

**KENYA LITERATURE BUREAU**

**TENDER DOCUMENT**

**FOR**

**COLLECTION OF GARBAGE**

**RESERVED FOR SPECIAL GROUP**

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**TENDER NO: KLB/T/09/19- 20**

**CLOSING DATE: 20-5-2019**

**TIME: 10:00 AM**

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## SECTION I INVITATION TO TENDER

### TENDER NOTICE

Kenya Literature Bureau invites bidders who are technically and financially capable to supply the items mentioned in the schedule for the financial year **1<sup>st</sup> July 2019 to 30<sup>th</sup> June 2020.**

## SECTION II - INSTRUCTIONS TO TENDERERS

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## SECTION II - INSTRUCTIONS TO TENDERERS

### 2.1 Eligible Tenderers

- 2.1.1 This Invitation for Tenders is open to all tenderers eligible as described in the Invitation to Tender. Successful tenderers shall complete the supply of goods by the intended completion date specified in the Schedule of Requirements Section VIII.
- 2.1.2 The Kenya Literature Bureau entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.
- 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 Bureau to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods under this Invitation for tenders.
- 2.1.4 Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices.

### 2.2 Eligible Goods

- 2.2.1 All goods to be supplied under the contract shall have their origin in eligible source countries.
- 2.2.2 For purposes of this clause, "origin" means the place where the goods are mined, grown, or produced. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially-recognized product results that is substantially different in basic characteristics or in purpose or utility from its components
- 2.2.3 The origin of goods is distinct from the nationality of the tenderer.

### 2.3 Cost of Tendering

- 2.3.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the Bureau, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 2.3.2 The price to be charged for the tender document shall be **Kshs. 1,000/= for hard copies. No charges applicable if downloaded.**
- 2.3.3 All firms found capable of performing the contract satisfactorily in accordance to the set criteria shall be awarded the contract.

### 2.4 The Tender Document

- 2.4.1 The tender document comprises the documents listed below and addenda issued in accordance with clause 2.6 of these instructions to Tenderers
- (i) Invitation to Tender
  - (ii) Instructions to tenderers
  - (iii) General Conditions of Contract
  - (iv) Special Conditions of Contract

- (v) Schedule of requirements
- (vi) Technical Specifications
- (vii) Tender Form and Price Schedules
- (viii) Tender Security Form
- (ix) Contract Form
- (x) Performance Security Form
- (xi) Bank Guarantee for Advance Payment Form
- (xii) Manufacturer's Authorization Form
- (xiii) Confidential Business Questionnaire

2.4.2 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.

## 2.5 Clarification of Documents

2.5.1 A prospective tenderer requiring any clarification of the tender document may notify the Bureau in writing or by post at the entity's address indicated in the Invitation to Tender. The Bureau will respond in writing to any request for clarification of the tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of tenders, prescribed by the Bureau. Written copies of the Bureau entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers that have received the tender document.

2.5.2 The Bureau 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.

## 2.6 Amendment of Documents

2.6.1 At any time prior to the deadline for submission of tenders, the Bureau, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by amendment.

2.6.2 All prospective candidates that have received the tender documents will be notified of the amendment in writing or by post and will be binding on them.

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

## 2.7 Language of Tender

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

## **2.8 Documents Comprising of Tender**

- 2.8.1 The tender prepared by the tenderers shall comprise the following components
- (a) a Tender Form and a Price Schedule completed in accordance with paragraph 2.9, 2.10 and 2.11 below
  - (b) documentary evidence established in accordance with paragraph 2.12 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
  - (c) documentary evidence established in accordance with paragraph 2.2.1 that the goods and ancillary services to be supplied by the tenderer are eligible goods and services and conform to the tender documents; and
  - (d) tender security furnished in accordance with paragraph 2.14

## **2.9 Tender Forms**

- 2.9.1 The tenderer shall complete the Tender Form and the appropriate Price Schedule furnished in the tender documents, indicating the goods to be supplied, a brief description of the goods, their country of origin, make/brand, quantity, and prices.

