



TENDER FOR LEGAL SERVICES

TENDER NO. KenGenDC/T/008/2019

CLOSING DATE: 3RD MAY 2019 AT 10:30 A.M.

The Trust Secretary,
KenGen Staff Retirement Benefits Scheme
P.O BOX 47936 – 000100,
KenGen Pension Plaza 2, 11th Floor,
Kolobot Road, Parklands.
Nairobi.
Tel No: 0711036286
/0711036932.

April 2019.

ALL CANDIDATES ARE ADVISED TO READ CAREFULLY THIS TENDER DOCUMENT IN ITS ENTIRETY BEFORE MAKING ANY BID.

TABLE OF CONTENTS

| | Page |
|---|------|
| SECTION I INVITATION TO TENDER..... | 3 |
| SECTION II INSTRUCTIONS TO TENDERERS..... | 6 |
| SECTION III GENERAL CONDITIONS OF CONTRACT..... | 16 |
| SECTION IV SPECIAL CONDITIONS OF CONTRACT..... | 21 |
| SECTION V SCHEDULE OF REQUIREMENTS..... | 22 |
| SECTION VI TECHNICAL SPECIFICATIONS..... | 29 |
| SECTION VI STANDARD FORMS..... | 30 |

SECTION I – INVITATION TO TENDER

TENDER REF NO. KenGenDC/T/008/2019

TENDER NAME: PROVISION OF LEGAL SERVICES FOR PRIVATE EQUITY INVESTMENT TO KenGen Defined Contribution Scheme.

- 1.1. KenGen Defined Contribution (DC) Scheme, is a pension Scheme to KenGen PLC. The Scheme invites interested eligible bidders to submit their bids for Legal Advisory Services on Private Equity Investment as detailed in the Scope of Service.

A complete set of tender documents may be downloaded by interested candidates free of charge from www.kengensrbs.co.ke or *public tenders portal* and those who have downloaded the document from the website must forward their particulars immediately for recording and any further clarifications and addenda to tenders@kengensrbs.co.ke.

- 1.2. **The rates quoted should be inclusive of all taxes, must be expressed in Kenya shillings and shall remain valid for a period of (120) days from the Closing date of the tender.**
- 1.3. Completed tender documents are to be enclosed in plain sealed envelopes, marked with the tender number and be deposited in the tender box provided at **Tender Box on Eleventh (11TH) Floor of KenGen Pension Plaza 2**. Addressed to

**Trust Secretary
KenGen Staff Retirement Benefits Scheme,
P.O BOX 47936 – 000100,
Kolobot Road – Nairobi Kenya.**

- 1.4 To be received on or before, **Friday 3rd May 2019 at 10.30am**. Tenders will be opened immediately thereafter in the presence of the Candidates or their representatives who choose to attend.

Contents

| | |
|--|----|
| SECTION I – INVITATION TO TENDER..... | 3 |
| SECTION II INSTRUCTIONS TO TENDERERS | 6 |
| 2.1 Eligible tenderers | 6 |
| 2.2 Cost of tendering | 6 |
| 2.3 Contents of tender documents..... | 6 |
| 2.4 Clarification of Documents..... | 7 |
| 2.5 Amendment of documents | 7 |
| 2.6 Language of tender..... | 7 |
| 2.7 Documents Comprising the Tender | 7 |
| 2.8 Form of Tender | 8 |
| 2.9 Tender Prices | 8 |
| 2.10 Tender Currencies. | 8 |
| 2.11 Tenderers Eligibility and Qualifications..... | 8 |
| 2.13 Validity of Tenders..... | 9 |
| 2.14 Format and Signing of Tender..... | 9 |
| 2.15 Sealing and Marking of Tenders | 9 |
| 2.16 Deadline for Submission of Tenders | 10 |
| 2.17 Modification and withdrawal of tenders | 10 |
| 2.18 Opening of Tenders | 11 |
| 2.19 Clarification of tenders | 11 |
| 2.20 Preliminary Examination and Responsiveness..... | 11 |
| 2.21 Evaluation and comparison of tenders. | 12 |
| 2.22 Contacting the procuring entity | 13 |
| 2.23 Award of Contract | 13 |
| 2.24 Notification of award..... | 13 |
| 2.25 Signing of Contract | 14 |
| 2.6 Performance Security..... | 14 |
| 2.7 Corrupt or Fraudulent Practices | 14 |
| APPENDIX I TO INSTRUCTIONS TO THE TENDERERS | 15 |
| SECTION III GENERAL CONDITIONS OF CONTRACT..... | 16 |
| TABLE OF CONTENTS | 16 |
| SECTION III GENERAL CONDITIONS OF CONTRACT..... | 17 |
| 3.1 Definitions..... | 17 |
| 3.2 Application..... | 17 |

