



# **KenGen**

**KENYA ELECTRICITY GENERATING PLC**

**KGN-GDD-060-2019**

**TENDER FOR WARRANTY UPGRADE OF DELL HARDWARE  
IN OLKARIA 1AU AND OLKARIA IV POWER PLANTS**

*(Reserved for Enterprises Owned by Youth)*

**Kenya Electricity Generating PLC  
Stima Plaza Phase III, Kolobot Road, Parklands  
P.O. BOX 47936-00100  
NAIROBI.  
Website: [www.kengen.co.ke](http://www.kengen.co.ke)**

**April, 2019**

# TABLE OF CONTENTS

	PAGE
INTRODUCTION	2
SECTION I INVITATION TO TENDER.....	4
SECTION II INSTRUCTIONS TO TENDERERS.....	5
Appendix to Instructions to Tenderers.....	18
SECTION III GENERAL CONDITIONS OF CONTRACT.....	20
SECTION IV SPECIAL CONDITIONS OF CONTRACT.....	26
SECTION V SCHEDULE OF REQUIREMENTS.....	27
SECTION VI DESCRIPTION OF SERVICES.....	28
SECTION VII PRICE SCHEDULE FOR THE SERVICES.....	30
SECTION VIII STANDARD FORMS.....	32

## EXECUTIVE ORDER NO. 2 OF 2018

Following the Executive Order No.2 of 2018 issued by The Presidency

1. **THAT** effective the 1<sup>st</sup> of July 2018, all Public Procuring Entities shall maintain and continuously **update and publicize** (through the websites of the Public Procuring Entity, e-Citizen, Public Procurement Regulatory Authority platforms, public notice boards and/or official government publications):
  - Full Particulars of the awarded Bidder (Supplier, Contractor or Consultant);
  - Specification of goods and services, scope and schedule of works and contract value;
  - Technical and financial capacity of the awarded bidder (Supplier, Contractor or Consultant) and summary of reasons for the award;
  - Award Date and Contract Period;
  - Current market price of the specific goods, works or service, as well as price guidelines as published by the Public Procurement Regulatory Authority with regard to that specific item (*where applicable*);
2. In furtherance to above, the list of the awarded suppliers/contracts/consultants shall include the following information:
  - Name of Supplier
  - Registration Details (ID/Registration/Incorporation Number
  - PIN Number
  - List of Directors, Shareholders and Beneficial Owners (in case of a company)
  - Name of Proprietor (for sole Proprietor and Business name)
  - Name of Partners (for Partnerships)
  - Business Contacts Information (telephone and email address)
  - Postal address
  - Physical address
  - Tax Compliance Status
  - Business Permit/License Number
  - County of operation

**In compliance to the executive order, the above details shall form part of mandatory requirement in the tender documents submitted**

## GUIDELINES TO PREPARATION OF BID DOCUMENT

In preparing the bid document in response to the tender, bidders are advised to note the following:

1. **Section I – Invitation to Tender.** This section gives guidelines on how and where to seek further clarification pertaining to the tender document; the form and amount of Tender Security required; where and when the tenders should be submitted; and place where tenders will be opened.
2. **Section II – Instruction to Tenderers.** This section guides tenderers on how to prepare their bid and how the tendering process will be carried out up to the award stage including notification of award to the successful bidder. **“Appendix to Instruction to Tenderers”** customizes clauses under Section II. **Wherever there is a conflict between the provisions of the Instructions to Tenderers under Section II and the provisions of the appendix, the provisions of the appendix prevail.**
3. **Evaluation Criteria:** This gives information on how the tender will be evaluated. Tenderers should be able to evaluate their bids before submission to determine in advance whether they meet the requirement of the bid or not. Through the evaluation criteria bidders will be able to note all the required documents that should be attached to the bid document.

