



REPUBLIC OF KENYA



## NATIONAL COUNCIL FOR POPULATION AND DEVELOPMENT

P O Box 48994, 00100, Chancery Building, Valley Road

P O Box 48994, 00100

**NAIROBI**

Email: [procurement@ncpd.go.ke](mailto:procurement@ncpd.go.ke)

### REQUEST FOR QUOTATION FORM

**NCPD/FIN/PRO/FORMS/002 ISSUE NO 004 REVISION NO. 003**

Name of Bidder

.....

Address.....

.....

**Preference and Reservation Scheme**

***(NCPD Registered AGPO)***

Quotation Reference Number:

NCPD 321/2021/2022

Subject of Quotation: LAYOUT AND  
PRINTING SERVICES

**THIS IS NOT AN ORDER.** Read the conditions and instructions on reverse before quoting.

(a) The National Council for Population and Development (NCPD) invites you to submit quotations for indicated in detail in Schedule of Requirements and Specifications".

#### **LAYOUT AND PRINTING OF KENPOP NEWSLETTER**

(b) Your quotation shall follow the instructions and documents in this RFQ document and shall be in English Language.

(c) Tenderers may obtain further information at Procurement Office - NCPD Headquarters, Room No. 440 on 4th Floor Chancery Building Valley Road, Nairobi, during normal office working hours (i.e. 0900 to 1500 hours)

(d) The completed quotation forms are to be enclosed in plain sealed envelopes, marked with the quotation number, Quotation Name, Tenderer's Name and be deposited in the Tender Box at NCPD Headquarters, 4th Floor Chancery Building Valley Road, Nairobi or be addressed to Director General, National Council for Population and Development, 4th Floor Chancery Building Valley Road, P O BOX 48994-00100 GPO Nairobi so as to be received on or before **3/6/2022** at **10.00** hours (Kenya time).

(e) Return the original copy and retain a duplicate for your records.

(f) Enquiries regarding this quotation may be addressed to : [procurement@ncpd.go.ke](mailto:procurement@ncpd.go.ke); **Attention** Head of Supply Chain Management

(g) Any resulting contract shall be subject to the terms and conditions detailed in Part 3: Contract.

(h) Please inform by email or express mail the undersigned within 3 days of receipt of this RFQ if you will not be submitting a quotation

(i) NCPD encourages all partners to make use of Feedback Mechanisms below;

i) Corruption Reporting Box at the Main Reception in the Head Office and County Offices

ii) Toll free Hotline for complaints: 0800724212/Complaints Reporting Desk: 020-2711600 Ext 311/333

iii) Dedicated email account: [complaints@ncpd.go.ke](mailto:complaints@ncpd.go.ke)

iv) Anonymous corruption reporting link on the NCPD website: [www.ncpd.go.ke](http://www.ncpd.go.ke)

v) Dedicated email for Procurement office: [procurement@ncpd.go.ke](mailto:procurement@ncpd.go.ke)

