



NATIONAL COUNCIL FOR POPULATION AND DEVELOPMENT

TENDER DOCUMENT

FOR

ENGAGEMENT OF AN ADVOCATE / LAW FIRM ON A RETAINER BASIS AT NCPD.

TENDER NO. NCPD HQT/09/2018-2019

CLOSING DATE AND TIME: FRIDAY 30TH NOVEMBER, 2018 AT 2.00 PM

The Director General
National Council for Population & Development
4th Floor Chancery Building
Valley Road
P. O. Box 48994-00100
NAIROBI
Tel. 2711600/2711601
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SECTION I – INVITATION TO TENDER

National Council for Population and Development (NCPD) is a state agency under the National Treasury and Planning whose mandate is to undertake analysis, formulation, development and coordination of the implementation of Population policies and Programmes for Sustainable Development.

NCPD now invites tenders for **ENGAGEMENT OF AN ADVOCATE / LAW FIRM ON A RETAINER BASIS AT NCPD**. Tender documents may be obtained from Procurement Office - NCPD Headquarters, Room No. 440 on 4th Floor Chancery Building Valley Road, Nairobi, Kenya during normal working hours or they can also be obtained from the Council's website: www.ncpd-ke.org. A non-refundable fee of Ksh. 1,000/= will be required for those who choose to purchase hard copies of the tender document. Those who download the document will not be required to pay any fee. Completed Tender Documents should be addressed, marked and submitted accompanied by a tender security delivered to:

National Council for Population & Development
4th Floor Chancery Building, Valley Road
P. O. Box 48994-00100
NAIROBI, KENYA Tel. +254-2-2711600/271160

Tenders will be opened immediately after closure on **FRIDAY 30TH NOVEMBER, 2018 at 2.00 p.m.** at the NCPD Board Room, in the presence of tenderers or representatives who choose to attend the opening. Late tenders will not be accepted.

Tenders to be submitted in plain and sealed envelopes clearly marked as below:

ENGAGEMENT OF AN ADVOCATE / LAW FIRM ON A RETAINER BASIS AT NCPD. TENDER NO.NCPD/HQT/09/2018-19 (with the mark) “DO NOT OPEN BEFORE FRIDAY 30TH NOVEMBER, 2018 at 2.00 pm

DIRECTOR GENERAL

SECTION II – INSTRUCTIONS TO TENDERERS

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 will 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. NCPD'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.
- 2.1.3. Tenderers will 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 NCPD 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 will not be eligible.

2.2 Cost of Tendering

- 2.2.1 The Tenderer will bear all costs associated with the preparation and submission of its tender, and NCPD, 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 will not exceed Kshs.5,000/=
- 2.2.3 NCPD will 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 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
 - 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 NCPD in writing or by post, fax or email at the entity's address indicated in the Invitation for tenders. NCPD 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 NCPD. 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. NCPD will 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 NCPD, 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, NCPD, 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 NCPD, will 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 will govern.

2.7 Documents Comprising the Tender

- 2.7.2. The tender prepared by the Tenderer will 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 will 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 will 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 will 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 will 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 will not be allowed for contracts not exceeding one year (12 months)
- 2.9.5 Where contract price variation is allowed, the variation will not exceed 10% of the original contract price.
- 2.9.6 Price variation requests will be processed by NCPD within 30 days of receiving the request.

2.10 Tender Currencies

- 2.10.1 Prices will 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 will 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 will establish to NCPD'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 will 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 will be in the amount not exceeding 2 per cent of the tender price.
- 2.12.2 The tender Security is required to protect NCPD against the risk of Tenderer's conduct which would warrant the Security's forfeiture, pursuant to paragraph 2.12.7
- 2.12.3 The tender Security will be denominated in a Kenya Shillings or in another freely convertible currency and will be in the form of:
 - a) A bank guarantee.
 - b) Cash.
 - c) Such insurance guarantee approved by the Authority.
 - d) Letter of credit
- 2.12.4 Any tender not secured in accordance with paragraph 2.12.1 and 2.12.3 will be rejected by NCPD as non-responsive, pursuant to paragraph 2.20
- 2.12.5 Unsuccessful Tenderer's Security will be discharged or returned as promptly as possible as but not later than thirty (30) days after the expiration of the period of tender validity prescribed by NCPD.
- 2.12.6 The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 2.29, and furnishing the performance Security, pursuant to paragraph 2.30.
- 2.12.7 The tender security may be forfeited:
 - a) If a Tenderer **withdraws** its tender **during** the period of tender validity specified by NCPD on the Tender Form; or
 - b) In the case of a successful Tenderer, *if* the Tenderer fails:
 - i. to sign the contract in accordance with paragraph 30
 - or**
 - ii. to furnish performance Security in accordance with paragraph 31.
 - c) If the Tenderer rejects, correction of an error in the tender.

