



**Centre for Mathematics, Science and Technology Education in Africa
CEMASTEА**

Restricted Tender (RT)

Tender

For

FENCING A 10 ACRE PLOT IN WAJIR COUNTY

Invitation for Tender (IFT) Number:

CEMASTEА/FE/RT/2020

**Tender Closing date: Wednesday 19th February, 2020
Time: 10.00 AM**

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Section A: Invitation for Tenders

Date: 5th February, 2020

Invitation for Tenders (IFT)

TENDER REG. NO. CEMASTEА/FE/RT/2020

For

FENCING A 10 ACRE LAND IN WAJIR COUNTY

1. The Centre for Mathematics Science and Technology Education in Africa (CEMASTEА).CEMASTEА now invites sealed bids from eligible bidders for fencing of a 10 acre land in Wajir County.
2. Bidding will be conducted through the procedures specified in the Public Procurement and Asset Disposal Act 2015 (PPADA 2015) and Public Procurement and Disposal Regulation 2006 (PPDR 2006)
3. A complete set of Tender Documents (hard copy) in English detailing the requirements may be obtained from the Procurement office situated at:

CEMASTEА

P.O Box 24214-00502

Karen, NAIROBI

OR

at the CEMASTEА website:

Website: www.cemastea.ac.ke

Upon payment of a non-refundable fee of **Kshs. 1,000 for the hard copy (Kenya Shillings One Thousand Only)** from Monday to Friday between 09:00hrs and 16:00hrs.

4. Completed **Serialized/ Paginated** tender documents one original and a copy and accompanied by a **Bid Security of KSH 50,000 (Kenya Shillings Fifty thousand only)** or equivalent in a freely convertible currency from a reputable bank or an insurance company approved by Public Procurement Regulatory Authority (PPRA), in plain sealed envelopes clearly marked with the **Tender No. and Tender Description** as particularly described in the Tender documents should be addressed and submitted to:

THE DIRECTOR CEMASTEА

P.O Box 24214-00502

Karen, NAIROBI

And must be deposited in the Tender Box at the Administration Block CEMASTE A in Karen on or **before Wednesday 19th February, 2019 at 10:00am** Bulky tenders can be handed over to CEMASTE A procurement office for registration and safe keeping till the tender opening date.

5. Bids will be opened promptly in public and in the presence of Bidders and their representatives who choose to attend in the opening at **CEMASTE A Sugiyama Hall at 10:00am**
6. **Late bids, Electronic Bids, Bids not opened in and not read out in public at the bid opening ceremony shall not be accepted for evaluation.**

Section B: INSTRUCTIONS TO TENDERERS

1.1. Eligible Tenderers

1.1.1 This Invitation for Tenders is restricted to pre-qualified tenderers eligible as described in the Appendix to Instructions to Tenderers. Successful tenderers shall provide the services for the stipulated duration from the date of commencement (hereinafter referred to as the term) specified in the tender documents.

1.1.2 The procuring entity's employees, committee members, board members and their relatives (spouse and children) are not eligible to participate in the tender unless where specially allowed under section 131 of the Act.

1.1.3 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 Procuring entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the services under this Invitation for tenders.

1.1.4 Tenderers involved in corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

1.2 Cost of Tendering

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

1.2.2 The price to be charged for the tender document shall not exceed Ksh 1, 000/=

1.2.3 The procuring entity shall allow the prospective tenderer to review the tender document free of charge before purchase.

1.3 Contents of Tender Document

1.3.1 The tender documents comprise the documents listed below and addenda issued in accordance with clause 2.5 of these instructions to tenderers.

- i) Instructions to Tenderers
- ii) General Conditions of Contract
- iii) Special Conditions of Contract
- iv) Schedule of Requirements
- v) Evaluation criteria

- vi) Form of Tender
- vii) Price Schedules
- viii) Contract Form
- ix) Confidential Business Questionnaire Form
- x) Tender security Form
- xi) Declaration of Undertaking

1.3.2 The Tenderer is expected to examine all instructions, forms, terms and specification 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.

1.4 Clarification of Tender Documents

2.4.1 A Candidate making inquiries of the tender documents may notify the Procuring entity by post, fax or by email at the procuring entity's address indicated in the Invitation for tenders. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives not later than five (5) days prior to the deadline for the submission of the tenders, prescribed by the procuring entity. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all candidates who have received the tender documents.

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

1.5 Amendment of Tender Documents

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

1.5.2 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.

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

1.6 Language of Tenders

1.6.1 The tender prepared by the tenderer, as well as all correspondence and documents relating to the tender exchanged by the tenderer and the

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

1.7. Documents Comprising the Tender

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

(a) A Tender Form and a Price Schedule completed in accordance with paragraph 2.8, 2.9 and 2.10 below

(b) Documentary evidence established in accordance with paragraph 2.1.2 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;

(c) Tender security furnished in accordance with paragraph 2.12 (if applicable)

1.8. Form of Tender

1.8.1 The tenderer shall complete the Tender Form and the Price Schedule furnished in the tender documents, indicating the services to be provided.

1.9. Tender Prices

1.9.1 The tenderer shall indicate on the form of tender and the appropriate Price Schedule the unit prices and total tender price of the services it proposes to provide under the contract.

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

1.9.3 Prices quoted by the tenderer shall remain fixed during the Term of the contract unless otherwise agreed by the parties. A tender submitted with an adjustable price quotation will be treated as nonresponsive and will be rejected, pursuant to paragraph 2.20.5

1.10. Tender Currencies

2.10.1 Prices shall be quoted in Kenya Shillings

1.11. Tenderers Eligibility and Qualifications

1.11.1 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 it's tender is accepted.

