"><b>100</b></td> </tr> </tbody> </table> <p>The minimum score to be considered technically responsive is 70% of the possible total points above.</p> <p>Only tenderers who score the minimum 70% and above will have their financial</p> | No.        | Evaluation criteria | Score | a) | <b>Fleet Size</b> – Each bidder must have at least two (2) fuel bowsers of 10,000 liters not more than three (3) years old. The trucks to be solely owned by the bidder. In each case proof of ownership must be included with the bid. To be verified during due diligence site visit(provide copies of logbooks as proof of ownership) | <b>20</b> | b) | <b>Fleet Insurance requirements and compliance:</b> All trucks must have comprehensive Insurance cover with Goods in Transit and Fidelity Insurance covers or a commitment letter from an Insurance company to provide the covers required upon award. In each case proof must be included with the bid. | <b>20</b> | c) | <b>Evidence of ownership of a workshop/garage.</b><br>In the event that the bidder has outsourced this activity, a legally bidding agreement between the bidder and the service provider for the period covering this procurement must be submitted with the tender document | <b>10</b> | d) | <b>Age of fleet</b> – Bowsers listed for this tender shall not be more than 3 years and must be mechanically sound. As part of evaluation, the Corporation may require to inspect the fleet, in whole or in part to ascertain the mechanical status. | <b>20</b> | e) | <b>Fleet operation</b> – For purposes of this tender, the bidder must submit a list of drivers assigned to operate the fleet. A summary on each driver must be included showing years of driving experience, age, any defensive driving training undertaken and any other relevant information. For purposes of this tender, the preferred driving experience is at least 7 years. Copies of licenses, certificates of good conduct and any other certificates of training for the drivers must be included as proof. | <b>15</b> | f) | Comprehensive Health, Safety and Environment policy. EHS policy to be signed by CEO. Attach sample active check lists, procedure manuals and any other relevant EHS documentation | <b>15</b> |  | <b>TOTAL</b> | <b>100</b> |
| No.                       | Evaluation criteria   | Score      |                     |       |    |  |           |    |  |           |    |  |           |    |  |           |    |   |           |    |   |           |  |              |            |
| a)                        | <b>Fleet Size</b> – Each bidder must have at least two (2) fuel bowsers of 10,000 liters not more than three (3) years old. The trucks to be solely owned by the bidder. In each case proof of ownership must be included with the bid. To be verified during due diligence site visit(provide copies of logbooks as proof of ownership)  | <b>20</b>  |                     |       |    |  |           |    |  |           |    |  |           |    |  |           |    |   |           |    |   |           |  |              |            |
| b)                        | <b>Fleet Insurance requirements and compliance:</b> All trucks must have comprehensive Insurance cover with Goods in Transit and Fidelity Insurance covers or a commitment letter from an Insurance company to provide the covers required upon award. In each case proof must be included with the bid.  | <b>20</b>  |                     |       |    |  |           |    |  |           |    |  |           |    |  |           |    |   |           |    |   |           |  |              |            |
| c)                        | <b>Evidence of ownership of a workshop/garage.</b><br>In the event that the bidder has outsourced this activity, a legally bidding agreement between the bidder and the service provider for the period covering this procurement must be submitted with the tender document  | <b>10</b>  |                     |       |    |  |           |    |  |           |    |  |           |    |  |           |    |   |           |    |   |           |  |              |            |
| d)                        | <b>Age of fleet</b> – Bowsers listed for this tender shall not be more than 3 years and must be mechanically sound. As part of evaluation, the Corporation may require to inspect the fleet, in whole or in part to ascertain the mechanical status.  | <b>20</b>  |                     |       |    |  |           |    |  |           |    |  |           |    |  |           |    |   |           |    |   |           |  |              |            |
| e)                        | <b>Fleet operation</b> – For purposes of this tender, the bidder must submit a list of drivers assigned to operate the fleet. A summary on each driver must be included showing years of driving experience, age, any defensive driving training undertaken and any other relevant information. For purposes of this tender, the preferred driving experience is at least 7 years. Copies of licenses, certificates of good conduct and any other certificates of training for the drivers must be included as proof.   | <b>15</b>  |                     |       |    |  |           |    |  |           |    |  |           |    |  |           |    |   |           |    |   |           |  |              |            |
| f)                        | Comprehensive Health, Safety and Environment policy. EHS policy to be signed by CEO. Attach sample active check lists, procedure manuals and any other relevant EHS documentation   | <b>15</b>  |                     |       |    |  |           |    |  |           |    |  |           |    |  |           |    |   |           |    |   |           |  |              |            |
|                           | <b>TOTAL</b>  | <b>100</b> |                     |       |    |  |           |    |  |           |    |  |           |    |  |           |    |   |           |    |   |           |  |              |            |