### Checklist of Document Forming the Bid

No.	Documents forming part of the bid	Remarks																								
1	The main sections of the tender document that includes Section I – Invitation to Tender; Section II – Instruction to Tenderers, including Appendix to Instruction to Tenderers; and Section III – General Conditions of the Contract, including Special Conditions of Contract	These Sections remain as they are in the tender document.																								
2	Duly filed mandatory business questionnaire with particulars of the supplier ,contractor and consultant and shall include: <table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="text-align: center;">i.</td><td>Name of supplier</td></tr> <tr><td style="text-align: center;">ii.</td><td>Registration details (ID/Registration/Incorporation Number )</td></tr> <tr><td style="text-align: center;">iii.</td><td>PIN Number</td></tr> <tr><td style="text-align: center;">iv.</td><td>List of directors, shareholders and beneficial owners(in case of a company)</td></tr> <tr><td style="text-align: center;">v.</td><td>Name of proprietor (for sole proprietor and business name)</td></tr> <tr><td style="text-align: center;">vi.</td><td>Name of partners (for partnerships)</td></tr> <tr><td style="text-align: center;">vii.</td><td>Business contact information (Telephone and Email Address)</td></tr> <tr><td style="text-align: center;">viii.</td><td>Postal Address</td></tr> <tr><td style="text-align: center;">ix.</td><td>Physical address</td></tr> <tr><td style="text-align: center;">x.</td><td>Tax compliance status</td></tr> <tr><td style="text-align: center;">xi.</td><td>Business permit /License number</td></tr> <tr><td style="text-align: center;">xii.</td><td>County of operations</td></tr> </table>	i.	Name of supplier	ii.	Registration details (ID/Registration/Incorporation Number )	iii.	PIN Number	iv.	List of directors, shareholders and beneficial owners(in case of a company)	v.	Name of proprietor (for sole proprietor and business name)	vi.	Name of partners (for partnerships)	vii.	Business contact information (Telephone and Email Address)	viii.	Postal Address	ix.	Physical address	x.	Tax compliance status	xi.	Business permit /License number	xii.	County of operations	
i.	Name of supplier																									
ii.	Registration details (ID/Registration/Incorporation Number )																									
iii.	PIN Number																									
iv.	List of directors, shareholders and beneficial owners(in case of a company)																									
v.	Name of proprietor (for sole proprietor and business name)																									
vi.	Name of partners (for partnerships)																									
vii.	Business contact information (Telephone and Email Address)																									
viii.	Postal Address																									
ix.	Physical address																									
x.	Tax compliance status																									
xi.	Business permit /License number																									
xii.	County of operations																									
4	Duly filled priced schedules	Prices quoted to be inclusive of taxes																								
5	Duly filled and signed Form of Tender in the format provided in the tender document																									
6	Duly filled and signed declaration form in the form provided																									
7	Bid document to be <b>serialized/paginated</b> on all pages																									
8	Bidders are advised to use KenGen’ s tender document or ensure to align their bid to it																									
9	Confirmation of a bid submission Original and Copy																									

## SECTION I

### INVITATION TO TENDER

The Company invites sealed tenders from 'Enterprises owned by Youth' for the "TENDER FOR WARRANTY UPGRADE OF DELL HARDWARE IN OLKARIA 1AU AND OLKARIA IV POWER PLANTS" whose specifications are detailed in the Tender Document.

Interested eligible candidates may obtain further information from and inspect the Tender Documents during official working hours starting at the date of advert at the office of:

**Supply Chain Director**

Tel: (254) (020) 3666000

Email: [tenders@kengen.co.ke](mailto:tenders@kengen.co.ke); cc: [wnyangwes@kengen.co.ke](mailto:wnyangwes@kengen.co.ke)

The document can also be viewed and downloaded from the website [www.kengen.co.ke](http://www.kengen.co.ke) Bidders who download the tender document from the website **are advised to forward their particulars to facilitate any subsequent tender clarifications and addenda**. Downloaded documents are free of charge.

Bidders are advised from time to time to be checking the website for any uploaded further information on this tender.

Unless otherwise stated, tenders MUST be accompanied by a security in the format and amount specified in the tender documents and must be submitted in a plain sealed envelope and marked "**KGN-GDD-060-2019 - TENDER FOR WARRANTY UPGRADE OF DELL HARDWARE IN OLKARIA 1AU AND OLKARIA IV POWER PLANTS**" and addressed to:

**Company Secretary & Legal Affairs Director  
Kenya Electricity Generating Company Limited  
10<sup>th</sup> Floor, Pension Plaza  
Phase II Kolobot Road,  
Parklands  
P O Box 47936 - 00100  
NAIROBI, KENYA**

On or before: **8<sup>th</sup> May, 2019 at 10.00 a.m.**

There shall be a **MANDATORY SITE VISIT** on: **30<sup>th</sup> April, 2019** at Geothermal Complex, **Olkaria, Naivasha**. The assembly point will be at **Geothermal Plaza – Olkaria at 10.00 AM**. **Bidders will proceed to site after pre-bid conference.**

Tenders will be opened on **8<sup>th</sup> May, 2019 at 10.30 a.m.** in the presence of the candidates' representatives who choose to attend at Stima Plaza III, Executive Committee Room, and 7th Floor. The company reserves the right to vary the quantities.