| | | |
|-------|---|-------------------------------------|
| 3.2.1 | These General Conditions shall apply to the extent that they are not super ceded by provisions of other part of contract..... | 17 |
| 3.3 | Standards..... | 17 |
| 3.4 | Use of Contract Documents and Information..... | 17 |
| 3.5 | Patent Right's..... | 18 |
| 3.6 | Performance Security..... | 18 |
| 3.7 | Inspections..... | 18 |
| 3.8 | Payment..... | 18 |
| 3.9 | Prices..... | 18 |
| 3.10 | Assignment..... | 18 |
| 3.11 | Termination for Default..... | 19 |
| 3.12 | Termination of insolvency..... | 19 |
| 3.13 | Termination for convenience..... | 19 |
| 3.14 | Resolution of disputes..... | 19 |
| 3.15 | Governing Language..... | 19 |
| 3.16 | Force Majeure..... | 20 |
| 3.17 | Applicable Law..... | 20 |
| 3.18 | Notices..... | 20 |
| | SECTION IV SPECIAL CONDITIONS OF CONTRACT..... | 21 |
| | SECTION V – SCHEDULE OF REQUIREMENTS..... | 22 |
| | TENDER RESPONSIVENESS CRITERIA..... | 23 |
| | Mandatory requirements..... | 23 |
| | Technical evaluation one..... | 24 |
| | Technical evaluation Two..... | Error! Bookmark not defined. |
| | <i>Appendix II: BIDDERS REFERENCE SITE FORM.....</i> | Error! Bookmark not defined. |
| | PROJECT SUMMARY FOR EACH REFERENCE SITE..... | Error! Bookmark not defined. |
| | SECTION VII - PRICE SCHEDULE FOR PROVISION OF SERVICES..... | 25 |
| | SECTION VIII - STANDARD FORMS..... | 26 |
| | Notes on the Sample Forms..... | 26 |
| | 8.1 FORM OF TENDER..... | 27 |
| | 8.2 CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM..... | 29 |
| | 8.3 TENDER SECURITY FORM..... | 33 |
| | 8.4 PERFORMANCE SECURITY FORM..... | 34 |
| | 8.5 LETTER OF NOTIFICATION OF AWARD..... | 35 |
| | 8.6 FORM RB 1..... | 36 |
| | 8.7 ANTI CORRUPTION DECLARATION PLEDGE..... | 37 |

SECTION II INSTRUCTIONS TO TENDERERS

2.1 Eligible tenderers

- 2.1.1. This invitation 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. KenGen SRBS 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.
- 2.1.3. Tenderers shall provide the qualification information statement that the tenderer (including all members, of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the KenGen SRBS 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.
- 2.1.4. Tenderers involved in corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

2.2 Cost of tendering

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

2.3 Contents of tender documents

- 2.3.1. The tender document comprises of the documents listed below and addenda issued in accordance with clause 6 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 Price schedules
 - vii) Contract form
 - viii) Confidential business questionnaire form
 - ix) Tender security form
 - x) Performance security form
 - xi) 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 by 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 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.

2.7 Documents Comprising the Tender

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

- (a) A Tender Form and a Price Schedule completed in accordance with paragraph 9, 10 and 11 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 paragraph 2.22.

2.9.4 Contract price variations may be allowed for contracts 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 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 of 2 per cent of the tender price.

2.12.3 The tender security is required to protect the Procuring entity against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 2.12.2. The tender security shall be denominated in a Kenya Shillings, **Bank guarantee**.

2.12.4 Any tender not secured in accordance with paragraph 2.12.1 and 2.12.3 will be rejected by the Procuring entity as non-responsive, pursuant to paragraph 2.20

2.12.5 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 KenGen SRBS.

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

2.12.7 The tender security may be forfeited:

(a) If a tenderer **withdraws** its tender **during** the period of tender validity specified by KenGen SRBS on the Tender Form; or

(b) In the case of a successful tenderer, *if* the tenderer fails:

(i) to sign the contract in accordance with paragraph 2.27.1

or

(ii) to furnish performance security in accordance with paragraph 2.27.2.