2.13 Validity of Tenders

- 2.13.1 Tenders will remain valid for 60 days or as specified in the invitation to tender after date of tender opening prescribed by NCPD, pursuant to paragraph 2.18. A tender valid for a shorter period will be rejected by NCPD as nonresponsive.
- 2.13.2 In exceptional circumstances, NCPD may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto will be made in writing. The tender Security provided under paragraph 2.12 will 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 will 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 will govern.
- 2.14.2 The original and all copies of the tender will be typed or written in indelible ink and will 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, will be initialed by the person or persons signing the tender.
- 2.14.3 The tender will have no interlineations, erasers, or overwriting except as necessary to correct errors made by the Tenderer, in which case such corrections will be initialed by the person or persons signing the tender.

2.15 Sealing and Marking of Tenders

- 1.15.1 The Tenderer will seal the original and each copy of the tender in separate envelopes, duly marking the envelopes as "ORIGINAL" and "COPY." The envelopes will then be sealed in an outer envelope. The inner and outer envelopes will:
 - a) be addressed to NCPD 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(day, date and time of closing),"
- 2.15.2 The inner envelopes will also indicate the name and address of the Tenderer to enable the tender to be returned unopened in case it is declared "late". —
- 2.15.4 If the outer envelope is not sealed and marked as required by paragraph 2.15.1, NCPD 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 NCPD at the address specified under paragraph 2.15.1 no later than 2.00 PM **FRIDAY 30TH NOVEMBER, 2018**
- 2.16.2 NCPD 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 NCPD 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 will be received by NCPD 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 NCPD prior to the deadline prescribed for the submission of tenders.
- 2.17.2 The Tenderer's modification or withdrawal notice will 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 no 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 NCPD may at any time terminate procurement proceedings before contract award and will not be liable to any person for the termination.
- 2.17.6 NCPD will 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 NCPD will open all tenders in the presence of Tenderers' representatives who choose to attend, on **FRIDAY 30TH NOVEMBER, 2018 at 2.00 pm** and in the location specified in the invitation to tender. The Tenderers' representatives who are present will 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 NCPD, at its discretion, may consider appropriate, will be announced at the opening.
- 2.18.4 NCPD 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 NCPD may at its discretion, ask the Tenderer for a clarification of its tender. The request for clarification and the response will be in writing, and no change in the prices or substance will be sought, offered, or permitted.
- 2.19.2 Any effort by the Tenderer to influence NCPD in NCPD'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 NCPD 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 will prevail, and the total price will 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 NCPD 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, NCPD 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. NCPD'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 NCPD 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, NCPD 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 NCPD will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.20
- 2.22.2 The comparison will 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 NCPD'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;
- 2.22.4 Pursuant to paragraph 22.3 the following evaluation methods will be applied:
- a) ***Operational Plan.***
NCPD requires that the services under the Invitation for Tenders will be performed at the time specified in the Schedule of Requirements. Tenders offering to perform longer than NCPD's required delivery time will be treated as non-responsive and rejected.
 - b) ***Deviation in payment schedule.***
Tenderers will 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. NCPD may consider the alternative payment schedule offered by the selected Tenderer.
- 2.22.5 The tender evaluation committee will evaluate the tender within 30 days from the date of opening the tender.
- 2.22.6 To qualify for contract awards, the Tenderer will 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) Will 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) Will not be debarred from participating in public procurement.