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

1.12. Tender Security

1.12.1 The tenderer shall furnish, as part of its tender, a tender security for the amount and form specified in the Appendix to Instructions to Tenderers.

1.12.2 The tender security shall not exceed 2 per cent of the tender price.

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

1.12.4 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form

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

1.12.5 Any tender not secured in accordance with paragraph 2.12.1 and 1.12.3 shall be rejected by the Procuring entity as non-responsive, pursuant to paragraph 2.20.5

1.12.6 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

1.12.7 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

1.12.8 The tender security may be forfeited:

- (a) if a tenderer withdraws its tender during the period of tender validity.
- (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 2.30.
- (c) If the tenderer reject correction of an arithmetic error in the tender.

1.13. Validity of Tenders

1.13.1 Tenders shall remain valid for 90 days after date of tender opening pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the Procuring entity as non-responsive.

1.13.2 In exceptional circumstances, the Procuring entity may solicit the

Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 2.12 shall also be suitably extended. A tenderer granting the request will not be required nor permitted to modify its tender.

1.14. Format and Signing of Tenders

1.14.1 The tenderer shall prepare an original and a copy 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.

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

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

1.15 Sealing and Marking of Tenders

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

1.15.2 The inner and outer envelopes shall:

- (a) be addressed to the Procuring entity at the address given in the Invitation to Tender.
- (b) bear tender number and name in the invitation to tender and the words, "DO NOT OPEN BEFORE (**Wednesday 19th February, 2020 at 10:00am**)"

1.15.3 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".

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

1.16. Deadline for Submission of Tenders

1.16.1 Tenders must be received by the Procuring entity at the address specified under paragraph 2.15.2 not later than (**Wednesday 19th February, 2020 at 10:00am**)

1.16.2 The Procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 2.5.3 in which case all rights and obligations of the Procuring entity and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

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

1.17. Modification and Withdrawal of Tenders

1.17.1 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 tenders, is received by the Procuring entity prior to the deadline prescribed for submission of tenders.

1.17.2 The tenderer's modification or withdrawal notice shall be prepared, sealed, marked and dispatched in accordance with the provisions of paragraph 2.15. a withdrawal notice may also be sent by fax or email but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.

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

1.17.4 No tender may be withdrawn in the interval between the deadlines for submission of tenders and the expiration of the period of tender validity. Withdrawal of a tender during this interval may result in the Tenderer's forfeiture of its tender security, pursuant to paragraph 2.12.7.

1.18. Opening of Tenders

1.18.1 The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, on **(Wednesday 19th February, 2020 at 10:00am**) and in the location specified in the invitation for tenders. The tenderers' representatives who are present shall sign a register evidencing their attendance

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

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

1.19 Clarification of Tenders

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

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

1.20 Preliminary Examination and Responsiveness

1.20.1 The Procuring entity 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.

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

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

1.20.4 Prior to the detailed evaluation, pursuant to paragraph 2.20, the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one which conforms to all the terms and conditions of the tender documents without material deviations the Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

1.20.5 If a tender is not substantially responsive, it will be rejected by the procuring entity and may not subsequently be made responsive by the tenderer by correction of the nonconformity.

1.21. Conversion to single currency

1.21.1 Where other currencies are used, the Procuring entity will convert those currencies to Kenya Shillings using the selling exchange rate on the date of tender closing provided by the Central Bank of Kenya.

1.22. Evaluation and Comparison of Tenders

2.22.1 The Procuring entity will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 1.20

1.22.2 The Procuring entity's evaluation of a tender will take into account, in addition to the tender price, the following factors, in the manner and to the extent indicated in paragraph 2.22.3.

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

1.22.3 Pursuant to paragraph 2.22.2. the following evaluation methods will be applied.

(a) Operational Plan

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

(b) Deviation in payment schedule

(i) Tenderers shall state their tender price for the payment on schedule outlined in the special conditions of contract.

Tenders will be evaluated on the basis of this base price.

Tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in tender price they wish to offer for such alternative payment schedule. The Procuring entity may consider the alternative payment schedule offered by the selected tenderer.

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

1.23. Contacting the Procuring entity

1.23.1 Subject to paragraph 2.19 no tenderer shall contact the Procuring entity on any matter relating to its tender, from the time of the tender opening to the time the contract is awarded.

1.23.2 Any effort by a tenderer to influence the Procuring entity in its decisions on tender evaluation, tender comparison, or contract award may result in the rejection of the Tenderers' tender.

1.24 Post-qualification

1.24.1 The Procuring entity will verify and 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.

1.24.2 The determination will take into account the tenderer 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 1.11.2, as well as such other information as the Procuring entity deems necessary and appropriate

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

1.25 Award Criteria

1.25.1 Subject to paragraph 2.29 the Procuring entity will award the contract to the successful tenderer whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

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

- (a) Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.
- (b) Legal capacity to enter into a contract for procurement
- (c) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
- (d) Shall not be debarred from participating in public procurement.

1.26. Procuring entity's Right to accept or Reject any or all Tenders

1.26.1 The Procuring entity reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected tenderer or tenderers.

If the Procuring entity determines that none of the tenders is responsive, the Procuring entity shall notify each tenderer who submitted a tender.

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

1.26.3 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.

1.27 Notification of Award

1.27.1 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.