|                                  |  |
|----------------------------------|--|
| <b>Instructions to Tenderers</b> | <b>Particulars of appendix to instructions to tenderers</b>  |
|                                  | proposals evaluated, where award will be to the technically responsive tenderer with the lowest evaluated price amongst the technically responsive tenderers upon successful negotiations if required.   |
| 2.24                             | <p><b>Award criteria</b></p> <p><b>a) Competitive negotiation</b><br/>National Oil shall conduct competitive negotiations where;</p> <ul style="list-style-type: none"> <li>• there is a tie in the lowest evaluated price by two or more tenderers;</li> <li>• there is a tie in highest combined score points;</li> <li>• the lowest evaluated price is in excess of available budget; or</li> <li>• the lowest evaluated price is above market rates</li> </ul> <p><b>b) Post qualification</b><br/>National Oil shall conduct post qualification due Diligence to determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.</p> <p><b>c) Award</b><br/>National Oil will award the contract to the successful tenderer whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily after conducting post qualification due diligence.</p> |
| 2.27                             | <p><b>Particulars of performance security</b><br/>The amount of Performance Security shall be Ksh.500,000 in the format of the Performance Security Form provided in the tender document in the form of a bank guarantee drawn by a bank licensed and operating in Kenya.</p>  |
| 2.28                             | <p><b>In addition to clause 2.28, the ethics as described below will apply:</b></p> <p><b>2.28.4 Ethics</b><br/>It is a requirement that both National Oil and prospective suppliers of goods, services and works observe the highest standards of ethics during the procurement and execution of contracts.<br/>In pursuance of this policy, National Oil requires that all bidders concerned take measures to ensure that no transfer of gifts, payments or other benefits to officials of National Oil and/or procurement/management staff with decision making responsibility or influence occurs. In this regard, National Oil will require all tenderers to sign, as part of the tender documents, an Integrity Pact (Section VII – Standard forms). Non-delivery of the Bidders Declaration and Integrity Pact (Section VII – Standard forms) duly undersigned by the chief executive or legal representative of the tendering party will result in exclusion of the bid/ quotation from the procurement process.</p>   |

### **3 SECTION III – GENERAL CONDITIONS OF CONTRACT**

|   |             |
|---|-------------|
| <b>TABLE OF CONTENTS .....</b>                | <b>Page</b> |
| <b>3.1 DEFINITIONS .....</b>                  | <b>21</b>   |
| <b>3.2 APPLICATION .....</b>                  | <b>21</b>   |
| <b>3.3 STANDARDS .....</b>                    | <b>21</b>   |
| <b>3.4 PATENT RIGHTS.....</b>                 | <b>21</b>   |
| <b>3.5 PERFORMANCE SECURITY .....</b>         | <b>21</b>   |
| <b>3.6 INSPECTIONS AND TESTS .....</b>        | <b>22</b>   |
| <b>3.7 PAYMENT .....</b>                      | <b>22</b>   |
| <b>3.8 PRICES.....</b>                        | <b>22</b>   |
| <b>3.9 ASSIGNMENT.....</b>                    | <b>22</b>   |
| <b>3.10 TERMINATION FOR DEFAULT .....</b>     | <b>22</b>   |
| <b>3.11 TERMINATION OF INSOLVENCY.....</b>    | <b>23</b>   |
| <b>3.12 TERMINATION FOR CONVENIENCE .....</b> | <b>23</b>   |
| <b>3.13 RESOLUTION OF DISPUTES.....</b>       | <b>23</b>   |
| <b>3.14 GOVERNING LANGUAGE .....</b>          | <b>23</b>   |
| <b>3.15 FORCE MAJEURE.....</b>                | <b>24</b>   |
| <b>3.16 APPLICABLE LAW .....</b>              | <b>24</b>   |
| <b>3.17 NOTICES .....</b>                     | <b>24</b>   |

### **3.1 Definitions**

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

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

### **3.2 Application**

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

### **3.3 Standards**

- 3.3.1** The services provided under this Contract shall conform to the 7 standards mentioned in the Schedule of requirements

### **3.4 Patent Rights**

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

### **3.5 Performance Security**

- 3.5.1** Within twenty eight (28) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the performance security where applicable in the amount specified in Special Conditions of Contract.

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

**3.5.3** The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Procuring entity and shall be in the form of

a) A bank guarantee.

**3.5.4** The performance security will be discharged by the procuring entity and returned to the candidate not later than thirty (30) days following the date of completion of the tenderer's performance of obligations under the contract, including any warranty obligations under the contract.

### **3.6 Inspections and Tests**

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

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

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

**3.6.4** Nothing in clause 3.6 shall in any way release the tenderer from any warranty or other obligations under this Contract.

### **3.7 Payment**

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

### **3.8 Prices**

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

### **3.9 Assignment**

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

### **3.10 Termination for Default**

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

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

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

### **3.11 Termination of insolvency**

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

### **3.12 Termination for convenience**

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

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

### **3.13 Resolution of disputes**

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

**3.13.2** 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 that the dispute be referred for resolution to the formal mechanisms specified in the SCC.