2.23 Contacting NCPD

- 2.23.1 Subject to paragraph 2.19, no Tenderer will contact NCPD 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 NCPD 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, NCPD 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 paragraph 2.1.2, as well as such other information as NCPD 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 NCPD will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

b) Award Criteria

- 2.24.3 Subject to paragraph 2.29 NCPD will award the contract to the successful Tenderer whose tender has been determined to be **substantially technically 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.
- 2.24.4 NCPD 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 NCPD's action. If NCPD determines that none of the Tenderers is responsive; NCPD will notify each Tenderer who submitted a tender.
- 2.24.5 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 will 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 NCPD pursuant to clause 2.29. Simultaneously the other Tenderers will be notified that their tenders have not been successful.
- 2.25.3 Upon the successful Tenderer's furnishing of the performance Security pursuant to paragraph 31, NCPD will promptly notify each unsuccessful Tenderer and will discharge its tender Security, pursuant to paragraph 2.12

2.26 Signing of Contract

- 2.26.1 At the same time as NCPD notifies the successful Tenderer that its tender has been accepted, NCPD 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 will sign and date the contract and return it to NCPD.
- 2.26.3 The parties to the contract will 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 thirty (30) days of the receipt of notification of award from NCPD, the successful Tenderer will 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 NCPD.
- 2.27.2 Failure of the successful Tenderer to comply with the requirement of paragraph 2.29 or paragraph 2.30.1 will constitute sufficient grounds for the annulment of the award and forfeiture of the tender Security, in which event NCPD may make the award to the next lowest evaluated or call for new tenders.

2.28 Corrupt or Fraudulent Practices

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

2.29 Appendix to instructions to Tenderers

The following information will 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 this appendix, the provisions of the appendix herein will prevail over those of the instructions to Tenderers

INSTRUCTION NO	TITLE	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERERS
2.1.	Eligible Tenderers	Eligible tenders will be open to international as well as firms that have been incorporated in Kenya
2.11.	Eligibility and Qualifications	Eligibility and qualification will be decided on the determination that a tender is substantially responsive to the Terms of Reference and a demonstration of technical, financial and legal capacity necessary to perform contract. The “ Detailed Technical Evaluation Criteria ” are provided herein.
2.12.	Tender Security	The tender Security will be 2 per cent of the tender price.
2.24.	Award of contract	The firm that satisfies the requirements for Eligibility and Qualifications (As provided in 2.30) and will be further considered to be substantially responsive (highest technical scores) and also determined to be the lowest evaluated bidder will be eligible for contract award.
2.16.3.	Bulky tenders	Bulky tenders that cannot go through the slot of the tender box should be handed over to the Procurement office - NCPD Headquarters, Room No. 440 on 4 th Floor Chancery Building Valley Road, Nairobi. Late tenders will be rejected.

2.30 Technical Evaluation Criteria

A preliminary evaluation will be carried out and Bidders who are missing any of the following items shall be considered non-responsive and hence won't be considered for further evaluation. Bidders are encouraged to paginate their documents and provide a table of contents.

a) PRELIMINARY EVALUATION CRITERIA(MANDATORY)

Tenderers are required to submit the following documents, failure to which they shall not be considered for further evaluation.

Criteria	Priority
Certificate of Registration/incorporation/Admission	Mandatory
Completed and Signed Form of Tender	Mandatory
Completed and Signed Confidential Business Questionnaire	Mandatory
Bid Bonds as stipulated in the tender document	Mandatory

b) Detailed Technical Evaluation (*Please review section v for detailed Terms of Reference*)

During detailed evaluation the bids shall be subjected to a thorough evaluation to check if they meet the technical requirements as stated in their respective bid documents. Each of the requirements in the bids shall be scored as weighted below: The table of content is supposed to be structured in a way that makes identification of the detailed particulars easy.

Requirement	Points
QUALIFICATION & EXPERIENCE OF LAW FIRM/ADVOCATE	
<i>Attach CVs , academic and professional Certificates for the proposed staff</i>	
Qualification and Competence as per Specific Duties and Responsibilities provided in the TOR	50
Experience on comparable assignments to the requirements provided in the TOR	30
Signed and stamped Letters of recommendation from clients	20
Total Points.	100

SECTION III - GENERAL CONDITIONS OF CONTRACT

3.1. Definitions

- 3.1.1. In this contract the following terms will be interpreted as indicated:
- a) “The contract” means the agreement entered into between NCPD 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 NCPD under the Contract.
 - d) “NCPD” 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 will apply to the extent that they are not superseded by provisions of other part of contract.