1.27.2 The notification of award will signify the formation of the contract subject to the signing of the contract between the tenderer and the procuring entity pursuant to clause 2.9. Simultaneously the other tenderers shall be notified that their tenders were not successful.

1.27.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 2.29 the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 1.12

1.28 Signing of Contract

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

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

1.28.3 The contract will be definitive upon its signature by the two parties.

1.28.4 The parties to the contract shall have it signed within twenty one (21) days from the date of notification of contract award unless there is an administrative review request.

1.29 Performance Security

1.29.1 The successful tenderer shall furnish the performance security in accordance with the Conditions of Contract, in a form acceptable to the Procuring entity.

1.29.2 Failure by the successful tenderer to comply with the requirement of paragraph 1.29 or paragraph 1.30.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Procuring entity may make the award to the next lowest evaluated tender or call for new tenders.

1.30 Corrupt or Fraudulent Practices

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

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

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

Appendix to Instructions to Tenderers

Notes on the Appendix to the Instruction to Tenderers

1. The Appendix to instructions to tenderers is intended to assist the procuring entity in providing specific information in relation to corresponding clause in the instructions to Tenderers included in

Section II and has to be prepared for each specific procurement.

2. The procuring entity should specify in the appendix information and requirements specific to the circumstances of the procuring entity, the procuring of the procurement, and the tender evaluation criteria that will apply to the tenders.

3. In preparing the Appendix the following aspects should be taken into consideration;
 - (a) The information that specifies and complements provisions of Section II to be incorporated.
 - (b) Amendments and/or supplements if any, to provisions of Section II as necessitated by the circumstances of the specific procurement to be also incorporated.
4. Section II should remain unchanged and can only be amended through the Appendix to instructions to tenders.
5. Any clause to be included in the appendix to instructions to tenderers must be consistent with the applicable public procurement law and regulations.

Section C: General Information

Introduction

1. Eligible Tenderers

- 1.1 This Invitation for Tenders is open to all tenderers eligible as described in the tender documents. Successful tenderers shall provide the services for the stipulated duration from the date of commencement (hereinafter referred to as the term) specified in the tender documents.
- 1.2 Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring entity, in this CEMASTEIA, to provide documents to be used for the procurement of the services under this Invitation for tenders.
- 1.3 Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices.

2. Cost of Tendering

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

The Tender Document

3. Contents

- 31 The tender document comprises the documents listed below and addenda issued in accordance with clause 4 of these instructions to tenders.
- (a) Invitation for Tenders
 - (b) General information
 - (c) General Conditions of Contract
 - (d) Special Conditions of Contract
 - (e) Price Schedules
 - (f) Tender Form
 - (g) Tender Security Form
 - (h) Contract Form
 - (i) Declaration of Undertaking
- 32 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 tenderer's risk and may result in the rejection of its tender.

4. Clarification of Documents

A prospective tenderer requiring any clarification of the tender document may notify the Procuring entity in writing or by cable (hereinafter, the term *cable* is deemed to include telex and facsimile) at the entity's address indicated in the Invitation for tenders. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives no later than seven (7) days prior to the deadline for the submission of tenders, prescribed by the procuring entity. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers who have received the tender document.

5. Amendment of Documents

- 51 At any time prior to the deadline for submission of tenders, the Procuring entity, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by amendment.
- 52 All prospective candidates who have received the tender documents will be notified of the amendment in writing or by cable, and such amendment will be binding on them.

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

Preparation of Tenders

6. Language of Tender

The tender prepared by the tenderer, as well as all correspondence and documents relating to the tender exchanged by the tenderer and the Procuring entity, shall be written in English language, 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.

Documents Comprising the Tender

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

- (a) Tender Form and a Price Schedule completed in accordance with paragraph 8, 9 and 10 below
- (b) documentary evidence established in accordance with paragraph 11 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
- (d) tender security furnished is in accordance with paragraph 12

7. Tender Form

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

8. Tender Prices

- The tenderer shall indicate on the appropriate Price Schedule the unit prices and total tender price of the services it proposes to provide under the contract.
- Prices indicated on the Price Schedule shall be the cost of the services quoted including all taxes payable:
- Prices quoted by the tenderer shall be fixed during the Term 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 22.

9. Tender Currencies

Prices shall be quoted in Kenya Shillings.

10. Tenderers Eligibility and Qualifications.

- Pursuant to paragraph 1 of section C, 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.
- The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall establish to the Procuring entity's satisfaction that the tenderer has the financial and technical capability necessary to perform the contract as outlined in the evaluation criterion below;

11. Tender Security

- 12.1 The tenderer shall furnish, as part of its tender, a tender security for the amount specified in the Invitation to tender.
- 12.2 The tender security is required to protect the Procuring entity against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 12.7
- 12.3 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, in the form provided in the tender documents or another form acceptable to the Procuring entity and valid for thirty (30) days beyond the validity of the tender.
- 12.4 Any tender not secured in accordance with paragraph 12.1 and 12.3 will be rejected by the Procuring entity as non responsive, pursuant to paragraph 22.
- 12.5 Unsuccessful Tenderers' 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 Procuring entity.
- 12.6 The successful Tenderers' tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 30, and furnishing the performance security, pursuant to paragraph 31.
- 12.7 The tender security may be forfeited:

13. if a tenderer withdraws its tender during the period of tender validity specified by the procuring entity on the Tender Form; or

14. 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

13. Validity of Tenders

13.1 Tenders shall remain valid for 90 days or as specified in the tender documents after date of tender opening prescribed by the Procuring entity, pursuant to paragraph 18. A tender valid for a shorter period shall be rejected by the Procuring entity as non-responsive.