## **2.10 Tender Prices**

- 2.10.1 The tenderer shall indicate on the appropriate Price Schedule the unit prices and total tender price of the goods it proposes to supply under the contract
- 2.10.2 Prices indicated on the Price Schedule shall include all costs including taxes, insurances and delivery to the premises of the entity.
- 2.10.3 Prices quoted by the tender shall be fixed during the Tender's performance of the contract and not subject to variation on any account. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.22
- 2.10.4 The validity period of the tender shall be 90 days from the date of opening of the tender.

## **2.11 Tender Currencies**

- 2.11.1 Prices shall be quoted in Kenya Shillings unless otherwise specified in the Appendix to Instructions to Tenderers.

## **2.12 Tenderers Eligibility and Qualifications**

- 2.12.1 Pursuant to paragraph 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.
- 2.12.2 The documentary evidence of the tenderers eligibility to tender shall establish to the Bureaus satisfaction that the tenderer, at the time of submission of its tender, is from an eligible source country as defined under paragraph 2.1
- 2.12.3 The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall be established to the Bureaus satisfaction;

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

## **2.13 Goods Eligibility and Conformity to Tender Documents**

2.13.1 Pursuant to paragraph 2.12 of this section, the tenderer shall furnish, as part of its tender documents establishing the eligibility and conformity to the tender documents of all goods which the tenderer proposes to supply under the contract

2.13.2 The documentary evidence of the eligibility of the goods shall consist of a statement in the Price Schedule of the country of origin of the goods and services offered which a certificate of origin issued at the time of shipment shall confirm.

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

- (a) a detailed description of the essential technical and performance characteristic of the goods;
- (b) a list giving full particulars, including available source and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the goods for a period of two (2) years, following commencement of the use of the goods by the Bureau; and
- (c) a clause-by-clause commentary on the Bureau Technical Specifications demonstrating substantial responsiveness of the goods and service to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.

2.13.4 For purposes of the documentary evidence to be furnished pursuant to paragraph 2.13.3(c) above, the tenderer shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by the Bureau in its Technical Specifications, are intended to be descriptive only and not restrictive. The tenderer may substitute alternative standards, brand names, and/or catalogue numbers in its tender, provided that it demonstrates to the Bureau satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

## **2.14 Tender Security (Not Applicable)**

2.14.1 The tenderer shall furnish, as part of its tender, a tender security for the amount specified in the Appendix to Invitation to Tenderers.

2.14.2 The tender security shall be in the amount of **2%** per cent of the tender sum.

2.14.3 The tender security is required to protect the Bureau against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 2.14.7

- 2.14.4 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form of a bank guarantee or a bank draft issued by a reputable bank located in Kenya or abroad, or a guarantee issued by a reputable insurance company in the form provided in the tender documents or another form acceptable to the Bureau and valid for thirty (30) days beyond the validity of the tender.
- 2.14.5 Any tender not secured in accordance with paragraph 2.14.1 and 2.14.3 will be rejected by the Bureau as non-responsive, pursuant to paragraph 2.22
- 2.14.6 Unsuccessful Tenderer's tender security will be discharged or returned as promptly as possible but not later than thirty (30) days after the expiration of the period of tender validity prescribed by the Bureau.
- 2.14.7 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
- 2.14.8 The tender security may be forfeited:
- (a) if a tenderer withdraws its tender during the period of tender validity specified by the Bureau 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 2.29
    - or
    - (ii) to furnish performance security in accordance with paragraph 2.28

## 2.15 **Validity of Tenders**

- 2.15.1 Tenders shall remain valid for 90 days or as specified in the Invitation to Tender after the date of tender opening prescribed by the Bureau, pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the Bureau as non-responsive.
- 2.15.2 In exceptional circumstances, the Bureau 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 2.14 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.

## 2.16 **Format and Signing of Tender**

- 2.16.1 The Bureau 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.
- 2.16.2 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. . The person or persons signing the tender shall initial all pages of the tender, except for unamended printed literature.