**Dated: 26/5/2022.**

## PART 1: INSTRUCTIONS TO TENDERERS

1. **Tenderers are advised to read carefully** these instructions and the Conditions of Contract in Part 3: Contract, before preparing the quotation. The standard forms in this RFQ may be photocopied for completion but the Tenderer is responsible for their accurate reproduction. The term Tenderer shall mean the firm or person invited to submit a quotation. The term Quotation herein shall mean the quotation submitted as usually understood in public procurement.
2. **Validity of Quotations:** The quotation will be held valid for **90 days** from the date of submission.
3. **The Quotation shall consist of** completed Tables A, B and C and the Form of Quotation all indicated in Part 2 of this Request for Quotations, and documents to evidence Eligibility and Conformity to Technical Specifications.
4. **Sealing and Marking of Quotations:** Quotations in one "one original" should be sealed in a single envelope, clearly marked with the **Quotation Reference Number** in the RFQ, the Tenderer's name
5. **Submission of Quotations:** Quotations, and any alternatives if allowed as per Item 11 below, should be submitted to the address below, on or before the date and time indicated in sub-item 4 below. Late quotations will be rejected.
  - 1) Name of Procuring Entity: NATIONAL COUNCIL FOR POPULATION AND DEVELOPMENT, Mailing Address: Director General, National Council for Population and Development P O Box 48994, 00100, NAIROBI  
Attention Head of Supply Chain Management, Physical address for hand or Courier Delivery: in the Tender Box at the main reception, 4th Floor Chancery Building Valley Road, Nairobi, Date of Submission (deadline): **3/6/2022** Time of Submission (deadline): **10.00 hours** (Kenya time).
6. **Opening of Quotations:** Quotations will be opened immediately after the closing date and time specified in item 5 (1) above, by at least three appointed officials of NCPD.
7. **Tenderer Eligibility:** Tenderer must submit Documentary evidence to show His/her eligibility to be awarded a contract to cover each of the following: (i) valid trading license (ii) certificate of registration, and (iii) valid tax compliance certificate. (iv) AGPO Certificate (where applicable). The Tenderer shall also complete attached forms to confirm eligibility and non-existence of a conflict of interest in relation to this procurement requirement by signing the attached Forms.
8. **Invitation not transferable:** This invitation is not transferable to other firms or individuals not so invited.
9. **Goods Eligibility:** Tenderer must submit as evidence documents to show the country of origin of any goods to be supplied or incorporated in the work or services
10. **Technical Specifications:** Documentary evidence to show that the goods meet the technical specifications.
11. **Alternative Quotations:** Tenderers **are permitted/not permitted** (*select one*) to submit alternative quotations for goods/alternative technical solutions for specified parts of the Works or Services (*select one*). Only the alternatives, if any, of the Tenderer with the winning quotation conforming to the basic technical requirements shall be considered by NCPD.
12. **Currency:** Quotations shall be priced in Kenya Shillings. Quotations in other currencies will be rejected if not allowed. ***NCPD shall not allow quotations in foreign currency***
13. **Evaluation of Quotations:** The evaluation of quotations will be conducted using the procedure set out below:
  - A. Preliminary examination to determine Tenderer eligibility:

Item	Preliminary criteria	Bidding Firm's Response		
		This column is for Firms that are already Registered by NCPD		Non-NCPD Registered firms' MUST provide Responses as required below
i)	valid trading license No.	Firms that are Registered by NCPD need NOT Supply this information unless there is a new information or an UPDATE	..... .....	Attach Documentary evidence
ii)	Company Registration Certificate No. or National ID No. (if an individual person)	Firms that are Registered by NCPD need NOT Supply this information unless there is a new information or an UPDATE	..... .....	Attach Documentary evidence
iii)	valid tax compliance certificate No.	Firms that are Registered by NCPD need NOT Supply this information unless there is a new information or an UPDATE	..... .....	Attach Documentary evidence
iv)	AGPO Certificate No. (where applicable)	Firms that are Registered by NCPD need NOT Supply this information unless there is a new information or an UPDATE	..... .....	Attach Documentary evidence
v)	Company official e-mail address and Official Tel No	Firms that are Registered by NCPD need NOT Supply this information unless there is a new information or an UPDATE	..... .....	Provide information
	Current list of directors, complete with their contact details	Firms that are Registered by NCPD need NOT Supply this information unless there is a new information or an UPDATE	..... .....	Provide information
vii)	Product Brochure/photo/image etc. (where applicable)	Attach Document	..... .....	Attach Document
viii)	confirmed eligibility and non-existence of a conflict of interest in relation to this procurement	Complete, sign and stamp all the forms	..... .....	Complete, sign and stamp all the forms

B. Technical examination to determine goods eligibility, compliance with technical specifications and commercial responsiveness **(If applicable)**. Quotations failing this stage will be rejected and not considered in next stage.