13.2 In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 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.

14. Format and Signing of Tender

- The tenderer shall prepare two copies of the tender, clearly marking each "ORIGINAL TENDER" and "COPY OF TENDER," as appropriate. In the event of any discrepancy between them, the original shall govern.
- 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 latter authorization shall be indicated by written power-of attorney accompanying the tender. All pages of the tender, except for unamended printed literature, shall be initialled by the person or persons signing the tender.
- 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 initialled by the person or persons signing the tender.

Submission of Tenders

15. Sealing and Marking of Tenders

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

15.2 The inner and outer envelopes shall:

(a) Be addressed to the Procuring entity at the following address:

**The Director
CEMASTE
PO BOX 24214-00502
Karen, Nairobi.**

15.3 Bear, **CEMASTE/FE/RT/2020**, the Invitation for Tenders (IFT) and the words: “DO NOT OPEN BEFORE **10.00 a.m. on Wednesday 19th February, 2020 at 10:00am** 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”.

15.4 If the outer envelope is not sealed and marked as required by paragraph 15.2, the Procuring entity will assume no responsibility for the tender’s misplacement or premature opening.

16. Deadline for Submission of Tenders

16.1 Tenders must be received by the Procuring entity at the address specified under paragraph 15.2 no later than **10.00 a.m. on Wednesday 19th February, 2020** The Procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 6, in which case all rights and obligations of the Procuring entity and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

17. Modification and Withdrawal of Tenders

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 tenders, is received by the Procuring prior to the deadline prescribed for submission of tenders.

- 17.2 The Tenderer's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 15. A withdrawal notice may also be sent by cable, but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.
- 17.3 No tender may be modified after the deadline for submission of tenders.
- 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 12.7.

Opening and Evaluation of Tenders

18. Opening of Tenders

- (b) The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, at **10.00 a.m. Local Time on Wednesday 19th February, 2020 at 10:00am** at the CEMASTE A Sugiyama Hall.

- 18.1 The tenderers' representatives who are present shall sign a register evidencing their attendance.
- 18.2 The tenderers' names, tender modifications or withdrawals, tender prices, discounts, and the presence or absence of requisite tender security and such other details as the Procuring entity, at its discretion, may consider appropriate, will be announced at the opening.
- 18.3 The Procuring entity will prepare minutes of the tender opening.

19. Clarification of Tenders

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

20. Preliminary Examination

- 20.1 The Procuring entity 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.
- 20.2 Arithmetical errors will be rectified on the following basis:
- If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected.
 - If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security may be forfeited.
 - If there is a discrepancy between words and figures, the amount in words will prevail.
- 20.3 The Procuring entity may waive any minor informality or nonconformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any tenderer.
- 20.4 Prior to the detailed evaluation, pursuant to paragraph 21, the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one which conforms to all the terms and conditions of the tender documents without material deviations. The Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.
- 20.5 If a tender is not substantially responsive, it will be rejected by the Procuring entity and may not subsequently be made responsive by the tenderer by correction of the nonconformity.

21. Evaluation and Comparison of Tenders

- 21.1 The Procuring entity will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 20.
- 21.2 The comparison shall be of the price to including all costs, as well as duties and taxes payable on all the materials to be used in the provision of the services.

22. Contacting the Procuring entity

- 22.1 Subject to paragraph 19, no tenderer shall contact the Procuring entity on any matter relating to its tender, from the time of the tender opening to the time the contract is awarded.
- 22.2 Any effort by a tenderer to influence the Procuring entity in its decisions on tender evaluation, tender comparison, or contract award may result in the rejection of the Tenderer's tender.

Award of Contract

23. Post-qualification

- 23.1 In the absence of pre-qualification, the Procuring entity will determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.
- 23.2 The determination will take into account the tenderer 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 11, as well as such other information as the Procuring entity deems necessary and appropriate.
- 23.3 An affirmative determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the Tenderer's tender, in which event the Procuring entity will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

24. Award Criteria

Subject to paragraph 9, 21 and 26 the Procuring entity will award the contract to the successful tenderer whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

25. Procuring entity's Right to Vary scope of services

The Procuring entity reserves the right at the time of contract award to increase or decrease the scope of services originally specified in the Schedule of requirements without any change in unit price or other terms and conditions.

26. Procuring entity's Right to Accept or Reject Any or All Tenders

The Procuring entity reserves the right to accept or reject any tender, and

to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the Procuring entity's action.

27. Notification of Award

- 27.1 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.
- 27.2 The notification of award will constitute the formation of the Contract.
- 27.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 29, the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 12.

28. Signing of Contract

- 28.1 At the same time as the Procuring entity notifies the successful tenderer that its tender has been accepted, the Procuring entity will send the tenderer the Contract Form provided in the tender documents, incorporating all agreements between the parties.
- 28.2 Within twenty one (21) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Procuring entity.
- 29.1 Failure of the successful tenderer to comply with the requirement of paragraph 28 or paragraph 29 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Procuring entity may make the award to the next lowest evaluated Candidate or call for new tenders.