*N/B: KenGen adheres to high standards of integrity in its business operations.*

*Report any unethical behavior immediately to the provided anonymous hotline service.*

1) Call Toll Free: 0800722626

2) Free Fax: 00800 007788

3) Email: [kengen@tip-offs.com](mailto:kengen@tip-offs.com)

4) Website: [www.tip-offs.com](http://www.tip-offs.com)

### SUPPLY CHAIN DIRECTOR

---

Tender for Warranty Upgrade of Dell Hardware in Olkaria 1AU and Olkaria IV Power Plants

**SECTION II**  
**INSTRUCTIONS TO TENDERERS**

**2.1 Eligible tenderers**

- 2.1.1. This Invitation to tender is open to all tenderers eligible as described in the instructions to tenderers. Successful tenderers shall provide the services for the stipulated duration from the **date** of commencement (hereinafter referred to as the term) specified in the tender documents.
- 2.1.2. The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender unless where specially allowed under section 131 of the Act.
- 2.1.3. Tenderers 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.
- 2.1.4. Tenderers involved in corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

**2.2 Cost of tendering**

- 2.2.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the procuring entity, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 2.2.2 The price to be charged for the tender document shall not exceed Kshs.1,000/= . Where the tenderers download documents from KenGen website, there shall be no cost.
- 2.2.3 The procuring entity shall allow the tenderer to review the tender document free of charge before purchase.

**2.4 The Tender documents**

- 2.4.1. The tender document comprises of the documents listed below and addenda issued in accordance with clause 6 of these instructions to tenders

---

Tender for Warranty Upgrade of Dell Hardware in Olkaria 1AU and Olkaria IV Power Plants

- i) Instructions to tenderers
- ii) General Conditions of Contract
- iii) Special Conditions of Contract
- iv) Schedule of Requirements
- v) Details of service
- vi) Form of tender
- vii) Price schedules
- viii) Contract form
- ix) Confidential business questionnaire form
- x) Tender security form
- xi) Performance security form

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.

## **2.4 Clarification of Documents**

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

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

## **2.5 Amendment of documents**

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

2.5.2. All prospective tenderers who have obtained the tender documents will be notified of the amendment by email and such amendment will be binding on

them.

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

## **2.6 Language of tender**

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

## **2.7 Documents Comprising the Tender**

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

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

(b) Documentary evidence established in accordance with Clause 2.11 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;

(c) Tender security furnished is in accordance with Clause 2.12

(d) Confidential business questionnaire

## **2.8 Form of Tender**

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

## **2.9 Tender Prices**

2.9.1 The tenderer shall indicate on the Price schedule the unit prices where

---

Tender for Warranty Upgrade of Dell Hardware in Olkaria 1AU and Olkaria IV Power Plants



applicable and total tender prices of the services it proposes to provide under the contract.

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

2.9.3 Prices quoted **by** the tenderer shall remain fixed during the term of the contract unless otherwise agreed by the parties. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.22.

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

2.9.5 Where contract price variation is allowed, the variation shall not exceed 25% of the original contract price.

2.9.6 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.

## 2.10 **Tender Currencies**

2.10.1 Prices shall be quoted in Kenya Shillings unless otherwise specified in the appendix to in Instructions to Tenderers

## 2.11 **Tenderers Eligibility and Qualifications.**

2.11.1 Pursuant to Clause 2.1 the tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.

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

## 2.12 **Tender Security**

2.12.1 The tenderer shall furnish, as part of its tender, a tender security for the amount and form specified in the Invitation to tender.

2.12.2 The tender security shall be in the amount specified in the Appendix.

2.12.2 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 2.12.7

2.12.3 The tender security shall be denominated in a Kenya Shillings or in another freely convertible currency and shall be in the form of:

- a) A bank guarantee.
- b) Such insurance guarantee approved by the Public Procurement Oversight Authority.

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

2.12.5 Unsuccessful tenderer's security will be discharged or returned as promptly as possible as but not later than thirty (30) days after the expiration of the period of tender validity prescribed by the procuring entity.

2.12.6 The successful tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 2.29, and furnishing the performance security, pursuant to paragraph 2.30.