### **3.14 Governing Language**

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

**3.15 Force Majeure**

The contractor 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.

**3.16 Applicable Law**

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

**3.17 Notices**

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

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



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

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

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

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

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

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

## SECTION IV SPECIAL CONDITIONS OF CONTRACT

- 4.1** Special conditions of contract shall supplement the general conditions of contract, wherever there is a conflict between the GCC and the SCC, the provisions of the SCC herein shall prevail over those in the GCC.
- 4.2** Special conditions of contract with reference to the general conditions of contract.

| <b>General conditions of contract reference</b> | <b>Special conditions of contract</b>  |
|---|--|
| 3.5   | <b>Particulars of performance security</b><br>The amount of Performance Security shall be Ksh.500, 000 in the format of the Performance Security Form provided in the tender document in the form of a bank guarantee drawn by a bank licensed and operating in Kenya. |
| 3.7   | The payments will be done promptly, monthly within 30 days after receipt of invoice at National Oil and confirmation of satisfactory receipt of services   |
| 3.13  | The provisions of the arbitration act of the laws of Kenya shall apply.  |

## 5 SECTION V – SCHEDULE OF REQUIREMENTS

This part will include any deliverables under the service contract

| Number | Description | Quantity | Delivery Time<br>Start _____<br>End _____ |
|--------|-------------|----------|---|
|--------|-------------|----------|---|

*(The tenderer should amend as appropriate)*

The transportation services are to be provided to various National Oil Sites/Stations:

## 6 SECTION VI – DESCRIPTION OF SERVICES

### A) REQUIREMENTS FROM THE TENDERER/TERMS OF REFERENCE (TORs)

#### DESCRIPTION OF SERVICES

##### Introduction

National Oil intends to procure dedicated transportation and fuel distribution services (10 m<sup>3</sup> bowzers for the Geothermal Development Company (GDC) Baringo and Menengai sites for a contract period of Three (3) years renewable, based on performance. The terrain within the GDC operations are is very hilly and challenging hence requiring almost new equipment which are mechanically sound.

##### Scope of Works

The scope of works includes transportation of Automotive Diesel (AGO) from the National Oil fuel loading depots to the GDC Baringo and Menengai sites, offloading into the storage tanks provided by National Oil or fuel bowzers and distribution of the fuel to the stationary GDC equipment within the GDC operation area while ensuring safety and preservation of products quality until title and risk passes to the fuel purchaser (GDC) at the designated billing meter/ pump.

The detailed scope of works includes:

- i) The main responsibility is to transport, distribute and management/ account for the fuel stocks in the 10m<sup>3</sup> bowzers. Contractor will be responsible of staff and fueling their own vehicles used to perform this work.
- ii) The contractor will use their trucks to load in NOC depot and deliver to GDC sites
- iii) Keep the stocks in the bowzers under their custody and supply to GDC on behalf of NOC through the billing meters or pump.
- iv) Will do daily stocks reconciliations and provide daily stocks reports to National Oil on fuel distributed using the bowser accompanied with signed delivery notes.
- v) Will account for fuel collected from NOC depot and delivered to GDC sites. The transit allowable losses will be 0.25% of stocks loaded at the depot. Losses over and above this allowance shall be recovered from the contractor before any payment is done.

Hence the contractor shall handle transportation and distribution of fuel on behalf of National Oil, while National Oil personnel will retain supervisory role.

##### Specific Requirements

- **Fleet Size-** Each bidder must have at least two fuel bowzers of 10m<sup>3</sup> capacity for distribution of fuel. The Bowser must be solely owned by the bidder in which case, proof of ownership must be included with the bid. The transportation trucks listed for this tender shall owned or leased to the bidder in which case a legally bidding contract must be attached with this tender.

- **Age of fleet-** The bowsers listed for this tender shall not be more than three (3) years old and must be mechanically sound. The terrain within the GDC operations are is very hilly and challenging. The other transportation trucks listed for this tender must be mechanically sound preferably not more than 5 years old. As part of evaluation, National Oil may require to inspect the fleet, in whole or in part to ascertain the mechanical status.
- **Fleet operation-** For purposes of this tender, the bidder must submit a list of drivers assigned to operate the fleet. A summary on each driver must be included showing years of driving experience, age, any defensive driving training undertaken and any other relevant information. For purposes of this tender, the preferred age bracket of drivers is 25-55 years old. Copies of licenses and any other certificates of training for the drivers must be included as proof.
- **Safety and security-** Each bidder shall comply fully with the safety and security requirements of National Oil listed in appendix TOR2. Noncompliance with any of these safety requirements shall lead to disqualification.
- **Statutory and legal-** For purposes of this tender all trucks included in this bid must meet the prevailing requirements laid down by NNTSA, Transport Ministry, Energy Regulatory Commission, Local Authority, Environmental Authority or any other body that may be relevant. Bidders must therefore familiarize with such existing requirements and comply. Any noncompliance shall lead to disqualification.
- **Goods In Transit (GIT) Insurance cover -** For purposes of this tender, bidders must provide proof of GIT for their fleet or a commitment letter from an insurance company willing to issue GIT cover. Upon award, successful bidder(s) will be required to amend their GIT to reflect National Oil as a beneficiary, which will also be captured in the contract.
- **Bowser to be fitted with dispensing pump with calibrated meter**