29. Corrupt Fraudulent Practices

- 30.1 The Procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts. In pursuance of this policy, the Procuring entity:-
 - (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i). "corrupt practice" means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public 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 Procuring entity, 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 Procuring entity of the benefits of free and open competition;

(b) 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;

(c) will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded any contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a contract

30.2 Furthermore, tenderers shall be aware of the provision stated in the General Conditions of Contract.

Section D: General Conditions of Contract

1. Definitions

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

- (a) “The Contract” means the agreement entered into between the Procuring entity and the tenderer, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- (b) “The Contract Price” means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations.
- (c) “The services” means services to be provided by the tenderer to the Procuring entity under the Contract.
- (d) “The Procuring entity” means the organization sourcing for the services under this Contract, in this case CEMASTEА.
- (e) “The tenderer” means the individual or firm providing the services under this Contract.

2. Application

2.1 These General Conditions shall apply in all Contracts made by the Procuring entity for the procurement of services.

4. Standards

4.1 The services provided under this Contract shall conform to the standards mentioned in the Technical Specifications.

5. Use of Contract Documents and Information

5.1 The Candidate shall not, without the Procuring entity’s prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring entity in connection therewith, to any person other than a person employed by the tenderer in the performance of the Contract.

5.2 The tenderer shall not, without the Procuring entity’s prior written consent, make use of any document or information enumerated in paragraph 5.1 above.

5.3 Any document, other than the Contract itself, enumerated in paragraph 5.1 shall remain the property of the Procuring entity and shall be returned (all copies) to the Procuring entity on completion of the Tenderer's performance under the Contract if so required by the Procuring entity.

6. Patent Rights

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

7. Payment

- The method and conditions of payment to be made to the tenderer under this Contract shall be specified in Special Conditions of Contract.
- Payments shall be made promptly by the Procuring entity as specified in the contract.

8. Prices

Prices charged by the tenderer for 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.

Assignment

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

9. Subcontracts

The tenderer shall notify the Procuring entity 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.

10. Termination for Default

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

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

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

11. Liquidated Damages

If the tenderer fails to provide any or all of the services within the period(s) specified in the contract, the procuring entity shall, without prejudice to its other remedies under the contract, deduct from the contract prices liquidated damages sum equivalent to 0.5% of the price of the unperformed services up to a maximum deduction of 10% of the unperformed services. After this the procuring entity may consider termination of the contract.

12. Resolution of Disputes

15.1 The procuring entity and the tenderer 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.

15.2 If, after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute the provisions of the Arbitration Act of the Laws of Kenya shall apply.

13. Language and Law

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

14. Force Majeure

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.

Section E: Special Conditions of Contract

Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract.

1. Clarification of Documents

The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives no later than five (5) days prior to the deadline for the submission of tenders.

2. Bidders Eligibility

The documentary evidence of the Bidders eligibility to tender shall include **proof of tax compliance** from the relevant tax authorities.

3. Validity of Tenders

Tenders shall remain valid for 90 days.

4. Prices to be quoted in Kenya Shillings.

5. Each tenderer must attach to the tender document a copy of official receipt issued from the cash office for the purchase of tender document.

6. The documentary evidence of the tenderers eligibility to tender shall include proof of tax compliance from the relevant tax authorities.

7. Provision of the company profile including names of directors and senior managers.

8. Complete set of audited financial statements for the last three years.

9. Provide references of other organisations to which you render similar services.

10. Indicate the number of years the company has been in business.

11. Performance security will not be required.

Section G: Price Schedule of Requirements

SN	Requirements	Quantity	Unit Price Inclusive of VAT
1.	Cement Bags 50kgs	9	
2.	Ballast(tonnes)	1	
3.	Sand(tonnes)	1	
4.	Nails 4" (Kgs)	10	
5.	Gate	1	
6.	Transport	1	
7.	U Nails (Kgs)	50	
8.	Posts 9 ft pieces	1000	
9.	Used Oil (litres)	100	
10.	Gladiator(Litres)	20	
11.	Chain Link (8ft)	100	
12.	Barbed Wire (610 metres)	60	
13.	Labour	1	
14.	TOTAL PRICE INCLUSIVE OF VAT		

NB: Incases of discrepancies in the unit price and the total price, the unit price shall prevail.

Section H: Sample Form of Tender

Date: _____

Tender No:

To:

.....

[name and address of Procuring entity]

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda Nos.....*[insert numbers]*,the receipt of which is hereby duly acknowledged, we, the undersigned, offer to supply and deliver.....

[description of services]

in conformity with the said tender documents and or such other sums as may be ascertained in accordance with the Schedule of rates and prices attached herewith and made part of this Tender.

2. We undertake, if our Tender is accepted, to deliver the services in accordance with our specifications.

- 3. 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.
- 4. Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.
- 5. 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 and on behalf of.....

Section I: Sample Tender Security Form

IFT No.: -----

Supply and delivery of -----

To: CEMASTEА

WHEREAS [*insert: name of Tenderer*] (hereinafter called “the Tenderer”) has submitted its tender dated [*insert: date of tender*] for the performance of the above-named Contract (hereinafter called “the Tender”)

KNOW ALL PERSONS by these present that WE [*insert: name of bank*] of [*insert: address of bank*] (hereinafter called “the Bank”) are bound unto [*insert: name of Purchaser*] (hereinafter called “the Purchaser”) in the sum of: [*insert: amount*], for which payment well and truly to be made to the said Purchaser, the Bank binds itself, its successors and assigns by these presents.

Sealed with the Common Seal of the said Guarantor this [*insert: number*] day of [*insert: month*], [*insert: year*].