2.12.7 The tender security may be forfeited:

- (a) If a tenderer **withdraws** its tender **during** the period of tender validity specified by the procuring entity on the Tender Form;  
or
- (b) In the case of a successful tenderer, if the tenderer fails:
  - (i) To sign the contract in accordance with paragraph 30**Or**
  - (ii) To furnish performance security in accordance with paragraph 31.
- (c) If the tenderer rejects, correction of an error in the tender.

## 2.13 Validity of Tenders

2.13.1 Tenders shall remain valid for **Ninety (90) days** or as specified in the invitation to tender after date of tender opening prescribed by the Procuring entity, pursuant to paragraph 2.18. A tender valid for a shorter period shall be

rejected by the Procuring entity as nonresponsive.

2.13.2 In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 2.12 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

## 2.14 **Format and Signing of Tender**

2.14.1 The tenderer shall prepare two copies of the tender, clearly / marking each "ORIGINAL TENDER" and "COPY OF TENDER," as appropriate. In the event of any discrepancy between them, the original shall govern.

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

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

## 2.15 **Sealing and Marking of Tenders**

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

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 8<sup>th</sup> May, 2019 at 10.00 a.m.,"

2.15.3 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".

2.15.4 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.

## 2.16 **Deadline for Submission of Tenders**

2.16.1 Tenders must be received by the Procuring entity at the address specified under paragraph 2.15.2 no later than **8<sup>th</sup> May, 2019 at 10.00 a.m.**

2.16.2 The procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 6, in which case all rights and obligations of the procuring entity and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

## 2.17 **Modification and withdrawal of tenders**

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

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

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

2.17.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the Tenderer's forfeiture of its tender security, pursuant to paragraph 2.12.7.

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

2.17.6 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of

receiving the request from any tenderer.

## **2.18 Opening of Tenders**

2.18.1 The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, on **8<sup>th</sup> May, 2019 at 10.30 a.m.** and in the location specified in the invitation to tender. The tenderers' representatives who are present shall sign a register evidencing their attendance.

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

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

## **2.19 Clarification of tenders**

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

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

## **2.20 Preliminary Examination and Responsiveness**

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

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

prevail.

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

2.20.4 Prior to the detailed evaluation, pursuant to paragraph 23, the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one which conforms to all the terms and conditions of the tender documents without material deviations. The Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

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

## **2.21 Conversion to a single currency**

2.21.1 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.

## **2.22 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 2.20

2.22.2 The comparison shall be of the price including all costs as well as duties and taxes payable on all the materials to be used in the provision of the services.

2.22.3 The Procuring entity's evaluation of a tender will take into account, in addition to the tender price, the following factors, in the manner and to the extent indicated in paragraph 2.22.4 and in the technical specifications:

(a) Operational plan proposed in the tender;

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

2.22.4 Pursuant to paragraph 22.3 the following evaluation methods will be applied:

(a) ***Operational Plan.***

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

(b) ***Deviation in payment schedule.***

Tenderers shall state their tender price for the payment on a schedule outlined in the special conditions of contract. Tenders will be evaluated on the basis of this base price. Tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in tender price they wish to offer for such alternative payment schedule. The Procuring entity may consider the alternative payment schedule offered by the selected tenderer.

2.22.5 The tender evaluation committee shall evaluate the tender within fifteen (15) days from the date of opening the tender.

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

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

## **2.23. Contacting the procuring entity**

2.23.1 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.

2.23.2 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.

## **2.24 Award of Contract**

## a) **Post qualification**

2.24.1 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.

2.24.2 The determination will take into account the tenderer's financial and technical capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 2.1.2, as well as such other information as the Procuring entity deems necessary and appropriate.

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

## b) **Award Criteria**

2.24.3 Subject to paragraph 2.29 the Procuring entity will award the contract to the successful tenderer whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily. 2.24.4 The procuring entity reserves the right to accept or reject any tender and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the procuring entity's action. If the procuring entity determines that none of the tenderers is responsive; the procuring entity shall notify each tenderer who submitted a tender.

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

## 2.25 **Notification of award**

2.25.1 Prior to the expiration of the period of tender validity, the Procuring



entity will notify the successful tenderer in writing that its tender has been accepted.

2.25.2 The notification of award will signify the formation of the Contract subject to the signing of the contract between the tenderer and the procuring entity pursuant to clause 2.29. Simultaneously the other tenderers shall be notified that their tenders have not been successful.