## **QUALITY MANAGEMENT**

- a) Do you have a statement of policy for the management of quality? If “yes” please provide copy of the procedure detailing all aspects of Quality Management covered therein.
- b) Has the organisation or structure of your company been documented and the management roles and responsibilities described?
- c) Do you have a management representative who has clearly defined authority and responsibility for all quality management issues?

## **ENVIRONMENT, HEALTH & SAFETY**

- a) Have written procedures been developed and implemented for the management and control of Safety within your company? If “yes” please provide copy of the procedure detailing all aspects of HSE covered therein.
- b) Do you have a management representative who has clearly defined authority and responsibility for all safety management matters?
- c) Have written procedures been developed and implemented for the management and control of the environment in your company operations?

- d) Do you have a management representative who has clearly defined authority and responsibility for all environmental management issues?
- e) Please confirm that neither your company nor any of your employees have been prosecuted for any breach of environmental regulations in the last 5 years.

### **Other requirements**

- **Copies of Log Books for the fleet: Age of fleet** – Trucks listed for this tender shall not be more than 3 years from the date of registration as per the log book and must be mechanically sound.
- Copy of VALID CR12 form from the Registrar of Companies on the Registrar’s letterhead
- **Driving experience** - Each driver must have at least 7 years’ driving experience carrying hazardous/dangerous goods– copies of their National Identity Cards (or any other form of identification e.g. passport copies) and Valid driving licenses must be attached.
- Evidence of a registered office clearly indicating the office location in the form of a signed lease, utility bills or ownership of the premises. Visits will be done to confirm accuracy of the information given.
  - **Safety and security**- Each bidder shall comply fully with the safety and security requirements of National Oil listed in appendix TOR2. Noncompliance with any of these safety requirements shall lead to disqualification.
  - **Statutory and legal**- For purposes of this tender all trucks included in this bid must meet the prevailing requirements laid down by NTSA, Transport Ministry, Local Authority, ERC, Traffic Act, Environmental Authority or any other body that may be relevant. Bidders must therefore familiarize with such existing requirements and comply. Any noncompliance shall lead to disqualification.
  - **Goods In Transit (GIT) Insurance cover** - For purposes of this tender, bidders must provide proof of GIT for their fleet and upon award, successful bidder(s) will be required to amend their GIT to reflect National Oil as a beneficiary, which will also be captured in the contract.

a) **INSERT A FULLY SIGNED BOND (TOR1)**  
**BOND**

By this AGREEMENT we ..... in consideration of the award of the Contract for the Tender for fuel transport services, **NOCK/PRC/03(1402) 2017-2018** hereby irrevocably and unconditionally undertake to

- Fit a GPS tracking facility in all the motor vehicles consigned for this Tender within a period of three (3) months from the date of Contract.
- Allow National Oil to integrate all our trucks to National Oil’s fleet management system during the contract period.

Failure which, I understand and accept that the Contract shall automatically terminate at no expense, costs or liability whatsoever to National Oil Corporation of Kenya Ltd.

*IN WITNESS WHEREOF we hereto have hereunto duly executed this Bond this..... day of ..... 201....*

|   |   |      |
|---|---|------|
| <b>SIGNED</b> and <b>SEALED</b> with the common seal of | ] |      |
| .....   | ] |      |
|   | ] |      |
| In the presence of: -                                   | ] |      |
|   | ] |      |
| Director .....  | ] | Sign |
| Name  | ] | seal |
|   | ] |      |
| Director/Secretary.....                                 | ] | sign |
| Name  | ] |      |
|   | ] |      |