THE CONDITIONS of this obligation are:

- (a) If after tender opening the tenderer withdraws his tender during the period of tender validity specified in the instructions to tenderers or
- 2 . If the tenderer rejects the correction of an error upon prompt notice by the procuring entity and
- 3. If the tenderer, having been notified of the acceptance of his tender by the employer during the period of tender validity:
 - (a) Fails or refuses to execute the form of agreement in accordance with the instructions to tenderers if required or
 - (b) Fails or refuses to furnish the Performance Security, in accordance with instructions to tenderers

We undertake to pay to the Procuring Entity up to the above amount upon receipt of its first written demand, without the Procuring Entity having to substantiate its demand, provided that in its demand the Procuring Entity will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the two conditions specifying the occurred condition or conditions.

This guarantee will remain in full force up to and including thirty (30) days after the period of tender validity and any demand in respect thereof should reach the Guarantor not later than the above date.

Date:

Signature of the Guarantor

(Witness)

(Seal)

Insurance Tender Security Form

IFT No.: -----

Supply and delivery of -----

To: CEMASTEА

WHEREAS [*insert: name of Tenderer*] (hereinafter called “the Tenderer”) has submitted its tender dated [*insert: date of tender*] for the performance of the above-named Contract (hereinafter called “the Tender”)

KNOW ALL PERSONS by these present that WE [*insert: name of the insurance company*] of [*insert: address of insurance company*] (hereinafter called “the Guarantor”) are bound unto [*insert: name of Purchaser*] (hereinafter called “the Purchaser”) in the sum of: [*insert: amount*], for which payment well and truly to be made to the said Purchaser, the guarantor binds itself, its successors and assigns by these presents.

Sealed with the Common Seal of the said Guarantor this [*insert: number*] day of [*insert: month*], [*insert: year*].

THE CONDITIONS of this obligation are:

(b) If after tender opening the tenderer withdraws his tender during the period of tender validity specified in the instructions to tenderers or

2 . If the tenderer rejects the correction of an error upon prompt notice by the procuring entity and

3. If the tenderer, having been notified of the acceptance of his tender by the employer during the period of tender validity:

(a) Fails or refuses to execute the form of agreement in accordance with the instructions to tenderers if required or

(b) Fails or refuses to furnish the Performance Security, in accordance with instructions to tenderers

We undertake to pay to the Procuring Entity up to the above amount upon receipt of its first written demand, without the Procuring Entity having to substantiate its demand, provided that in its demand the Procuring Entity will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the two conditions specifying the occurred condition or conditions.

This guarantee will remain in full force up to and including thirty (30) days after the period of tender validity and any demand in respect thereof should reach the Guarantor not later than the above date.

Date:

Signature of the Guarantor

(Witness)

(Seal)

Section J: Sample Contract Form

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

WHEREAS the Procuring entity invited tenders for Provision of Consultancy Services for Recruitment of Chief Executive officer and Finance Director on the basis of the rates specified on the appended schedules (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 General Conditions of Contract;
 - (c) the Special Conditions of Contract; and
 - (d) the Procuring entity’s Notification of Award
3. In consideration of the payments to be made by the Procuring entity to the tenderer as hereinafter mentioned, the tenderer hereby covenants with the Procuring entity to provide the services and to remedy defects therein in conformity in all respects with the provisions of the Contract
4. The Procuring entity hereby covenants to pay the tenderer in consideration of the provision of the services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the contract at the times and in the manner prescribed by the contract.

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

Signed, sealed, delivered by _____ the _____ (for the Procuring entity)

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

in the presence of _____

**Section K: ANTI – CORRUPTION POLICY IN THE PROCUREMENT PROCESS
UNDERTAKING BY BIDDER ON ANTI – CORRUPTION POLICY / CODE OF CONDUCT
AND COMPLIANCE PROGRAMME**

The governments of Kenya is committed to fighting corruption in all its forms and in all its institutions to ensure that all the government earned revenues are utilized prudently and for the purpose intended with a view to promoting economic development as the country work towards actualizing Vision 2030.

Here at CEMASTEIA and also being one of the government entities mandated under the government Legal Notice number 466 of 2004 to procure, warehouse and distribute Essential Medicines and Medical Supplies to all the public health facilities in Kenya, on behalf of the government, we are highly committed to fighting any form of corruption in our organization to ensure that all the monies that the government entrust with us, is optimally and prudently utilized for the benefits of all the people we serve.

The following is a requirement that every Bidder wishing to do business with CEMASTEIA must comply with:

- (1) Each bidder must submit a statement, as part of the tender documents, in the format given and which must be signed personally by the Chief Executive Officer or other appropriate senior corporate officer of the bidding company and, where relevant, of its subsidiary in Kenya. If a tender is submitted by a subsidiary, a statement to this effect will also be required of the parent company, signed by its Chief Executive Officer or other appropriate senior corporate officer.
- (2) Bidders will also be required to submit similar No-bribery commitments from their subcontractors and consortium partners; the bidder may cover the subcontractors and consortium partners in its own statement, provided the bidder assumes full responsibility.
- (3)
 - a) Payment to agents and other third parties shall be limited to appropriate compensation for legitimate services.
 - b) Each bidder will make full disclosure in the tender documentation of the beneficiaries and amounts of all payments made, or intended to be made, to agents or other third parties (including political parties or electoral candidates) relating to the tender and, if successful, the implementation of the contract.
 - c) The successful bidder will also make full disclosure [quarterly or semi-annually] of all payments to agents and other third parties during the execution of the contract.
 - d) Within six months of the completion of the performance of the contract, the successful bidder will formally certify that no bribes or other illicit commissions have been paid. The final accounting shall include brief details of the goods and

services provided that are sufficient to establish the legitimacy of the payments made.