© 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 paragraph 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 paragraph 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.**" and **financials enclosed in a different envelope (form of tender and price schedule).**

(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** (3rd May 2019 at 10:30 am.)” 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”.

2.28.1 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 paragraph 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 paragraph 2.15.2 no later than **(3rd May 2019 at 10:30 am)**

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 paragraph 6, 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 paragraph 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 paragraph 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 KenGen RBs Boardroom 3rd May 2019, at 10.30am. The tenderers' representatives who are present shall sign a register evidencing their attendance.

2.18.3 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.

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

2.19 Clarification of tenders

2.19.1 To assist in the examination, evaluation and comparison of tenders the procuring entity may at its discretion, ask the tenderer for a clarification of its tender. The request for clarification and the response shall be in writing, and no change in the prices or substance shall be sought, offered, or permitted.

2.19.2 Any effort by the tenderer to influence the procuring entity in the procuring entity's tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderers tender.

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

2.20 Preliminary Examination and Responsiveness

2.20.1 The Procuring entity will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required securities have been furnished whether the documents have been properly signed, and whether the tenders are generally in order.

2.20.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security may be forfeited. If there is a discrepancy between words and figures, the amount in words will prevail.

2.20.3 The Procuring entity may waive any minor informality or nonconformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any tenderer.

2.20.4 Prior to the detailed evaluation, pursuant to paragraph 23, the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, 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 Evaluation and comparison of tenders.

2.21.1 The procuring entity will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.20

2.21.2 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.

2.21.3 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 paragraph 2.22.4 and in the technical specifications:

(a) operational plan proposed in the tender;

(b) deviations in payment schedule from that specified in the Special Conditions of Contract;

2.21.4 Pursuant to paragraph 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. Tenders 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. KenGen SRBS may consider the alternative payment schedule offered by the selected tenderer.

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

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

(a) Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.

(b) Legal capacity to enter into a contract for procurement

(c) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing

- (d) Shall not be debarred from participating in public procurement.

2.22 Contacting the procuring entity

- 2.22.1 Subject to paragraph 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.
- 2.22.2 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.

2.23 Award of Contract

a) Post qualification

- 2.23.1 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. This may include site visit to verify the tenderers information at its own discretion.
- 2.23.2 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 paragraph 2.1.2, as well as such other information as the Procuring entity deems necessary and appropriate.
- 2.23.3 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

- 2.23.4 Subject to paragraph 2.29 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.
- 2.23.5 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.
- 2.23.6 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.

2.24 Notification of award

2.24.1 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.

2.24.2 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 2.29. Simultaneously the other tenderers shall be notified that their tenders have not been successful.

2.24.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 31, the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.12

2.25 Signing of Contract

2.25.1 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.

2.25.2 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.

2.25.3 The parties to the contract shall have it signed within 21 days from the date of notification of contract award unless there is an administrative review request. The contract shall include a detailed service level agreement.

2.6 Performance Security

2.26.1 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.

2.26.2 Failure of the successful tenderer to comply with the requirement of paragraph 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.

2.7 Corrupt or Fraudulent Practices

2.27.1 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.

2.27.2 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;

2.27.3 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 I TO INSTRUCTIONS TO THE TENDERERS

| INSTRUCTIONS TO TENDERERS REFERENCE | PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS |
|--|--|
| 2.1.1 | The tender is open to all Registered Legal Firms with international affiliation and valid accreditations to offer Legal Services Locally and Overseas. |
| 2.1.3 | Declaration of No Conflict of Interest is provided for in the Confidential Business Questionnaire. |
| 2.3.2 | The fees charged for a complete set of tender documents is One Thousand Kenya Shillings (1,000.00) only and free of charge if downloaded from Schemes website www.kengensrbs.co.ke . |
| 2.11.1 | Tender prices may be quoted in Kenya Shillings or the equivalent in freely convertible currency. |
| 2.13 | Tender Validity Period 90 days from closing date of the tender. |
| 2.14.1 | Tenderer must submit two copies of tender documents with financials enclosed in a separate envelope and must be submitted in the format provided in the FORM OF TENDER and PRICE SCHEDULE |
| 2.16.3 | Bulky tenders shall be submitted at KenGen SRBS Procurement Desk, Located at Pension Plaza 2, 11 th Floor and Must be registered BEFORE 10.30 am on 3rd May 2019 |