b) **National Oil Corporation of Kenya**

**Appendix TOR2**

**Date: .....**

| No. | Item description   | Y/N | Comments |
|-----|--|-----|----------|
| 1.  | Vehicle engine is of the compression ignition (CI) type and located in front of the rear face of the cab.  |     |          |
| 2.  | Vehicle fitted with functional GPS system with evidence of its deployment and use for tracking vehicles and driver behaviour   |     |          |
| 3.  | Vehicle fitted with anti-lock braking system (ABS)   |     |          |
| 4.  | Vehicles fitted with speed governor device and certificate for the same provided   |     |          |
| 5.  | Where landing legs are fitted to articulated vehicles they must be installed by the manufacturer and subject to regular maintenance.   |     |          |
| 6.  | No unapproved electrical appliances are to be installed or used in the vehicles, e.g. CD players, fans.  |     |          |
| 7.  | Seat belts in good condition. Seat belts of lap/sash configuration with automatic retraction activated locking mechanisms  |     |          |
| 8.  | Seats must be fitted with head restraints to minimize the risk of whiplash injuries.   |     |          |
| 9.  | Reversing bleeper fitted. Two high intensity reversing lights fitted to the rear of the vehicle, angled to the Rear and slightly outwards  |     |          |
| 10. | Wide-angle mirrors must be fitted to enhance the driver's view along the entire length of the vehicle. Where deemed necessary in view of the local driving conditions, additional mirrors may be required. |     |          |
| 11. | The vehicle side- and end- restraints must be designed to prevent cylinders or pallets leaving the vehicle under severe braking conditions and / or vehicle maneuvering.                                   |     |          |
| 12. | The tare weight and maximum gross vehicle weight displayed on the vehicle.   |     |          |
| 13. | Information about the maximum number of cylinders that can be transported by the vehicle displayed on the vehicle or carried in its cab.   |     |          |
| 14. | Two 9Kg dry powder fire extinguishers mounted, accessible and readily removable (quick release bucket-type holder). Next test date is valid and seal is unbroken. Rating should be at least 20 BC          |     |          |
| 15. | One 2.5 Kg fire extinguisher in the cabin. Next test date is valid and seal is unbroken  |     |          |
| 16. | Vehicle has a first aid kit in an easily accessible place  |     |          |
| 17. | Warning triangles (two safety triangles) available in the cabin  |     |          |
| 18. | Overturn protection device   |     |          |



|     |  |  |  |
|-----|--|--|--|
| 19. | Dome cover locks with latches parallel to tank sides and facing the rear when in locked position   |  |  |
| 20. | Distance between back of cabin and front of tanks is at least 15mm   |  |  |
| 21. | Valves are spring loaded, open towards tank interior and stem not attached to the actuator   |  |  |
| 22. | Valve assembly design is such that in the event of an accident, the actuator and outlet pipe can break away causing valve to close automatically   |  |  |
| 23. | Are all valves and pipes fitted in the tank for purposes of filling or discharge adequately protected by an under and side rail damage protection device?  |  |  |
| 24. | Valves operated by either mechanical, hydraulic or pneumatic means have controls to give rapid response and additionally an emergency trip located in a position away from a discharge point and an acceptable means of automatically closing the valves in the event of fire, is provided |  |  |
| 25. | Each tank compartment provided with at least one pressure-and-vacuum vent designed to prevent loss of liquid through the vent owing to surge or to the vehicle overturning.  |  |  |
| 26. | Vents mounted, shielded and drained in a manner to prevent accumulation of water   |  |  |
| 27. | Ready access to each manhole provided by means of fixed ladder or by a skid-proof platform for tanks with more than one manhole  |  |  |
| 28. | Skid-proof manhole provided with a fall protection system of either collapsible hand rail or suitable steel wire for fastening of safety harness   |  |  |
| 29. | Fixed ladder first step does not exceed 550mm from ground and intermediate steps are equally spaced and do not exceed 300mm apart  |  |  |
| 30. | Each step has a toe hold clearance of at least 130mm, steps preferably slope inward and hand holds are fitted above the height of the top step   |  |  |
| 31. | Hose compatible with product being transported Type 1 – has electrical continuity; Type 2- has antistatic cover and no electrical bonding  |  |  |
| 32. | Self-draining hose carriers fitted on the left hand/right side of tank   |  |  |
| 33. | Hose carriers have rounded ends with no sharp protrusions or edges liable to damage the hoses  |  |  |
| 34. | Hose carrier is of sufficient length and hoses do not hang out of the rear end   |  |  |
| 35. | Cabin heaters and electrical lighters are removed  |  |  |
| 36. | Any protruding engine components next to the rear of the cabin are shielded from overhead spillage by a metallic or other non-absorbent material shield  |  |  |
| 37. | Special, clearly marked document holder mounted in a   |  |  |