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

## **2.17 Sealing and Marking of Tenders**

2.17.1 The Tenderer shall seal the original and each copy of the tender in separate envelopes, duly marking the envelopes as “ORIGINAL” and “COPY.” The envelopes shall then be sealed in an outer envelope.

2.17.2 The inner and outer envelopes shall:

(a) be addressed to the Bureau at the following address

**The Managing Director**

**Kenya Literature Bureau**

**P.O Box 30022 00100**

**Nairobi**

(b) bear the tender number and name in the Invitation for Tenders and the words, “DO NOT OPEN BEFORE,” **20<sup>th</sup> May 2019 at 10.00 am**

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

2.17.4 If the outer envelope is not sealed and marked as required by paragraph 2.17.2, the Bureau will assume no responsibility for the tender’s misplacement or premature opening.

## **2.18 Deadline for Submission of Tenders**

Tenders must be received by the Bureau at the address specified under paragraph 2.17.2 no later than the stipulated date and time.

2.18.1 The Bureau may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 2.6, in which case all rights and obligations of the Bureau and candidates previously subject to the deadline will therefore be subject to the deadline as extended

## **2.19 Modification and Withdrawal of Tenders**

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

2.19.2 The Tenderer’s modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 2.17. A withdrawal notice may also be sent by cable, telex but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.

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

2.19.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the tenderer on

the Tender Form. Withdrawal of a tender during this interval may result in the Tenderer's forfeiture of its tender security, pursuant to paragraph 2.14.7

2.19.5 The Bureau may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

2.19.6 The Bureau 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.

## **2.20 Opening of Tenders**

2.20.1 The Bureau will open all tenders in the presence of tenderers' representatives who choose to attend thereafter in the Boardroom, Kenya Literature Bureau  
The tenderers' representatives who are presence shall sign a register evidencing their attendance.

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

2.20.3 The Bureau will prepare minutes of the tender opening.

## **2.21 Clarification of Tenders**

2.21.1 To assist in the examination, evaluation and comparison of tenders the Bureau 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 of the tender shall be sought, offered, or permitted.

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

## **2.22 Preliminary Examination**

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

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

2.22.3 The Bureau entity may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any tenderer.

2.22.4 Prior to the detailed evaluation, pursuant to paragraph 2.24 the Bureau 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 Bureau determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

2.22.5 If a tender is not substantially responsive, it will be rejected by the Bureau and may not subsequently be made responsive by the tenderer by correction of the non-conformity.

## **2.23 Conversion to Single Currency**

2.23.1 Where other currencies are used, the Bureau will convert these currencies to Kenya Shillings using the selling exchange rate on the date of tender closing provided by the Central Bank of Kenya.

## **2.24 Evaluation and Comparison of Tenders**

2.24.1 The Bureau will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.22

2.24.2 The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.

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

## **2.25 Preference**

2.25.1 Preference where allowed in the evaluation of tenders shall not exceed 15%

## **2.26 Contacting the Bureau**

2.26.1 Subject to paragraph 2.21 no tenderer shall contact the Bureau on any matter related to its tender, from the time of the tender opening to the time the contract is awarded.

2.26.2 Any effort by a tenderer to influence the Bureau in its decisions on tender, evaluation, tender comparison, or contract award may result in the rejection of the Tenderer's tender.

## **2.27 Award of Contract**

### **(a) Post-qualification**

2.27.1 In the absence of pre-qualification, the Bureau 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.

2.27.2 The determination will take into account the tenderer financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 2.12.3 as well as such other information as the Bureau deems necessary and appropriate.

2.27.3 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 Bureau will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

**(b) Award Criteria**

2.27.4 The Bureau will award the contract to the successful tenderer(s) whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

**(c) Bureau's Right to Vary quantities**

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

**(d) Bureau Right to Accept or Reject Any or All Tenders**

2.27.6 The Bureau 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 Bureau action

**2.28 Notification of Award**

2.28.1 Prior to the expiration of the period of tender validity, the Bureau will notify the successful tenderer in writing that its tender has been accepted.