SECTION III GENERAL CONDITIONS OF CONTRACT

TABLE OF CONTENTS

| | |
|------|---|
| 3.1 | Definitions |
| 3.2 | Application |
| 3.3 | Standards |
| 3.4 | Use of contract documents and information |
| 3.5 | Patent Rights |
| 3.6 | Performance security |
| 3.7 | Inspections and tests |
| 3.8 | Payment |
| 3.9 | Prices |
| 3.10 | Assignment |
| 3.11 | Termination for default |
| 3.12 | Termination for insolvency |
| 3.13 | Termination for convenience |
| 3.14 | Resolution of disputes |
| 3.15 | Governing language |
| 3.16 | Force majeure |
| 3.17 | Applicable law |
| 3.18 | Notices |

SECTION III GENERAL CONDITIONS OF CONTRACT

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

- 3.2.1 These General Conditions shall apply to the extent that they are not super ceded 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 Use of Contract Documents and Information

- 3.4.1 The Tenderer shall not, without the KenGen SRBS’s prior written consent, disclose the Contract, or any provision therefore, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the KenGen SRBS in connection therewith, to any person other than a person employed by the Tenderer in the performance of the Contract.
- 3.4.2 The Tenderer shall not, without the KenGen SRBS’s prior written consent, make use of any document.
- 3.4.3 Any document, other than the Contract itself, enumerated in paragraph 3.5.1 shall remain the property of the KenGen SRBS and shall be returned (all

copies) to the KenGen SRBS on completion of the Tenderer's performance under the Contract if so, required by the KenGen SRBS.

3.5 Patent Right's

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

3.6 Performance Security

Within fourteen (14) 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.

3.6.2 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.

3.6.3 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 Bank guarantee.

3.6.4 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.

3.7 Inspections

3.7.1 The Procuring entity or its representative shall have the right to evaluate 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.

3.7.2 Should any inspected 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.

3.8 Payment

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

3.9 Prices

Prices/ rates 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 / rates 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.

3.10 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.

3.11 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.

3.12 Termination of insolvency

The procuring entity may at the 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.

3.13 Termination for convenience

- 3.13.1 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.
- 3.13.2 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.

3.14 Resolution of disputes

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

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

3.15 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.

3.16 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.

3.17 Applicable Law.

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

3.18 Notices

Any notices given by one party to the other pursuant to this contract shall be sent to the other party by post 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.

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.

| General Conditions of Contract Reference | Special Conditions of Contract |
|---|---|
| 3.6 | The performance bond shall be Professional Indemnity issued by locally registered Insurance Firms at Kshs. 100 Million. |
| 3.8 | The payment terms are that payment shall be made within thirty (30) days from the date of provision of service. |
| 3.9 | Prices charged by the Tenderer for goods delivered and services performed under the Contract shall not, with the exception of any price adjustments authorized in Special Conditions of Contract, vary from the prices by the Tenderer in its tender. All prices quoted by the Tenderers must be inclusive of all taxes, discounts and delivery costs to Nairobi, Kenya |

SECTION V – SCHEDULE OF REQUIREMENTS

Scope of Work

To provide legal services from time to time in relation to investments by KenGen Defined Contribution (DC) Scheme 2012 (the “Client”) in African Development Partners III (ADP III) & AfricInvest Fund IV (AF4), (each a “Target Fund” and together, the “Target Funds”) (together the “Matters”). Your representation of the Client is envisaged to encompass:

- (a) an initial review of the private placement memorandum, limited partnership agreement/by-laws and other fund documentation in relation to each proposed Target Fund to identify any “red flag” issues and, where possible, suggest potential solutions to such “red-flag” issues which might prohibit an investment by the Funds in that Target Fund (the “Initial Review”);
- (b) subject to no “red-flag” issues having been identified in respect of a Target Fund, or to potential resolution of such issues being identified, the preparation of an issues list (“Issues List”) to include our comments on the relevant Target Fund’s Private Placement Memorandum, LPA and Subscription Agreement (if available);
- (c) negotiation of the terms of the Target Fund LPA and, if required, any side letter with the manager/sponsor of the Target Fund and their external advisers; and
- (d) assistance as required with closing arrangements.