|     |  |  |  |
|-----|--|--|--|
|     | conspicuous position in the cabin (for easy location in an emergency)  |  |  |
| 38. | Vehicle engine exhaust discharges sideways on the right hand side of the vehicle at a point not closer than 1m from any tank outlet or liquid discharge point  |  |  |
| 39. | Protruding exhaust system shielded by shield that exceeds exhaust pipe by at least 100mm   |  |  |
| 40. | Endurance breaking systems emitting high temperatures behind the rear wall of the cabin are equipped with thermal shields  |  |  |
| 41. | Each circuit other than starting and ignition circuits incorporates protective devices such as fuses or manual reset circuit breakers  |  |  |
| 42. | Stout steel guards (bumper) or frame of vehicle protects lower part of the rear of the tank and piping in event of a collision and face (in elevation ) in at least 100mm high   |  |  |
| 43. | Inside face edge of bumper is not less than 100mm to the rear of the tank and its fittings at any point  |  |  |
| 44. | Under-run devices provided   |  |  |
| 45. | Minimum of two wheel chokes  |  |  |
| 46. | A reflective conspicuity tape of width of 25mm (minimum) round in addition to two chevron signs fixed at the rear  |  |  |
| 47. | Spill response kit capable of responding to a credible spill incidence that the truck can encounter  |  |  |
| 48. | Traffic cones  |  |  |
| 49. | Set of emergency instructions including emergency contacts   |  |  |
| 50. | Tyres comply with EAS 357 and retreaded tyres to KS205 (NOTE: Retread NOT allowed on steering axles)   |  |  |
| 51. | Number plate mounting bracket with light   |  |  |
| 52. | Rear high mounted stop light   |  |  |
| 53. | High intensity fog lights  |  |  |
| 54. | Tank serial number stamped at suitable part of the tank in addition following markings (legible & durably) required on flame proof data plate: <ul style="list-style-type: none"> <li>▪ Manufacturers name, trade name or trade mark</li> <li>▪ Date of manufacture</li> <li>▪ Date of test</li> <li>▪ Design pressure</li> <li>▪ Tank capacity in litres per compartment</li> <li>▪ Maximum liquid load in kilograms</li> <li>▪ Maximum design liquid density in kilograms per cubic meter</li> <li>▪ Maximum fill rate in litres per minute and pressure in kilopascals</li> <li>▪ Maximum discharge rate in litres per minute</li> <li>▪ Statement; ‘this vessel complies with KS 2180’ in conjunction with inspection authority stamp</li> </ul> |  |  |
| 55. | Tank conspicuously marked on each side and rear in   |  |  |

|     |  |  |  |
|-----|--|--|--|
|     | letters at least 18 inches high on a background of sharply contrasting color the words: 'FLAMMABLE', 'DANGEROUS' and 'KEEP DISTANCE'   |  |  |
| 56. | Static charge dissipation wire installed in the approximate centre of each compartment firmly attached at the top of the manhole cover and at the bottom to the bottom valve splash shield   |  |  |
| 57. | Records of testing by competent person approved by ERC maintained  |  |  |
| 58. | Truck painted and no corrosion arising from atmospheric influence – primer shall be epoxy zinc chromate of two coats of minimum 35 microns; finish coat is acrylic polyurethane paint of two coats of minimum dry film thickness of 30 to 40 microns |  |  |
| 59. | Certificate of initial inspection of tanker by inspection and testing authority (valid for 1 year) and subsequent recertification certificates   |  |  |
| 60. | Road tanker permit issued by ERC   |  |  |

**NOTE:**

- 1) Status should be indicated either "YES" or "NO".
- 2) Where status is "NO", the reason should be indicated in the "remarks" column

## **7 SECTION VII – STANDARD FORMS**

### **Notes on standard forms**

1. The tenderer shall complete and submit with its tender the form of tender and price schedules pursuant to instructions to tenderers clause 2.9 and in accordance with the requirements included in the special conditions of contract.
2. When requested by the appendix to the instructions to tenderers, the tenderer should provide the tender security, either in the form included herein or in another form acceptable to the procuring entity pursuant to instructions to tenderers clause 2.12.3
3. The contract form, the price schedules and the schedule of requirements shall be deemed to form part of the contract and should be modified accordingly at the time of contract award to incorporate corrections or modifications agreed by the tenderer and the procuring entity in accordance with the instructions to tenderers or general conditions of contract.
4. The performance security and bank guarantee for advance payment forms should not be completed by the tenderers at the time of tender preparation. Only the successful tenderer will be required to provide performance/entity and bank guarantee for advance payment forms in accordance with the forms indicated herein or in another form acceptable to the procuring entity and pursuant to the – conditions of contract.
5. The principal's or manufacturer's authorisation form should be completed by the principal or the manufacturer, as appropriate in accordance with the tender documents.

## **SECTION VII – STANDARD FORMS**

- 1 Form of tender
- 2 Price schedules
- 3 Contract form
- 4 Confidential Questionnaire form
- 5 Tender securing declaration form
- 6 Tender security form
- 7 Performance security form
- 8 Bank guarantee for advance payment
- 9 Bidder's Declaration and Integrity Pact

**1 FORM OF TENDER**

Date \_\_\_\_\_

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

To.....

.....

[Name and address of procuring entity]

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda No's..... *[insert numbers]* of which is hereby duly acknowledged, we, the undersigned, offer to provide ..... *[description of services]* in conformity with the said tender documents for the sum of ..... *total tender amount in words and figures]* or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

2. We undertake, if our Tender is accepted, to provide the services in accordance with the services schedule specified in the Schedule of Requirements.