C. Financial comparison of quotations to determine the lowest evaluated quotation. In case foreign currency is allowed, for comparison purposes only, foreign currency quotations will be converted to Kenya shillings using the exchange rates published by the Central Bank of Kenya on the day of submission of quotations.

14. **Lowest Evaluated Quotation:** The lowest evaluated quotation shall be recommended for award of contract.

15. **Award of contract:** Award of contract shall be by placement of a Letter of Acceptance or Local Purchase Order in accordance with Part 3: Contract. The currency of award and payment shall be currency in which the quotation was submitted. Unsuccessful tenderers who responded will be notified of the accepted quotation, indicating the name and the amount of the accepted quotation

In case there shall be a tie in a quotation for provision of a conferencing venue, preference for award of tender shall be based on the criteria below;

- a. Comparison of spaciousness of meeting hall,
- b. Availability of comparably ample parking space
- c. Relative ranking in a previous re-evaluation report,
- d. Distance from noise and hustle of urban centers
- e. Proximity to a related event/office/center,
- f. Centrality of a location of a venue

16. **Right to Reject:** NCPD reserves the right to accept or reject any quotation or to cancel the quotation process and reject all quotations at any time prior to contract award.

**FORM OF QUOTATION** [To be completed by Tenderer]

<b>Quotation Addressed to</b>	NATIONAL COUNCIL FOR POPULATION AND DEVELOPMENT
Date of Quotation	.....
Quotation Reference Number:	NCPD ...../...../.....
Subject of Quotation	.....

1. We have examined and have no reservations to the Request for Quotation document, and understand its full content and intent.
2. In compliance with your request for quotations dated \_\_, \_\_, \_\_ referenced above, we offer to

\_\_\_\_\_ *(specify one of supply goods, complete the works or provide the services)*  
to cover and conform to our pricing listed in the attached Quotation Submission TABLE at a total price of Kenya Shillings \_\_\_\_\_ (in words) \_\_\_\_\_

**OR** in Foreign Currency *(if allowed)*, Currency \_\_\_\_\_ amount \_\_\_\_\_ (in words) \_\_\_\_\_

3. We confirm that we are eligible to participate in public procurement and meet the eligibility criteria specified in the instructions to tenderers.
4. We also confirm that the \_\_\_\_\_ *(goods to be supplied/works to be constructed/services to be provided (select one))* conform to the schedule of requirements table below and in conformity with technical specifications listed in schedule of requirements of this RFQ Document.
5. We undertake to adhere by the Code of Ethical Conduct for Suppliers, Contractors and Service Providers, copy available from \_\_\_\_\_ *(specify website)* during the procurement process and the execution of any resulting contract.
6. We confirm that the prices quoted are fixed and firm for the duration of the validity period and performance of the contract and will not be subject to revision or variation.
7. The validity period of our quotation is: \_\_\_\_\_ days from the time and date of the submission deadline *(number to be same as in the instructions to Tenderers)*.
8. We confirm we are not submitting any other Quotation as an individual or firm, and we are not participating in any other Quotation as a Joint Venture member or as a subcontractor.
9. We, along with any of our subcontractors, suppliers, Engineer, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to a temporary suspension or a debarment imposed by the Public Procurement Regulatory Authority or any other entity of the Government of Kenya, or any international organization.
10. We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption.
11. We hereby certify and confirm that the Quotation is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the "Certificate of Independent Quotation Determination" attached below.
12. We, the Tenderer, have completed fully and signed the **FORM FOR DISCLOSURE OF INTEREST**- interest of the firm in NCPD, attached below.

The Delivery/Completion period offered is: \_\_\_\_\_ days from date of acceptance of Quotation. The warranty period offered is \_\_\_\_\_ weeks.