- e) Statements required according to subparagraphs (b) and (d) of this paragraph will have to be certified by the company's Chief Executive Officer, or other appropriate senior corporate officer.
- (4) Tenders which do not conform to these requirements shall not be considered.
- (5) If the successful bidder fails to comply with its No-bribery commitment, significant sanctions will apply. The sanctions may include all or any of the following:
 - a) Cancellation of the contract;
 - b) Liability for damages to the public authority and/or the unsuccessful competitors in the bidding possibly in the form of a lump sum representing a pre-set percentage of the contract value (liquidated).
- (6) Bidders shall make available, as part of their tender, copies of their anti-Bribery Policy/Code of Conduct, if any, and of their-general or project - specific - Compliance Program.
- (7) The Government of Kenya through Kenya Anti-Corruption Commission has made special arrangements for adequate oversight of the procurement process and the execution of the contract. Those charged with the oversight responsibility will have full access if need be to all documentation submitted by Bidders for this contract, and to which in turn all Bidders and other parties involved or affected by the project shall have full access (provided, however, that no proprietary information concerning a bidder may be disclosed to another bidder or to the public).

1. MEMORANDUM (FORMAT)

Clause 41, 62 and 66 of the Public Procurement and Asset Disposal Act (PPADA) 2015

This company _____ (*name of company*) has issued, for the purposes of this tender, a Compliance Program copy attached -which includes all reasonable steps necessary to assure that the No-bribery commitment given in this statement will be complied with by its managers and employees, as well as by all third parties working with this company on the public sector projects or contract including agents, consultants, consortium partners, subcontractors and suppliers'")"

We also confirm that we have not been debarred from participating in Public Procurement Proceedings

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Bidder: _____

Section L: CONFIDENTIAL BUSINESS QUESTIONNAIRE

You are requested to give the particular indicated in Part 1 and either Part 2(a), 2(b), or 2(c) Which ever applies to your type of business

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

.....

Part 2(a) – Sole Proprietor:

Your name in full Age

Nationality Country of origin

Citizenship details.....

Party 2(b) – Partnership

Give details of partners as follows

	Name	Nationality	Citizenship Details	Shares
1.
...				
2.
...				
3.
4.
5.
.....				

Part 2(c) – Registered Company:

Private or public

.....

State the nominal and issued capital of the company –

Nominal Kshs..

Issued Kshs.....

Give details of all directors as follows

	Name	Nationality	Citizenship Details	Shares
1.
...				
2.
...				
3.
4.
5.
.....				

Date..... Signature of Tenderer
.....

If a citizen, indicate under “Citizenship Details” whether by Birth, Naturalization or Registration

PART II: PERSONNEL

Please enclose copy of the organization chart of the firm indicating the positions as they relate to this Tender.

Please provide the following information for the key personnel proposed for administration of this Contract.

1. Name.....
2. Age.....
3. Academic Qualification.....
4. Professional Qualification.....
5. Work Experience.....
6. Length of service with the firm and position held.....
7. Any other relevant details.....

PART III: FINANCIAL/COMMERCIAL INFORMATION

1. Attach a copy of firm's two most recent audited financial statements
2. Summary of quick assets and current liabilities as of...../20..... (Date)

Assets.....

.....

- a) Cash in hand
- b) Cash Deposited in Banks (State Details Below)

.....

.....

.....

Total Cash.....

Name of Bank Institution	Location	Deposit in Name of	Amount
i.			
ii.			
iii.			
iv.			

Liabilities.....

.....

3. Deposit with Bids or as guarantees (State details)

.....

.....

Deposited With	Name & Address	Purpose	Date of Recovery	Amount
i.				
ii.				
iii.				
iv.				

4. Due from completed contracts

(Amount receivable within 90 days, exclude claims not approved)

.....

Name and address of Owner	Contract Sum	Amount Receivable
i.		
ii.		
iii.		
iv.		

Attach Letters of Reference from the firm’s bankers regarding the firm’s credit position

5. Volume of business transacted between the Government of the Republic of Kenya and my company during the last 12 months, if any KShs.....
6. Volume of business transacted with other parastatal organizations during the last 12 months, if any, KShs.....
7. Work performed as a Service Provider of similar nature and volume over the last five years. List details of contracts under way or committed, including expected expiry dates.

Client Name	Name of Client Contact Person	Type of services provided and year of Completion	Value of Contract

8. Please indicate the payment terms and/ or incentives you are willing to offer to the Kenya Medical Supplies Authority, including but not limited to payment incentives

9. State whether or not you have experienced any problem(s) of non- performance with any contract(s) awarded to you during the last 12 months and give a brief

explanation/ description of the problem(s). Please give the information on a separate sheet of paper.

PART IV: TENDERER’S REFERENCES

NAME OF TENDERER’S OTHER CLIENTS AND VALUES OF CONTRACT/ORDERS IN LAST TWELVE MONTHS

1. First Client (Organization)

- i) Name of 1st client (Organization).....
- ii) Address of Client (Organization).....
- iii) Telephone No. of Client.....
- iv) Facsimile No of Client.....
- v) E-mail Address of Client.....
- vi) Name of Contact Person at the Client (Organization).....
- vii) Value of Contracts/Orders.....
- viii) Duration of ongoing Contracts/Orders.....

2. Second Client (Organization)

- i) Name of 2nd client (Organization).....
- ii) Address of Client (Organization).....
- iii) Telephone No. of Client.....
- iv) Facsimile No of Client.....
- v) E-mail Address of Client.....
- vi) Name of Contact Person at the Client (Organization).....
- vii) Value of Contracts/Orders.....
- viii) Duration of ongoing Contracts/Orders.....