3. If our Tender is accepted, we will obtain the tender guarantee in a sum equivalent to \_\_\_\_\_ percent of the Contract Price for the due performance of the Contract, in the form prescribed by (Procuring entity).

4. We agree to abide by this Tender for a period of *[number]* days from the date fixed for tender opening of the Instructions to tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

5. Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.

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

*[Signature]* \_\_\_\_\_ *[In the capacity of]*

\_\_\_\_\_

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

## 2 PRICE SCHEDULE OF SERVICES

Name of Tenderer \_\_\_\_\_ Tender Number \_\_\_\_\_ Page \_\_\_\_ of \_\_\_\_\_

### PRICE SCHEDULE 1 – BARINGO SITE

| Price schedule  | Monthly fees per bowser Kshs- inclusive of VAT |
|---|--|
| Fuel Bowser including driver , attendant and distribution cost within GDC |  |
| Baringo   |  |

| Price schedule                       | Cost Kshs/ Km/M3- inclusive of VAT |
|--------------------------------------|------------------------------------|
| Transport charge- Depot to GDC Tanks |                                    |
| Baringo                              |                                    |

### PRICE SCHEDULE 2 - MENENGAI SITE

| Price schedule  | Monthly fees per bowser Kshs- inclusive of VAT |
|---|--|
| Fuel Bowser including driver , attendant and distribution cost within GDC |  |
| Menengai site   |  |

| Price schedule                       | Cost Kshs/ Km/M3- inclusive of VAT |
|--------------------------------------|------------------------------------|
| Transport charge- Depot to GDC Tanks |                                    |
| Menengai Site                        |                                    |

- 1. Tenders may quote for either both sites or one site*
- 2. Prices quoted should be inclusive of VAT – the tenderer should clearly state that their prices are inclusive of VAT. The prices should incorporate all specified requirements as given in Section VI.*

\_\_\_\_\_  
Name & Signature of tenderer (authorized signatory)

Stamp \_\_\_\_\_

*Note:* The tenderer is to cater for all its costs in the price schedule. No hidden costs are acceptable and no additional costs will be acceptable after award.

### 3 CONTRACT FORM

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

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

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

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

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

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

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

in the presence of \_\_\_\_\_.



#### 4 CONFIDENTIAL BUSINESS QUESTIONNAIRE

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

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

|  |
|--|
| <p>Part 1 General</p> <p>Business Name.....</p> <p>Location of Business Premises .....</p> <p>Plot No, .....Street/Road.....</p> <p>Postal address .....Tel No. ....Fax Email.....</p> <p>.....</p> <p>Nature of Business .....</p> <p>Registration Certificate No. ....</p> <p>Maximum value of business which you can handle at any one time – KShs. ....</p> <p>Name of your bankers.....</p> <p>.....</p> <p>Branch.....</p> |
|--|

| <p>Part 2 (a) – Sole Proprietor</p> <p>Your name in full.....Age.....</p> <p>Nationality.....Country of Origin.....</p> <p>Citizenship details</p> <p>.....</p>   |             |                     |                     |        |         |       |       |       |         |       |       |       |         |       |       |       |         |       |       |       |
|---|-------------|---------------------|---------------------|--------|---------|-------|-------|-------|---------|-------|-------|-------|---------|-------|-------|-------|---------|-------|-------|-------|
| <p>Part 2 (b) – Partnership</p> <p>Given details of partners as follows</p> <table border="1"> <thead> <tr> <th>Name</th> <th>Nationality</th> <th>Citizenship details</th> <th>Shares</th> </tr> </thead> <tbody> <tr> <td>1. ....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2. ....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3. ....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4. ....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>  | Name        | Nationality         | Citizenship details | Shares | 1. .... | ..... | ..... | ..... | 2. .... | ..... | ..... | ..... | 3. .... | ..... | ..... | ..... | 4. .... | ..... | ..... | ..... |
| Name  | Nationality | Citizenship details | Shares              |        |         |       |       |       |         |       |       |       |         |       |       |       |         |       |       |       |
| 1. ....   | .....       | .....               | .....               |        |         |       |       |       |         |       |       |       |         |       |       |       |         |       |       |       |
| 2. ....   | .....       | .....               | .....               |        |         |       |       |       |         |       |       |       |         |       |       |       |         |       |       |       |
| 3. ....   | .....       | .....               | .....               |        |         |       |       |       |         |       |       |       |         |       |       |       |         |       |       |       |
| 4. ....   | .....       | .....               | .....               |        |         |       |       |       |         |       |       |       |         |       |       |       |         |       |       |       |
| <p>Part 2 (c) – Registered Company</p> <p>Private or Public</p> <p>State the nominal and issued capital of company</p> <p>Nominal KShs.</p> <p>Issued KShs.</p> <p>Given details of all directors as follows</p> <table border="1"> <thead> <tr> <th>Name</th> <th>Nationality</th> <th>Citizenship details</th> <th>Shares</th> </tr> </thead> <tbody> <tr> <td>1. ....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2. ....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3. ....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4. ....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table> | Name        | Nationality         | Citizenship details | Shares | 1. .... | ..... | ..... | ..... | 2. .... | ..... | ..... | ..... | 3. .... | ..... | ..... | ..... | 4. .... | ..... | ..... | ..... |
| Name  | Nationality | Citizenship details | Shares              |        |         |       |       |       |         |       |       |       |         |       |       |       |         |       |       |       |
| 1. ....   | .....       | .....               | .....               |        |         |       |       |       |         |       |       |       |         |       |       |       |         |       |       |       |
| 2. ....   | .....       | .....               | .....               |        |         |       |       |       |         |       |       |       |         |       |       |       |         |       |       |       |
| 3. ....   | .....       | .....               | .....               |        |         |       |       |       |         |       |       |       |         |       |       |       |         |       |       |       |
| 4. ....   | .....       | .....               | .....               |        |         |       |       |       |         |       |       |       |         |       |       |       |         |       |       |       |
| <p>Date.....Signature of Candidate.....</p>   |             |                     |                     |        |         |       |       |       |         |       |       |       |         |       |       |       |         |       |       |       |