You will not undertake any tax or regulatory review or advice in relation to any investments made by the Client or any of the Target Funds, unless otherwise instructed by you.

TENDER RESPONSIVENESS CRITERIA

The following criteria shall be used in the evaluation of all bidders participating in this tender.

| Criteria | Maximum Score/Requirement | Cut Off Mark |
|--------------------------|---------------------------|-----------------|
| Mandatory Requirements | Mandatory | All must be met |
| Technical Evaluation One | 100 | 75 |
| Financial Evaluation | Lowest quoted price | |
| Totals | 100 | |

Determination of tender responsiveness and the following requirements are Mandatory to be submitted by bidder to be evaluated further.

Mandatory requirements

| | Description of Criteria |
|-----|---|
| 1. | Submission of Tender Documents 2 copies (original and copy) Financials enclosed in a separate envelope. |
| 2. | Company Profile <input type="checkbox"/> Attach a certified copy of Registration of Business/Certificate of Incorporation and certified Copy of CR 12 not older than three months from tender closing date and attach evidence of international affiliations. <input type="checkbox"/> Duly filled and signed Confidential Business Questionnaire. |
| 3. | Experience Five reference letters for assignments handled within the last five years, one Must have been a similar assignment (Private Equity Investment Legal Advisory) for at least one Pension Scheme in Kenya and the rest mergers and acquisitions related assignments. (Attach refence letter detailing the assignment). |
| 4. | Proof of Ten (10) years existence Copy of certificate of incorporation. |
| 6. | Reference from the Bank Reference Letter from the Bank. |
| 7. | Social Obligations Submit Valid Tax Compliance Certificate. |
| 8. | Audited books of accounts For the last two years (2016 and 2017 – Duly audited. Certified by the auditors) |
| 9. | Tender Security Provide Professional Indemnity of Kshs. 100 Million (Must be from a locally registered insurance company - IRA) and the policy must be endorsed by underwriter. |
| 10. | Anti-corruption Declaration Duly filled, Signed and Stamped in the format provided. |

Technical evaluation

The documents submitted will be evaluated for suitability and awarded marks which will contribute to a maximum 75% of the total tender evaluation.

| | Description of Criteria | Max. Score |
|----|---|------------|
| 1. | Company Profile Suitability of Service Provider and Experience of the firm; i. 10 year – 8 marks ii. 10 years and above - 10 marks | 10 |
| 2. | Managerial and Key Personnel Competency (Provide certified CV and Copies of academic and professional certificates) General Qualification of the: i. Team Leader/ Managing Partner –Degree in Law and Professional Diploma Qualification in law, advocate of high court and Valid LSK membership (10 marks) ii. Two Senior Lawyers - Degree in Law and Professional Diploma Qualification in Law and an advocate of high court, Valid LSK Membership (each 7.5 marks) | 25 |
| 3. | Professional Experience in the area of specialization i. Team Leader –7 years and above (4 years must be experience in handling Private Equity investment, Mergers and Acquisitions legal advisory) (10 marks) ii. Two Senior Lawyers - 5 years and above (2 years must be experience in handling Private equity investment, mergers and acquisitions legal advisory (each 7.5 marks) | 25 |
| 4. | Proof of handling similar assignment Five reference letters for current or most recent assignment in the last five years. One letter must be from a Pension Scheme in Kenya. i. Four (4) letters from reputable firms on similar assignment i.e. mergers and acquisitions or related (9 Marks) ii. One (1) letter from Pension Schemes on Private Equity investment (6 Marks) | 15 |
| 5. | Methodology. Adequacy of the proposed work plan and methodology in responding to the Terms of Reference | 10 |
| 6. | Professional Indemnity Minimum of Kshs 100 million, policy document MUST be certified by the underwriter. | 5 |
| 7. | Evidence of International Affiliation Attach evidences of across border affiliations. i. 1- 5 law firms (7 marks) ii. 6 law firms and above (10 marks) | 10 |
| | Total Score | 100 |

SECTION VII - PRICE SCHEDULE FOR PROVISION OF LEGAL SERVICES

Name of Tenderer _____

Tender Number

Page _____ of _____

| NO. | DESCRIPTION OF SERVICE | FREQUENCY | AMOUNT INCLUSIVE OF VAT & RELATED TAXES |
|-----|------------------------|-----------|--|
| 1. | Legal fees | | |
| | | | |

Note:

1. *In case of discrepancy between unit price and total, the unit price shall prevail*
2. *The Estimated Annual Quantities are only indicative for purpose of providing bidders with expected volume of business and in determining the lowest Evaluated Bidder.*

Bidder's Signature ~~~~~ Official Stamp ~~~~~
 ~~~~~ Date ~~~~~

## SECTION VIII - STANDARD FORMS

### Notes on the Sample Forms

- 1 *Form of Tender-* The form of tender must be completed by the Tenderer and submitted with the tender documents. It must also be duly signed by duly authorized representatives of the Tenderer.
- 2 *Confidential Business Questionnaire Form-* This form must be completed by the Tenderer and submitted with the tender documents.
- 3 *Tender Security Form-* When required by the tender documents the tender shall provide the tender security either in the form included herein or in another format acceptable to the procuring entity.
- 4 *Contract Form-* The Contract Form shall not be completed by the Tenderer at the time of submitting the tender. The Contract Form shall be completed after contract award and should incorporate the accepted contract price.
- 5 *Performance Security Form-* The performance security form should not be completed by the Tenderers at the time of tender preparation. Only the successful Tenderer will be required to provide performance security in the form provided herein or in another form acceptable to the procuring entity.
- 6 *Bank Guarantee for Advance Payment Form-* When Advance payment is requested for by the successful bidder and agreed by the procuring entity, this form must be completed fully and duly signed by the authorized officials of the bank.
- 7 *Anticorruption declaration form -* This form must be completed by the Tenderer and submitted with the tender documents.

## 8.1 FORM OF TENDER

### Financial Proposal

[Date]

To:

CEO & Trust Secretary

KenGen Staff Retirement Benefits Scheme

KenGen Pension Plaza 2

11<sup>th</sup> Floor, Kolobot Rd

P. O. Box 47936 - 00100

NAIROBI

Dear Sir,

1. Having examined the tender documents including Addenda Nos. .... *[insert numbers]*, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to provide ( ..... *(insert service description)* 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 proposal is accepted, to provide Legal Services in accordance with the conditions of this tender.
3. We agree to abide by this tender for a period of **120 days** from the date fixed for tender opening, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
4. This tender, together with your written acceptance thereof and your notification of award, shall constitute a basis signing of the contract by both parties.
5. We understand that the Board of Trustees is not bound to accept the lowest or any proposal they receive.

Yours faithfully,

*[Authorized Signature]*

*[Name and Title of Signatory]*

## 8.2 CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

You are requested to give the particulars indicated in Part 1; either Part 2(a), 2(b) or 2 (c) whichever applies to your type of business; and Part 3. ***You are advised that it is a serious offence to give false information on this form.***

| Part 1 – General                    |                                                                        |
|-------------------------------------|------------------------------------------------------------------------|
| 1.1                                 | Business Name<br>.....                                                 |
| 1.2                                 | Location of Business Premises.<br>.....                                |
| 1.3                                 | Plot No..... Street/Road                                               |
|                                     | Postal Address<br>.....<br>Tel No. .... Fax<br>..... E mail .....      |
| 1.4                                 | Nature of Business.....                                                |
| 1.5                                 | Registration Certificate No.<br>.....                                  |
| 1.6                                 | Maximum Value of Business which you can handle at any one time – Kshs. |
| 1.7                                 | Name of your Bankers .....Branch .....                                 |
| <b>Part 2 (a) – Sole Proprietor</b> |                                                                        |
| 2a.1                                | Your Name in Full ..... Age<br>.....                                   |
| 2a.2                                | Nationality ..... Country of Origin<br>.....                           |
|                                     | <input type="checkbox"/> Citizenship Details<br>.....<br>.....         |
| <b>Part 2 (b) Partnership</b>       |                                                                        |
| 2b.1                                | Given details of Partners as follows:                                  |
| 2b.2                                | <u>Name Nationality Citizenship Details Shares</u>                     |
|                                     | 1.....<br>.....<br>.....                                               |

|      |                                                     |
|------|-----------------------------------------------------|
|      | 2.....<br>.....                                     |
|      | 3.....<br>.....                                     |
|      | 4.....<br>.....                                     |
|      |                                                     |
|      | <b>Part 2 (c) – Registered Company</b>              |
| 2c.1 | Private or Public<br>.....<br>.....                 |
| 2c.2 | State the Nominal and Issued Capital of Company-    |
|      | Nominal Kshs.<br>.....                              |
|      | Issued Kshs.<br>.....                               |
| 2c.3 | Given details of all Directors as follows           |
|      | <u>Name Nationality, Citizenship Details Shares</u> |
|      | 1.....<br>.....                                     |
|      | 2.....<br>.....                                     |
|      | 3.....<br>.....                                     |
|      | 4.<br>.....<br>.....                                |
|      | 5.....<br>.....                                     |

|     |                                                                                                        |
|-----|--------------------------------------------------------------------------------------------------------|
|     | <b>Part 3 – Eligibility Status</b>                                                                     |
|     |                                                                                                        |
| 3.1 | Are you related to an Employee, Committee Member or Board Member of KenGen SRBS?<br>Yes _____ No _____ |