2.28.2 The notification of award will constitute the formation of the Contract but will have to wait until the contract is finally signed by both parties

2.28.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 2.30, the Bureau will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.14

**2.29 Signing of Contract**

2.29.1 At the same time as the Bureau notifies the successful tenderer that its tender has been accepted, the Bureau will send the tenderer the Contract Form provided in the tender documents, incorporating all agreements between the parties.

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

2.29.3 Within fourteen (14) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Bureau.

**2.30 Performance Security**

2.30.1 Within Thirty (30) days of the receipt of notification of award from the Bureau, 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 Bureau.

2.30.2 Failure of the successful tenderer to comply with the requirements of paragraph 2.27 or paragraph 2.28 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Bureau may make the award to the next lowest evaluated Candidate or call for new tenders.

### **2.31 Corrupt or Fraudulent Practices**

2.31.1 The Bureau requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts when used in the present regulations, the following terms are defined as follows;

- (i) “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of an Bureau official in the procurement process or in contract execution; and
- (ii) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Bureau, and includes collusive practice among tenderer (prior to or after tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive the Bureau of the benefits of free and open competition;

2.31.2 The Bureau 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.

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

## **SECTION III: GENERAL CONDITIONS OF CONTRACT**

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### 3.1 **Definitions**

3.1.1 In this Contract, the following terms shall be interpreted as indicated:-

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

### 3.2 **Application**

3.2.1 These General Conditions shall apply in all Contracts made by the Bureau for the procurement installation and commissioning of equipment

### 3.3 **Country of Origin**

3.3.1 For purposes of this clause, “Origin” means the place where the Goods were mined, grown or produced.

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

### 3.4 **Standards**

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

### 3.5 **Use of Contract Documents and Information**

3.5.1 The tenderer shall not, without the Bureau’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 Bureau in connection therewith, to any person other than a person employed by the tenderer in the performance of the Contract.

3.5.2 The tenderer shall not, without the Bureau’s prior written consent, make use of any document or information enumerated in paragraph 3.5.1 above

3.5.3 Any document, other than the Contract itself, enumerated in paragraph 3.5.1 shall remain the property of the Bureau and shall be returned (all copies) to the Bureau on completion of the Tenderer's performance under the Contract if so required by the Bureau

### **3.6 Patent Rights**

3.6.1 The tenderer shall indemnify the Bureau against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof in the Bureau's country

### **3.7 Performance Security**

3.7.1 Within thirty (30) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Bureau the performance security in the amount specified in Special Conditions of Contract.

3.7.2 The proceeds of the performance security shall be payable to the Bureau as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.

3.7.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Bureau and shall be in the form of a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in Kenya or abroad, acceptable to the Bureau, in the form provided in the tender documents.

3.7.4 The performance security will be discharged by the Bureau and returned to the Candidate not later than thirty (30) days following the date of completion of the Tenderer's performance obligations under the Contract, including any warranty obligations, under the Contract

### **3.8 Inspection and Tests**

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

3.8.2 The inspections and tests may be conducted in the premises of the tenderer or its subcontractor(s), at point of delivery, and/or at the Goods' final destination. If conducted on the premises of the tenderer or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Bureau.

3.8.3 Should any inspected or tested goods fail to conform to the Specifications, the Bureau may reject the equipment, and the tenderer shall either replace the rejected equipment or make alterations necessary to make specification requirements free of costs to the Bureau.

3.8.4 The Bureau's right to inspect, test and where necessary, reject the goods after the Goods' arrival shall in no way be limited or waived by reason of the equipment

having previously been inspected, tested and passed by the Bureau or its representative prior to the equipment delivery.

3.8.5 Nothing in paragraph 3.8 shall in any way release the tenderer from any warranty or other obligations under this Contract.

### **3.9 Packing**

3.9.1 The tenderer shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract.

3.9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract

### **3.10 Delivery and Documents**

3.10.1 Delivery of the Goods shall be made by the tenderer in accordance with the terms specified by Bureau in its Schedule of Requirements and the Special Conditions of Contract

### **3.11 Insurance**

3.11.1 The Goods supplied under the Contract shall be fully insured against loss or damage incidental to manufacturer or acquisition, transportation, storage, and delivery in the manner specified in the Special conditions of contract.