## 5 TENDER SECURING DECLARATION FORM

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

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

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

To: **National Oil Corporation of Kenya**

We, the undersigned, declare that:-

- 1 We understand that, according to your conditions, bids must be supported by a Bid-Securing Declaration.
- 2 We accept that we will automatically be suspended from being eligible for bidding in any contract with the Purchaser for the period of time of (insert number of months or years) starting on (insert date), if we are in breach of our obligation(s) under the bid conditions, because we:-
  - a) have with our Bid during the period of bid validity specified by us in the Bidding Data Sheet; or
  - b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity,
    - i) fail or refuse to execute the Contract, if required, or
    - ii) fail or refuse to furnish the Performance Security, in accordance with the ITT
- 3 We understand that this Bid Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of
  - i) our receipt of a copy of your notification of the name of successful Bidder, or
  - ii) twenty-eight days after the expiration of our Tender
- 4 We understand that if we are a Joint Venture, the Bid Securing Declaration must be in the name of the Joint Venture that submits the bid and the Joint Venture has not been legally constituted at the time of bidding, the Bid Securing shall be in the names of all future partners as named in the letter of intent.

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

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

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

Date on ..... Day of .....(*insert date of signing*)

**6 TENDER SECURITY FORM**

Whereas .....[name of the tenderer]

(hereinafter called “the tenderer”)has submitted its tender dated.....[date of submission of tender ] for the provision of .....

[name and/or description of the services]

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

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

Of.....having registered office at

[name of procuring entity](hereinafter called “the Bank”)are bound unto.....

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

.....

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

THE CONDITIONS of this obligation are:

1. If the tenderer withdraws its Tender during the period of tender validity specified by the tenderer on the Tender Form; or
2. If the tenderer, having been notified of the acceptance of its Tender by the Procuring entity during the period of tender validity:

(a) fails or refuses to execute the Contract Form, if required; or (b) fails or refuses to furnish the performance security, in accordance with the instructions to tenderers;

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

\_\_\_\_\_  
[signature of the bank]

*(Amend accordingly if provided by Insurance Company)*

**7 PERFORMANCE SECURITY FORM**

To: .....

[name of the Procuring entity]

WHEREAS..... [name of tenderer]

(hereinafter called "the tenderer") has undertaken, in pursuance of Contract No. \_\_\_\_\_  
[reference number of the contract] dated \_\_\_\_\_20\_\_\_\_ to

supply.....

[Description services](Hereinafter called "the contract")

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

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

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

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

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

\_\_\_\_\_  
Signature and seal of the Guarantors

\_\_\_\_\_  
*[name of bank or financial institution]*

\_\_\_\_\_  
*[address]*

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

**8 BANK GUARANTEE FOR ADVANCE PAYMENT**

To.....

[name of tender].....

Gentlemen and/or Ladies:

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

.....

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

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

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

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

Yours truly,

Signature and seal of the Guarantors

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

\_\_\_\_\_ [address]

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

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

**BIDDER’S DECLARATION**

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

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

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

Names in full: [.....]

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

[.....]

Place and date: [.....]

Stamp of the firm/company:

## INTEGRITY PACT

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

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

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

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

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

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

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

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



**LETTER OF NOTIFICATION OF AWARD**

Address of Procuring Entity

\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

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

\_\_\_\_\_  
\_\_\_\_\_

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

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

\_\_\_\_\_

SIGNED FOR ACCOUNTING OFFICER