3.3. Standards

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

3.4. Patent Right’s

- 3.4.1. The Tenderer will indemnify NCPD 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 twenty eight (28) days of receipt of the notification of Contract award, the successful Tenderer will furnish to NCPD the performance Security where applicable in the amount specified in Special Conditions of Contract.
- 3.6.2 The proceeds of the performance Security will be payable to NCPD as compensation for any loss resulting from the Tenderer’s failure to complete its obligations under the Contract.
- 3.6.3 The performance Security will be denominated in the currency of the Contract or in a freely convertible currency acceptable to NCPD and will be in the form of:
- a) Cash.
 - b) A bank guarantee.
 - c) Such insurance guarantee approved by the Authority.
 - d) Letter of credit.
- 3.6.4 The performance Security will be discharged by NCPD 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 and Tests

- 3.7.1 NCPD or its representative will have the right to inspect and/or to test the services to confirm their conformity to the Contract specifications. NCPD will notify the Tenderer in writing, in a timely manner, of the identity of any representatives retained for these purposes.
- 3.7.2 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, will be furnished to the inspectors at no charge to NCPD.
- 3.7.3 Should any inspected or tested services fail to conform to the Specifications, NCPD may reject the services, and the Tenderer will either replace the rejected services or make alterations necessary to meet specification requirements free of cost to NCPD.
- 3.7.4 Nothing in paragraph 3.7 will in any way release the Tenderer from any warranty or other obligations under this Contract.

3.8 Payment

- 3.8.1 The method and conditions of payment to be made to the Tenderer under this Contract will be specified in SCC

3.9 Prices

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

3.10 Assignment

The Tenderer will not assign, in whole or in part, its obligations to perform under this contract, except with NCPD's prior written consent.

3.10 Termination for Default

NCPD 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 NCPD.
- b) If the Tenderer fails to perform any other obligation(s) under the Contract.
- c) If the Tenderer, in the judgment of NCPD has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

In the event NCPD 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 will be liable to NCPD for any excess costs for such similar services.

3.12 Termination of insolvency

NCPD 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 NCPD.

3.13 Termination for convenience

- 3.13.1 NCPD 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 will specify that the termination is for NCPD 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 NCPD may elect to cancel the services and pay to the contractor on agreed amount for partially completed services.

3.14 Confidentiality

The contractor acknowledges that in dealing with the NCPDs pursuant to this contract, it may come across information, which is confidential and of proprietary nature to the NCPD, disclosure or use of which might result in damage or loss to the business or affairs of the NCPD. It's therefore agreed that the contractor shall keep all such information confidential and may not disclose the contents of same to anyone without prior written consent of the NCPD.

The contractor and/or its ICT products/components shall not:

- a) Share information gained through privileges to NCPD ICT infrastructure without the express authority from an authorized officer.
- b) Have illegal access to NCPD's ICT/internet infrastructure

NB: Illegal access to NCPD's ICT/internet infrastructure will be considered a fundamental breach leading to termination of contract and shall attract severe penalty and relevant legal suit

For avoidance of doubt it is agreed that the provisions of this clause shall survive the termination of this agreement and relevant legal suit.

3.15 Resolution of disputes

NCPD's and the contractor will make every effort to resolve amicably by direct informal negotiations any disagreement or dispute arising between them under or in connection with the contract. If after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute either party may require that the dispute be referred for resolution to the formal mechanisms specified in the SCC.

3.16 Governing Language

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

3.17 Force Majeure

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

3.18 Applicable Law

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

3.19 Notices

Any notices given by one party to the other pursuant to this contract will 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 will 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 will supplement the general conditions of contract, wherever there is a conflict between the GCC and the SCC, the provisions of the SCC herein will 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 will be not less than 2% of the value of tender sum which will be from a reputable commercial Bank or Insurance company approved by the Public Procurement Regulatory Authority (PPRA)
3.8	Payment will be made according to the performance or turning of milestones that will be clearly spelt out in contract will be certified by the Inspections and Acceptance committee
3.9	Price adjustments allowed will be limited to the provisions of the Public Procurement and Asset Disposal Act (2015)
3.14	If amicable settlement of resolution fails, either Party may refer to an arbitration and final decision of a person to be agreed between the Parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator will be appointed by the Chairman, Chartered institute of Arbitrators of Kenya
3.17	Applicable law will be Laws of Kenya

SECTION V – TERMS OF REFERENCE FOR ENGAGEMENT OF AN ADVOCATE / LAW FIRM ON A RETAINER BASIS AT NCPD

5.1 Background

NCPD is seeking services of a Corporation Secretary on retainer engagement to serve on a need basis.