### **3.12 Payment**

3.12.1 The method and conditions of payment to be made to the tenderer under this Contract shall be specified in Special Conditions of Contract

3.12.2 Payments shall be made promptly by the Bureau as specified in the contract

### **3.13 Prices**

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

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

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

3.13.4 Price variation request shall be processed by the Bureau within 30 days of receiving the request.

### **3.14. Assignment**

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



### **3.15 Subcontracts**

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

### **3.16 Termination for default**

- 3.16.1 The Bureau 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 deliver any or all of the goods within the periods specified in the Contract, or within any extension thereof granted by the Bureau
  - (b) if the tenderer fails to perform any other obligation(s) under the Contract
  - (c) if the tenderer, in the judgment of the Bureau has engaged in corrupt or fraudulent practices in competing for or in executing the Contract

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

### **3.17 Liquidated Damages**

- 3.17.1. If the tenderer fails to deliver any or all of the goods within the period(s) specified in the contract, the Bureau shall, without prejudice to its other remedies under the contract, deduct from the contract prices liquidated damages sum equivalent to 0.5% of the delivered price of the delayed items up to a maximum deduction of 10% of the delayed goods. After this the tenderer may consider termination of the contract.

### **3.18 Resolution of Disputes**

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

### **3.19 Language and Law**

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

### **3.20 Force Majeure**

3.20.1 The tenderer shall not be liable for forfeiture of its performance security or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

The provisions of Section IV complement the General Conditions of Contract included in Section III, specifying contractual requirements linked to the special circumstances of the Bureau and the goods being procured. In preparing Section IV, the following aspects should be taken into consideration.

- (a) Information that complement provisions of Section III must be incorporated and
- (b) Amendments and/or supplements to provisions of Section III, as necessitated by the circumstances of the goods being procured must also be incorporated.

#### **SECTION IV - SPECIAL CONDITIONS OF CONTRACT**

**4.0.** Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, between the GCC and the SCC, the provisions of the SCC herein shall prevail over these in the GCC.

#### **4.1. Special conditions of contract as relates to the GCC**

Reference of GCC Amendments of clauses in the General Conditions of Contracts

#### **3.7.1 Performance Security:**

The amount of the performance security as a percentage of the Contract price shall be 5%. The performance security shall be denominated in Kenya Shillings and shall be in the form of a bankers cheque, bank guarantee or irrevocable letter of credit issued by a reputable bank located in Kenya.

#### **3.12.2 Payment Terms**

The method and conditions of payment to the tenderer under this contract shall be as follows:

- (i) payment for the Goods shall be made in local currency
- (ii) payment for the Goods shall be made by the Bureau's cheque
- (iii) there shall be no advance payment under this contract
- (iv) payments will be made by the Bureau, within sixty (60) days after submission of an invoice and a statement or claim by the tenderer.

#### **3.13.3 Prices**

Prices quoted by the tenderer shall be fixed during the tender's performance of the contract and not subject to variation on any account for the period of contract except due to statutory / legislative

requirement and foreign exchange fluctuations. The Bureau will only absorb exchange rate fluctuations beyond 10% of the Central Bank of Kenya (CBK) mean exchange rate at the date of bidding. Unit price quoted shall be inclusive of all other charges incidental to the delivery of goods to our store

#### **4.2 Tender Security**

The Bureau shall accept guarantee issued by reputable banks and Insurance companies

#### **4.3 Submission of Brochures/Literature.**

All Brochures and product information/literature must be submitted together with the tender document.

#### **4.4 Delivery of Goods**

The tenderer shall make delivery of the goods to the Bureau's store and in accordance with the time schedule prescribed by the Bureau in the Local Purchase Orders.