| 3.2 | If answer in „3.1“ is <b>YES</b> give the relationship.<br>.....<br>.....<br>.....<br>.....            |

|     |                                                                                                                                                                                         |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3.3 | Does an Employee, Committee Member, Board Member of KenGen SRBS sit in the Board of Directors or Management of your Organization, Subsidiaries or Joint Ventures? Yes _____<br>No _____ |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|      |                                                                                                                                                                                                                                                                                                                                                                                          |
|------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3.4  | <p>If answer in „3.3“ above is <b>YES</b> give details.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>                                                                                                                                                                                                                                                |
| 3.5  | <p>Has your Organization, Subsidiary Joint Venture or Sub-contractor been involved in the past directly or indirectly with a firm or any of its affiliates that have been engaged by KenGen SRBS to provide consulting services for preparation of design, specifications and other documents to be used for procurement of the goods under this invitation?<br/> Yes _____ No _____</p> |
| 3.6  | <p>If answer in „3.5“ above is <b>YES</b> give details.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>                                                                                                                                                                                                                                                |
| 3.7  | <p>Are you under a declaration of ineligibility for corrupt and fraudulent practices? YES _____<br/> No _____</p>                                                                                                                                                                                                                                                                        |
| 3.8  | <p>If answer in „3.7“ above is <b>YES</b> give details:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>                                                                                                                                                                                                                                                |
| 3.9  | <p>Have you offered or given anything of value to influence the procurement process? Yes _____<br/> No _____</p>                                                                                                                                                                                                                                                                         |
| 3.10 | <p>If answer in „18“ above is <b>YES</b> give details</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>                                                                                                                                                                                                                                                  |
| 3.11 | <p>Disclosure of any litigation within the last three years.? Yes ..... No .....</p>                                                                                                                                                                                                                                                                                                     |

|  |                                                                                                      |
|--|------------------------------------------------------------------------------------------------------|
|  | If Yes. Please give details .....<br>.....<br>.....<br>.....                                         |
|  |                                                                                                      |
|  | I DECLARE that the information given on this form is correct to the best of my knowledge and belief. |
|  |                                                                                                      |
|  | Date ..... Signature of Candidate .....                                                              |

If a Kenya Citizen, indicate under “Citizenship Details” whether by Birth, Naturalization or registration.



**8.3 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..... [KenGen SRBS] (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 turnout 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)*

**8.4 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.....

[ **Provision of Legal 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]*

**8.5 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

REPUBLIC OF KENYA PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

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

BETWEEN

..... APPLICANT AND

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

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

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

**REQUEST FOR REVIEW**

I/We.....,the above named Applicant(s), of address: Physical address..... No.....Tel. No.....Email ....., hereby request the Public Procurement Administrative Review Board to review the whole/part of the above mentioned decision on the following grounds , namely:-

- 1.
. etc.

By this memorandum, the Applicant requests the Board for an order/orders that: ~ 1.

SIGNED .....(Applicant)

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

**FOR OFFICIAL USE ONLY**

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

SIGNED

**Board Secretary**

**8.7 ANTI CORRUPTION DECLARATION PLEDGE**

I/We (Name of the firm/Bidder) declare that I/We recognize that Public Procurement and disposal is based on a free and fair competitive tendering process which should not be open to abuse. I/We..... declare that I/We..... will not offer or facilitate, directly or indirectly, any inducement or reward to any public officer, their relations or business associates, in accordance with the tender No.....for or in the subsequent performance of the contract if I/We am/are successful. Signed by ..... Chief Executive Officer or authorized representative.