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

## 2.26 **Signing of Contract**

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

2.26.2 Within **fifteen (15) days** of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return **it** to the Procuring entity.

2.26.3 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.

## 2.27 **Performance Security**

2.27.1 Within **fifteen (15) days** of the receipt of notification of award from the Procuring entity, the successful tenderer shall furnish the performance security in accordance with the Conditions of Contract, in the Performance Security Form provided in the tender documents, or in another form acceptable to the Procuring entity.

2.27.2 Failure of the successful tenderer to comply with the requirement of paragraph 2.29 or paragraph 2.30.1 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 or call for new tenders.

## 2.28 **Corrupt or Fraudulent Practices**

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

## APPENDIX TO INSTRUCTIONS TO TENDERERS

The following information for procurement of services shall complement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provisions of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers.

Instructions to tenderers	Particulars of appendix to instructions to tenderers
2.1.1	This tender is “ <b>Reserved for Enterprises Owned by Youth</b> ”
2.10.1	Prices shall be quoted in Kenya Shillings
2.12.2	<b>Tender Security is not required.</b> Tender Security Declaration Form shall be duly filled and shall be valid for 120 days from the tender closing date.
2.13.1	The validity period of the tender shall be <b>120 days after</b> the date of opening of the tender
2.14.1	The Tenderer shall prepare <b>two copies of the tender</b> , clearly marking each “ <b>ORIGINAL TENDER</b> ” and “ <b>COPY OF TENDER</b> ,” as appropriate. The Tenderer <b>MUST</b> ensure Sequential pagination/serialization of all pages in the tender document, <b>Sec.74.1.i. of the PPADA, 2015.</b>
2.16.1	Tender closing date and time <b>8<sup>th</sup> May, 2019 at 10.00 a.m.</b>
2.18.1	Tender opening date and time <b>8<sup>th</sup> May, 2019 at 10.30 a.m.</b>
	No correction of errors. <ul style="list-style-type: none"> <li>• The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity. Ref: <b>Sec. 82 of the PPADA, 2015.</b></li> </ul>
2.27.1	<b>Performance Security:</b> Performance security shall be in the amount of <b>1%</b> of the contract price

	<p>The following shall be the evaluation Criteria</p> <p><b>A) Mandatory Requirements may include but not be limited to the following:</b></p> <ul style="list-style-type: none"> <li>• Duly completed tender form.</li> <li>• Duly filled, signed and stamped Tender Declaration Form</li> <li>• Provision of valid AGPO certificate for Youth category</li> <li>• Tender Validity of 120 days from tender closing date.</li> <li>• Duly completed price schedule.</li> <li>• Duly filled Mandatory confidential business questionnaire form</li> <li>• Valid Tax Compliance Certificate.</li> <li>• Valid Certificate of business registration/Certificate of Incorporation.</li> <li>• Manufacturers Authorization from Dell.</li> <li>• Evidence of Site Visit attendance.</li> <li>• All items must be quoted to be considered responsive.</li> </ul> <p><b><i>N/B The Executive order No. 2 shall form part of the mandatory requirements.</i></b></p> <p><b>B) Technical Evaluation Requirements</b></p> <ul style="list-style-type: none"> <li>• Compliance to technical specifications.</li> </ul> <p><b>C) Financial Evaluation</b></p> <ul style="list-style-type: none"> <li>• Award shall be based on the total lowest evaluated price.</li> </ul>
	<p>KenGen may at its own discretion conduct due diligence on the eligible bidders to establish their ability to perform the contract.</p>

**SECTION III**  
**GENERAL CONDITIONS OF CONTRACT**

**3.1 Definitions**

In this contract the following terms shall be interpreted as indicated:

- a) “The contract” means the agreement entered into between the Procuring entity and the tenderer as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- b) “The Contract Price” means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations.
- c) “The services” means services to be provided by the contractor including materials and incidentals which the tenderer is required to provide to the Procuring entity under the Contract.
- d) “The Procuring entity” means the organization sourcing for the services under this Contract.
- e) “The contractor means the individual or firm providing the services under this Contract.
- f) “GCC” means general conditions of contract contained in this section
- g) “SCC” means the special conditions of contract
- h) “Day” means calendar day

**3.2 Application**

These General Conditions shall apply to the extent that they are not superceded by provisions of other part of contract.

**3.3 Standards**

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

### 3.5 **Patent Right's**

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

### 3.6 **Performance Security**

Within **fifteen (15) days** of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the Performance security where applicable in the amount specified in Special Conditions of Contract.