3. Third Client (organization)

- i) Name of 3rd client (Organization).....
- ii) Address of Client (Organization).....
- iii) Telephone No. of Client.....

- iv) Facsimile No of Client.....
- v) E-mail Address of Client.....
- vi) Name of Contact Person at the Client (Organization).....
- vii) Value of Contracts/Orders.....
- viii) Duration of ongoing Contracts/Orders.....

4. Fourth Client (Organisation)

- i) Name of 4th client (Organization).....
- ii) Address of Client (Organization).....
- iii) Telephone No. of Client.....
- iv) Facsimile No of Client.....
- v) E-mail Address of Client.....
- vi) Name of Contact Person at the Client (Organization).....
- vii) Value of Contracts/Orders.....
- viii)Duration of ongoing Contracts/Orders.....

5. Fifth Client (organization)

- i) Name of 5th client (Organization).....
- ii) Address of Client (Organization).....
- iii) Telephone No. of Client.....
- iv) Facsimile No of Client.....
- v) E-mail Address of Client.....
- vi) Name of Contact Person at the Client (Organization).....
- vii) Value of Contracts/Orders.....
- viii)Duration of ongoing Contracts/Orders.....

(NB: You may include additional clients as you may wish to support your application)

PART V: Tender Questionnaire

1. Please fill in Block letters
2. Full Name of Tenderer:
.....
3. Full address of tenderer to which tender correspondence is to be sent (unless an agent has been appointed below)
.....
4. Telephone number (s) of Tenderer
.....
5. E-mail of Tenderer
.....
6. Name of Tenderer’s representative to be contacted on matters of the tender during the tender period.
.....
7. Details of Tenderer’s nominated agent, if any, to receive tender notices. This is essential of the tenderer does not have his registered address in Kenya.

Name:	
Address:	
Telephone:	
Fax:	
E-Mail Address:	

.....
Signature of Tenderer

PART VI: Confidential Business Questionnaire

You are requested to give particulars indicated in Part1 and either Part 2(a), 2(b) or 2(c) whichever applies 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.....

Registration Ref No.....

Location of business premises, i.e. Building.....
 Floor No.....Room No.....
 Plot No.....Street/Road.....
 Postal Address.....Postal Code.....
 Tel No..... Fax No.....
 Email.....Website.....

Nature of business.....
 Current Trade License No.Expiry Date.....
 VAT Certificate Number.....PIN Certificate No.....
 Local Authority License No.....Expiry Date.....

NB: Attach copies of Registration Certificate, VAT Registration Certificate, PIN Certificate , Local Authority License and a Valid Tax Compliance Certificate.

Maximum Value of business which you can handle at any one time KShs.....
 Name of your main Bankers.....
 Branch.....

Part 2 (a) Sole Proprietor:

My Name in full.....Age.....
 Nationality.....ID/Passport No.....Country of Origin.....

Part 2(b) Partnership

Name	Nationality	*Citizenship Details	shares
1.....			
2.....			
3.....			
4.....			
5.....			

Part 2(c) Registered Company

State whether Private or Public.....

State the nominal and issued Capital of the Company

Nominal Kshs..... Or Other Convertible currency.....

Issued KShs..... Or Other Convertible currency.....

Give Details of all Directors as follows:

Name	Nationality	*Citizenship Details	Shares
1.....			
2.....			
3.....			
4.....			
5.....			

Part 3- Names of all Associated or Holding Companies (If any)

- 1.....
- 2.....
- 3.....
- 4.....
- 5.....

If more companies are applicable, please give the information on a separate sheet of paper.

Part 4 – Give Details of all Directors of the Companies you have listed above as follows:-

- 1.....
- 2.....
- 3.....
- 4.....

5.....

*If Kenyan Citizen, indicate under “Citizenship Details”, whether by Birth, Naturalization or Registration.

DECLARATION

Give Statement of compliance with the requirements of clause 1.2 of the General instructions to Tenderers under section C.

I certify that all the above particulars are true

Name of Applicant (Officer).....

Signature of Applicant.....

Position in the Company/Title.....

Date.....

NB: Please affix rubber stamp or seal

SECTION M: EVALUATION CRITERIA

A. PRELIMINARY EXAMINATION

Evaluation will be carried on Yes/No basis

- **Bidding documents must be paginated/serialized. All bidders are required to submit their documents paginated in a continuous ascending order from the first page to the last in this format; (i.e. 1,2,3 n where n is the last page) (MANDATORY)**
- Copy of Certificate of Incorporation/Registration is provided **(MANDATORY)**
- Valid Copy of Tax Compliance Certificate is provided **(MANDATORY)**
- Original Bid Bond of **Ksh 50,000** valid for 120 days from date of tender opening **(MANDATORY)**
- Duly completed and signed form of tender **(MANDATORY)**
- Anti-Corruption Declaration signed **(MANDATORY)**
- Business questionnaire duly completed and signed.

B. TECHNICAL EVALUATION

1. Bidder to attach a detailed company profile including CV's of the senior Managers
2. Name/s and contact/s of Insurance Company/ies which have insured your Security Guards for the last 3 years.
3. Bidder Must have been in existence for the last two (2) years.
4. Must provide proof of funds in bank account showing availability of funds for executing the work.

NOTE: PASS MARK IS 75%

FINANCIAL EVALUATION

Bidders who are successful at preceding stages of evaluation will have their prices compared and award recommended to the lowest evaluated responsive bid.