Quotation Authorized by: \_\_\_\_\_  
Name and designation \_\_\_\_\_ Signature: \_\_\_\_\_

**FORM FOR DISCLOSURE OF INTEREST** - Interest of the Firm in NCPD.

Are there any person/persons in ..... NCPD who has/have an interest or relationship in this firm? Yes/No.....  
 If yes, provide details as follows.

	<b>Names of Person</b>	<b>Designation in NCPD</b>	<b>Interest or Relationship with Tenderer</b>
1			
2			
3			

**i) Conflict of interest disclosure**

	<b>Type of Conflict</b>	<b>Disclosure YES OR NO</b>	<b>If YES provide details of the relationship with Tenderer</b>
1	Tenderer is directly or indirectly controls, is controlled by or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Quotation has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the quotation of another tenderer, or influence the decisions of NCPD regarding this quotation process.		
5	Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the quotation.		
6	Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract specified in this Quotation Document.		
7	Tenderer has a close business or family relationship with a professional staff of NCPD who are directly or indirectly involved in the preparation of the Quotation document or specifications of the Contract, and/or the Quotation evaluation process of such contract.		
8	Tenderer has a close business or family relationship with a professional staff of NCPD who would be involved in the implementation or supervision of the Contract.		
9	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to NCPD throughout the quotation process and execution of the Contract?		

**Certification**

On behalf of the Tenderer, I certify that the information given above is complete, current and accurate as at the date of submission.

Full Name \_\_\_\_\_

Title or Designation \_\_\_\_\_

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Date)*

**ii) CERTIFICATE OF INDEPENDENT QUOTATION DETERMINATION**

I, the undersigned, in submitting the accompanying Letter of quotation to National Council for Population and Development

for: \_\_\_\_\_

*[Name and number of quotation]* in response to the request for tenders made by: \_\_\_\_\_

*[Name of Tenderer]* do hereby make the following statements that I certify to be true and complete in every respect: I certify, on behalf of \_\_\_\_\_ *[Name of Tenderer]* that:

1. I have read and I understand the contents of this Certificate;
2. I understand that the Tenderer will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the quotation on behalf of the Tenderer;
4. For the purposes of this Certificate and the quotation, I understand that the word "competitor" shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:
  - i. has been requested to submit a quotation in response to this request for quotations;
  - ii. could potentially submit a quotation in response to this request for quotations based on their qualifications, abilities or experience;
5. The Tenderer discloses that [check one of the following, as applicable]:
  - a) The Tenderer has arrived at the quotation independently from, and without consultation, communication, agreement or arrangement with, any competitor;
  - b) the Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for quotations, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements;
6. In particular, without limiting the generality of paragraphs (5)(a) or (5)(b) above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
  - a) prices;
  - b) methods, factors or formulas used to calculate prices;
  - c) the intention or decision to submit, or not to submit, a quotation; or
  - d) the submission of a quotation which does not meet the specifications of the request for quotations; except as specifically disclosed pursuant to paragraph (5) (b) above;
7. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this request for tenders relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph (5)(b) above;
8. the terms of the quotation have not been, and will not be, knowingly disclosed by the Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official quotation opening, or of the awarding of the Contract, whichever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph (5)(b) above.

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

*[Name, title and signature of authorized agent of Tenderer and Date]*

**iii) SELF-DECLARATION FORM**

We, the Tenderer \_\_\_\_\_ (*insert name*) submitting our Quotation in respect of Quotation No \_\_\_\_\_ for \_\_\_\_\_ (*insert quotation Title Description*) for NCPD

**1.0 DECLARE AS FOLLOWS:**

That, We the Tenderer including any entity or individual that directly or indirectly controls, is controlled by or is under common control with us, and any subcontractors, suppliers, project managers, consultants, manufacturers, service providers, agents, individuals, or any other party involved or to be involved for any part of the processes of procurement and contract execution related to the above quotation:

- a) have not engaged/will not engage in any corrupt or fraudulent practices in the processes of procurement and contract execution related to the above quotation as defined and/or described in the following:
  - i) the RFQ for the above Quotation;
  - ii) Kenya's Public Procurement and Asset Disposal Act, 2015) and its attendant Regulations;
  - iii) Kenya's Anti-Corruption and Economic Crimes Act, 2013; and
  - iv) any such other Acts or Regulations of Government of Kenya;
- b) have not offered/will not offer any inducement to any member of the board, management, staff and/or employees and/or agents of NCPD;
- c) have not engaged/will not engage in any collusive or corrosive practice with other tenderers participating in the subject quotation;
- d) have not been sanctioned or debarred by any entity from participation in public procurement proceedings of Kenya.