- (i) If at any time during the performance of the Contract, the tenderer should encounter conditions impeding timely delivery of the Goods, the tenderer shall promptly notify the Bureau in writing of the fact of the delay, its likely duration and its causes. On receipt of the tenderer's notice, the Bureau shall evaluate the situation and may at its discretion extend the tender's time for delivery with or without liquidated damages, in which case the extension shall be ratified by the Bureau by amendment of the Local Purchase Order.
- (ii) Except as provided under the General Conditions of contract paragraph 3.20, a delay by the tenderer in the performance of its delivery obligations shall render the tenderer liable to the imposition of liquidated damages pursuant to paragraph 3.17 unless an extension of time is agreed upon pursuant to paragraph 2 (ii) above without application of liquidated damages.
- (iii) Upon delivery of the Goods, the tenderer shall notify the Bureau and forward the following documents to the Bureau:
  - (a) Copies of the supplier invoice showing Goods description, quantity, unit price, total amount and Local Purchase Order number (LPO).
  - (b) Delivery note giving details as (a) above.

The Bureau with the arrival of the Goods shall receive the above documents, and if not received, the Goods will be rejected and the tenderer will be responsible for any consequent expenses.

#### **4.5 Delivery Times:-**

Deliveries shall not be made after 5.00 pm unless with special arrangement with the Managing Director, or the Supply Chain Manager.

#### **4.6 Availability of goods**

The tenderer shall carry sufficient inventories to assure ex-stock supply of the Goods tendered for. The items shall be supplied as promptly as possible and within the period specified on the Local Purchase Orders.

#### **4.7 Warranty**

- (i) The supplier warrants that the Goods supplied under the contract are new, unused and conforms to the specifications indicated in the Contract and/or Local Purchase Orders. The supplier further warrants that all Goods supplied under this contract shall have no defects, arising from design, materials or workmanship (except when the design and/or material is required by the Bureau's specification) or from any act or omission of the tenderer that may develop under normal use of the supplied Goods in the Conditions prevailing in the Bureau.
- (ii) If, for reasons attributed to the tenderer, these warranties are not attained in whole or in part. the supplier shall either:
  - (a) make such changes, modifications and/or additions to the goods or any part thereof as may be necessary in order to attain the contracted warranties specified in the contract at its own cost and expense and to carry out further performance tests to the satisfaction of the Bureau, or
  - (b) Replace such Goods with the ones that conform to the specifications in the contract at his own costs.

#### **4.8 Right to award Contract:-**

The Bureau reserves the right to award the contract in whole or in part without any change in the Unit price or other terms and conditions.

#### **4.9 Sourcing of Information:-**

The tenderer shall obtain for himself on his own responsibility, all information that may be necessary for preparing the tender and entering into a contract.

#### **4.10 Ownership Transfer:-**

Ownership of the goods is transferred to Kenya Literature Bureau after acceptance of quality of the goods. If the goods are rejected they shall be collected as promptly as possible but not later than 7 days, failure to which demurrages charges shall accrue at rate of 2% of the total value and be disposed after 21 days at suppliers cost.

#### **4.11 Unit of issue:-**

The potential supplier must take into consideration the product Unit of Issue specified in the tender. If there is a variation, an indication on the unit of issue the supplier wishes to provide must accompany the submission.

#### **4.12 Breach of Previous Contract**

Tenderers who breached the previous year 2018/2019 Bureau’s performance/ supply conditions shall not be considered for the particular products/service they defaulted on.

- 4.13** Tenderers **must** indicate the brand and country of origin of the product(s) where applicable
- 4.14** Tenderers must indicate if they are manufacturers or distributor of the items quoted for where applicable
- 4.15** The tenderers must undertake to hold ex-stock of a quarter of the tender quantity at any time should they win.
- 4.16** The “**ORIGINAL TENDER**” and “**COPY OF TENDER**” documents must be securely bound. No loose document or paper will be accepted
- 4.18** **Varying of Quantities**
- 4.19** The Bureau reserves the right at the time of contract award to increase or decrease the quantity of goods originally specified in the schedule of requirements by 10%
- 4.20** The Tenderers **MUST** attach copy of receipt as proof of purchase of the Tender Document
- 4.21** The Tenderers shall submit a statement confirming that they have not been debarred from supplying goods to other institutions.
- 4.22** The Bureau shall not allow preference in the evaluation of tenders