5.2 Job purpose

The Corporation Secretary will be responsible to the Board on matters of governance.

5.3 Specific Duties and Responsibilities

- i) Board induction and training
- ii) Updating the Board and Committee charters
- iii) Preparation of Board work plans
- iv) Facilitate Board Evaluation
- v) Facilitate Governance audit
- vi) Implementation of the Board's code of conduct and ethics
- vii) Ensure the timely preparation and circulation of Board and Committee minutes
- viii) Maintain and update the Board's register of conflict of interest
- ix) Ensure the Board members are aware of all relevant laws affecting the organization
- x) Ensure that annual reports are promptly filled with relevant authorities
- xi) Except in exceptional circumstances, ensure that Board and Committee papers are circulated in advance of any meeting.
- xii) Provide professional guidance to the Council on drafting and execution of contracts, agreements and memoranda of understanding
- xiii) Advise the Council on legal and related issues as they arise

5.4 Minimum Qualifications and Experience of the Law firm or the Advocate

- i) Bachelor's degree in Law;
- ii) Certified Public Secretary;
- iii) Post Graduate Diploma in Law(KSL)
- iv) Must be an advocate of the High Court of Kenya
- v) Seven (7) years of experience in a reputable law firm ;
- vi) Attended a Strategic Leadership Development Programme/Course lasting not less than four (4) weeks or its equivalent;
- vii) Proficiency in Microsoft Office applications.

In case of a Law firm, a dedicated personnel with the above qualifications must be named.

SECTION VI - STANDARD FORMS

1. Form of tender
2. Price schedules
3. Contract form
4. Confidential Questionnaire form
5. Tender Security form
6. Performance Security form
7. Bank guarantee for advance payment
8. Declaration form

FORM OF TENDER

Date _____

Tender No. _____

To.....

.....

[Name and address of NCPD]

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda Nos... *[Insert numbers,*
the of which is hereby duly acknowledged, wed, 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 (NCPD).
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 will 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, will 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 _____

PRICE SCHEDULE OF SERVICES

Name of Tenderer _____ Tender Number _____ . Page ____ of ____ .

1	2	3	4	5	6	7
Item	Description	Quantity & quality	Duration	Unit Price	Total Price EXW per item (cols. 4x5)	Unit Price of other incidental services payable

Signature of Tenderer _____

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

CONTRACT FORM

THIS AGREEMENT made the ___ day of _____ 20___ between..... [Name of procurement entity] of [Country of Procurement entity](Hereinafter called “NCPD”) of the one part and [Name of Tenderer] of [City and country of Tenderer](Hereinafter called “the Tenderer”) of the other part.

WHEREAS NCPD 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 will have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents will 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) NCPD’s Notification of Award.
3. In consideration of the payments to be made by NCPD to the Tenderer as hereinafter mentioned, the Tenderer hereby covenants with NCPD to provide the materials and spares and to remedy defects therein in conformity in all respects with the provisions of the Contract
4. NCPD 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 NCPD)

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

In the presence of _____.

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.

Part 1 General

Business Name.....
Location of Business Premises
Plot No, Street/Road
Postal address Tel No. Fax Email.....
Nature of Business
Registration Certificate No.
Maximum value of business which you can handle at any one time – Kshs.
Name of your bankers
Branch.....

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 NCPD](Hereinafter called “the Bank”) are bound unto.....

[Name of NCPD](Hereinafter called “NCPD”) in the sum of

For which payment well and truly to be made to the said NCPD, 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 NCPD 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 NCPD up to the above amount upon receipt of its first written demand, without NCPD having to substantiate its demand, provided that in its demand NCPD 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)

PERFORMANCE SECURITY FORM

To:

[Name of NCPD]

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 will 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]

(Amend accordingly if provided by Insurance Company)