That, what is deponed to herein above is true to the best of our knowledge, information and belief.

**Name of the Tenderer:** .....

*[Insert complete name of tenderer signing the quotation]*

**Name of the person duly authorized to sign the quotation on behalf of the Tenderer:**

.....

*[Insert complete name of person duly authorized to sign the quotation]*

**Title of the person signing the Quotation:** .....

*[Insert complete title of the person signing the quotation]*

**Signature of the person named above:** .....

*[Insert signature of person whose name and capacity are shown above]*

**PART 2: SCHEDULE OF REQUIREMENTS**

**TABLE A. SCHEDULE OF REQUIREMENTS, TECHNICAL SPECIFICATIONS**

Table A. SCHEDULE OF REQUIREMENTS AND TECHNICAL SPECIFICATIONS

**(To be completed only if applicable)**

<b>Item No.</b>	<b>Description of Goods/works or service</b>	<b>Quantity</b>	<b>Technical Specifications</b>	<b>Delivery Requirement</b> (within 14 Days) (Tenderer's to respond below)	<b>Conformity with Technical Specifications</b> (Tenderer's to respond below)
A	B	C	D	E	F
	Layout And Printing Of Kenpop Newsletter	500			

**SPECIFICATIONS FOR PRINTING OF KENPOP NEWSLETTER**

1. Cover to be full color, 350gsm matte finish
2. Inside pages, full color
3. Glossy finish
4. Use 250gms paper
5. Binding: saddle stitching
6. Size: A4
7. Number 500 copies
8. 40 pages



**TABLE B. SCHEDULE OF REQUIREMENTS TABLE**  
***Tenderer should complete columns d-e***

Item	Description of Goods/works/services <i>(Procuring Entity to select one)</i>	Quantity	Unit price	Total Price
A	B	C	D	E
1.	Layout And Printing Of Kenpop Newsletter	500		

Signature:

And seal/Stamp

Name:

Position:

Authorised for and on behalf of (*specify name of tenderer*) \_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

**PART 3: CONTRACT AGREEMENT**

(1) THIS CONTRACT AGREEMENT is made \_\_\_\_\_ (*specify date*).

Between **National Council for Population and Development**

having its principal place of Business at the Chancery Towers, Valley Road Nairobi and \_\_\_\_\_

having its principal place of business at \_\_\_\_\_

(2) WHEREAS NCPD invited quotations for the Supply of Goods/works/services (*select one*) described in Table B, i.e. \_\_\_\_\_ [*insert brief description of Goods, works and Services*] and has accepted a Quotation by the Tenderer in the sum of \_\_\_\_\_ [*insert Contract Price in words and figures*] (hereinafter called "the Contract Price").

(3) NOW THIS AGREEMENT WITNESSED AS FOLLOWS:

1. This Contract Agreement includes the following documents:

(a) Table A. SCHEDULE OF REQUIREMENTS AND TECHNICAL SPECIFICATIONS

- (b) Table B. QUOTATION SUBMISSION TABLE
- (c) FORM OF QUOTATION
- (d) Conditions of Contract

2. In consideration of the payments to be made by NCPD to the *Supplier/contractor/service provider* as hereinafter mentioned, the *Supplier/contractor/service provider* hereby covenants with NCPD to provide the Goods/works/services and to remedy defects therein in conformity in all respects with the provisions of the Contract.