**SECTION V EVALUATION CRITERIA**

The following requirements must be met by the tenderer notwithstanding other requirements in the tender documents:-

**a) Mandatory Requirements (MR)**

No	Requirement	Responsive or Not Responsive
MR 1	Must submit a copy of Certificate of Registration/ Incorporation	
MR 2	Must submit a copy of a valid Tax Compliance Certificate	
MR 3	Must Fill the price Schedule in the Format provided	
MR 4	Must fill the Form of tender in the format provided	
MR 5	Must provide a copy of a valid AGPO certificate	
MR 6	Must submit a duly filled up Confidential Business Questionnaire in format provided	
MR 7	Submit two Tender documents, well paged, securely bound and clearly marked (original and (copy )	
MR 8	Submit copy of identity card of company director	
MR 9	Submit copy of valid waste management transportation & disposal license from NEMA	
MR 10	Submit copy of valid authority to collect and dispose garbage from the relevant local authority/ County Government	

	<b>At this stage the tenderers submission will either be responsive in all mandatory (MR) requirements above or non-responsive. The non-responsive submissions will be eliminated from the entire evaluation process and will not be considered further.</b>	
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### b) Technical Scores

No	Evaluation criteria	Maximum Score	Bidders Score
1	<b>Financial Capability</b> Attach bank reference letter regarding suppliers credit position	25	
2	<b>Relevant Past experience</b> Provide names of three clients and attach documental evidence e.g. Reference letters and contract amount	15	
3	<b>Proof of physical facilities</b> e.g. equipment and vehicles allocated for this assignment. Attach copies of log book, NEMA and City Council authority to collect garbage.	25	
4	<b>Attach Company profile</b> Include Key Personnel CVs	25	
5	<b>Evidence of current provision of similar works</b> Provide evidence of serviced LPO or signed contracts (At least 2)	10	
	<b>Total Score</b>	<b>100</b>	
	<b>Only bidders who score 70 and above will be subjected to financial evaluation. Those who score below 70 will be eliminated at this stage from the entire evaluation process and will not be considered further.</b>		

### Financial Evaluation

The technically qualified bidder with the lowest evaluated price will be considered for award of the contract.

#### (a). Determination of evaluated price for each bid using the following;

- i) Checking for any arithmetic errors in the Tender
- ii) Conversion of all prices to the same currency using a uniform exchange rate prevailing at the closing date of the Tender
- iii) Application of any discount offered on the tender

#### (b) Ranking of Tenders according to their evaluated prices

## SECTION VI SCHEDULE OF REQUIREMENTS/ PRICE SCHEDULE

### COLLECTION AND DISPOSAL OF GARBAGE

1. All refuse from KLB will be collected in the designated places
2. The successful bidder must dispose off the garbage appropriately at the approved local authority dumping site.
3. The successful bidder must provide their staff with appropriate working tools and clothing when undertaking the services.

No	Name of Station	Estimated number of collections	Cost per Month/ Unit cost	VAT	Total Cost
1.	KLB Headquarter	Once a week			
2.	KLB Kijabe street office	Once week			
3.	KLB Headquarter	Liner bags (Refuse bags)			

**SECTION VII - STANDARD FORMS**

**8.1 FORM OF TENDER**

Date \_\_\_\_\_

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

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

\_\_\_\_\_  
*[name and address of Bureau]*

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda Nos. .... *[insert numbers]*, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to supply deliver, install and commission ( ..... *(insert equipment 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 Tender is accepted, to deliver install and commission the equipment in accordance with the delivery schedule specified in the Schedule of Requirements.

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

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

5. This Tender, together with your written acceptance thereof and your notification of award, shall constitute a Contract, between us. Subject to signing of the Contract by the parties.

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

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

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[in the capacity of]

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



## 8.2 CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

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 2 (a) – Sole Proprietor

Your name in full ..... Age .....