3. NCPD hereby covenants to pay the Supplier/Contractor/service provider (*select one*) in consideration of the provision of the Goods/works/services (*select one*) 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.

(4) In WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Kenya.

**For and on behalf of NCPD**

Signed: *[insert signature]* in the capacity of *[insert title or other appropriate designation]*

in the presence of *[insert identification of official witness]*

**For and on behalf of the Supplier/Contractor/Service Provider** (*select one*)

Signed: *[insert signature of authorized representative(s) of the Supplier]*

in the capacity of *[insert title or other appropriate designation]*

in the presence of *[insert identification of official witness]*

**CONDITIONS OF CONTRACT**

**1. Language**

The Contract as well as all correspondence and documents relating to the Contract exchanged by the Supplier/Contractor/Service Provider (*select one*) Provider and NCPD, shall be written in the English Language.

**2. Eligibility**

The goods shall have the nationality of an eligible country. All Goods and Related Services to be supplied under the Contract shall have their origin in Eligible Countries.

**3. Notices**

Any notice given by one party to the other pursuant to the Contract shall be in writing.

**4. Governing Law**

The Contract shall be governed by and interpreted in accordance with the Laws of Kenya, unless otherwise specified hereunder.

## 5. Settlement of Disputes

NCPD and the Supplier/Contractor/Service (*select one*) shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract. If the parties have failed to resolve their dispute or difference by such mutual consultation, either NCPD or the Supplier/Contractor/Service (*select one*) may give notice to the other party of its intention to commence arbitration. The dispute shall be referred to adjudication or arbitration in accordance with the laws of Kenya.

## 6. Supplier/Contractor/Service Provider Responsibilities

The Supplier/Contractor/Service Provider (*select one*) shall supply all the Goods included in the Schedule of Requirements.

## 7. Contract Price

Prices charged by the Supplier/Contractor/Service Provider (*select one*) under the Contract shall not vary from the prices quoted by the Supplier/Contractor/Service Provider (*select one*) in its quotation.

## 8. Terms of Payment

The Contract Price shall be paid One hundred (100) percent of the Contract Price as follows (*select one*):

- i) For Goods, price of goods received upon submission of a claim/invoice supported by the acceptance certificate issued by NCPD.
- ii) For Works, upon valuation by the Contractor of the portion of the works completed, such valuation to be accepted by NCPD, payments up to final completion certificate.
- iii) For Services, upon valuation by the Service Provider of the services completed, such valuation to be accepted by NCPD, payments up to final completion certificate
- iv) Payment shall be made in compliance with the requirements of the Public Procurement and Asset Disposal Act (2015) and any subsequent amendments thereof.
- v) All goods and services must be delivered on the scheduled dates of delivery. If a scheduled delivery fails, a fundamental breach of contract will be declared which may lead to commencement of termination proceedings
- vi) The acceptable days and times for delivery shall be from **Mondays to Wednesdays** from 8.00 am to 2.30 pm. NCPD shall not be liable for claims arising from deliveries made outside of this provision.
- vii) Suppliers are instructed **never to invoice** goods for which inspections and acceptance certificate have not been issued by NCPD. The Council shall receive invoices for accepted deliveries on **Thursdays** and **Fridays** from 8.00 am to 4.30 pm.
- viii) The performance of the supplier shall be measured against compliance with the following
  - a) Compliance with Delivery schedule
  - b) Compliance with Budget
  - c) Compliance with Quality specifications
- ix) In accordance with, NCPD's Information Security Policy, all information provided herein remain confidential. Wrongful disclosure/sharing of the contents of this engagement without prior written consent of NCPD is prohibited.

## 9. Inspections and Tests

The Supplier/Contractor/Service Provider (*select one*) shall at its own expense and at no cost to NCPD carry out all such tests and/or inspections of the Goods, works or Services to confirm their conformity to technical specifications.

**10. Warranty**

The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the contract.