Nationality ..... Country of origin .....

- Citizenship details .....

### Part 2 (b) Partnership

Given details of partners as follows:

Name	Nationality	Citizenship Details
Shares		
1. ....		
2. ....		
3. ....		
4. ....		

### Part 2 (c ) – Registered Company

Private or Public .....

State the nominal and issued capital of company-

Nominal Kshs. ....

Issued Kshs. ....

Given details of all directors as follows

Name	Nationality	Citizenship Details
Shares		
1.....		
2. ....		
3. ....		

**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 supply, installation and commissioning of ..... [*name and/or description of the equipment*]  
(hereinafter called “the Tender”) ..... KNOW ALL PEOPLE by these presents that WE ..... of ..... having our registered office at ..... (hereinafter called “the Bank”), are bound unto ..... [*name of Bureau*] (hereinafter called “the Bureau”) in the sum of ..... for which payment well and truly to be made to the said Bureau, 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 Bureau 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 Bureau up to the above amount upon receipt of its first written demand, without the Bureau having to substantiate its demand, provided that in its demand the Bureau 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 tender 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 CONTRACT FORM

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

WHEREAS the Bureau invited tenders for certain goods ] and has accepted a tender by the  
tenderer for the supply of those goods in the sum of ..... [*contract price in  
words and figures*] (hereinafter called “the Contract Price).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively  
assigned to them in the Conditions of Contract referred to:

2. The following documents shall be deemed to form and be read and construed as part of  
this Agreement viz:

- (a) the Tender Form and the Price Schedule submitted by the tenderer
- (b) the Schedule of Requirements
- (c) the Technical Specifications
- (d) the General Conditions of Contract
- (e) the Special Conditions of contract; and
- (f) the Bureau’s Notification of Award

3. In consideration of the payments to be made by the Bureau to the tenderer as hereinafter  
mentioned, the tender hereby covenants with the Bureau to provide the goods and to remedy  
defects therein in conformity in all respects with the provisions of the Contract

4. The Bureau hereby covenants to pay the tenderer in consideration of the provisions of the  
goods and the remedying of defects therein, the Contract Price or such other sum as may become  
payable under the provisions of the Contract at the times and in the manner prescribed by the  
contract.

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

Signed, sealed, delivered by \_\_\_\_\_ the \_\_\_\_\_ (for the Bureau

Signed, sealed, delivered by \_\_\_\_\_ the \_\_\_\_\_ (for the tenderer in the presence of \_  
\_\_\_\_\_

8.5 PERFORMANCE SECURITY FORM

To .....  
[name of Bureau]

WHEREAS ..... [name of tenderer] (hereinafter called “the tenderer”) has undertaken , in pursuance of Contract No. \_\_\_\_\_ [reference number of the contract] dated \_\_\_\_\_ 20 \_\_\_\_\_ to \_\_\_\_\_ supply ..... [description of goods] (hereinafter called “the Contract”).

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

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

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

Signed and seal of the Guarantors

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

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

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

## 8.6 BANK GUARANTEE FOR ADVANCE PAYMENT FORM

To .....  
[*name of Bureau*]

[*name of tender*] .....

Gentlemen and/or Ladies:

In accordance with the payment provision included in the Special Conditions of Contract, which amends the General Conditions of Contract to provide for advance payment, ..... [*name and address of tenderer*](hereinafter called "the tenderer") shall deposit with the Bureau a bank guarantee to guarantee its proper and faithful performance under the said Clause of the Contract in an amount of ..... [*amount of guarantee in figures and words*].

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

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

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

Yours truly,

Signature and seal of the Guarantors

---

[*name of bank or financial institution*]

---

[*address*]

---

[*date*]

## 8.7 MANUFACTURER'S AUTHORIZATION FORM

To *[name of the Bureau]* .....

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

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

---

*[signature for and on behalf of manufacturer]*

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

**LETTER OF NOTIFICATION OF AWARD**

Address of Bureau

\_\_\_\_\_

\_\_\_\_\_

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 : ACCOUNTING OFFICER