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

3.6.3 The performance security shall be denominated in the currency of the Contract or in a freely convertible currency acceptable to the Procuring entity and shall be in the form of:

- a) A bank guarantee.
- b) Such insurance guarantee approved by the Public Procurement Oversight Authority.

3.6.4 The performance security will be discharged by the procuring entity and returned to the candidate not later than thirty (30) days following the date of completion of the tenderer's performance of obligations under the contract, including any warranty obligations under the contract.

### 3.7 **Inspections and Tests**

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

3.7.2 The inspections and tests may be conducted on the premises of the tenderer or its subcontractor(s). If conducted on the premises of the tenderer or its subcontractor(s), all reasonable facilities and assistance, including access to

drawings and production data shall be furnished to the inspectors at no charge to the Procuring entity.

3.7.3 Should any inspected or tested services fail to conform to the Specifications, the Procuring entity may reject the services and the tenderer shall make alterations necessary to meet specification requirements free of cost to the Procuring entity.

3.7.4 Nothing in paragraph 3.7 shall in any way release the tenderer from any warranty or other obligations under this Contract.

### **3.8 Payment**

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

### **3.9 Prices**

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

### **3.10 Assignment**

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

### **3.10 Termination for Default**

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

- a) if the tenderer fails to provide any or all of the services within the period(s) specified in the Contract or within any extension thereof granted by the Procuring entity.
- b) if the tenderer fails to perform any other obligation(s) under the Contract.

- c) if the tenderer, in the judgment of the Procuring entity, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

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

### **3.12 Termination of insolvency**

The procuring entity may at the any time terminate the contract by giving written notice to the contractor if the contractor becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the contractor, provided that such termination will not produce or affect any right of action or remedy, which has accrued or will accrue thereafter to the procuring entity.

### **3.13 Termination for convenience**

3.13.1 The procuring entity by written notice sent to the contractor may terminate the contract in whole or in part, at any time for its convenience. The notice of termination shall specify that the termination is for the procuring entity's convenience, the extent to which performance of the contractor of the contract is terminated and the date on which such termination becomes effective.

3.13.2 For the remaining part of the contract after termination the procuring entity may elect to cancel the services and pay to the contractor an agreed amount for partially completed services.

### **3.14 Resolution of disputes**

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

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

### **3.15 Governing Language**



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

### **3.16 Force Majeure**

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

### **3.17 Applicable Law.**

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

### **3.18 Notices**

Any notices given by one party to the other pursuant to this contract shall be sent to the other party by E-mail and confirmed in writing to the other party's address specified in the SCC

A notice shall be effective when delivered or on the notices effective date, whichever is later.

### **3.19 Taxes**

3.19.1 "**Taxes**" means all present and future taxes, levies, duties, charges, assessments, deductions or withholdings whatsoever, including any interest thereon, and any penalties and fines with respect thereto, wherever imposed, levied, collected, or withheld pursuant to any regulation having the force of law and "Taxation" shall be construed accordingly.

#### **3.19.2 Local Taxation**

Nothing in the Contract shall relieve the Contractor and/or his Sub-Contractors from their responsibility to pay any taxes, statutory contributions and levies that may be levied on them in Kenya in respect of the Contract. The Contract Price shall include all applicable taxes and shall not be adjusted for any of these taxes.

3.19.3 The Contractor shall be deemed to be familiar with the tax laws in the Employer's Country and satisfied themselves with the requirements for all taxes, statutory contributions and duties to which they may be subjected during the term of the Contract.

3.19.4 In instances where discussions are held between the Employer and the Contractor regarding tax matters, this shall not be deemed to constitute competent advice and hence does not absolve the Contractor of their responsibility in relation to due diligence on the tax issue as per 3.19.2 above.

### **Tax Deduction**

3.19.5 If the Employer is required to make a tax deduction by Law, then the deduction shall be made from payments due to the Contractor and paid directly to the Kenya Revenue Authority. The Employer shall upon remitting the tax to Kenya Revenue Authority furnish the Contractor with the relevant tax deduction certificates.

3.19.6 Where the Contractor is paid directly by the Financiers and the Employer is not able to deduct tax, then the Contractor will be required to pay the tax deduction to Kenya Revenue Authority in the name of the Employer and furnish the Employer with an original receipt thereof as evidence of such payment. In absence of the said evidence, the Employer will not process any subsequent payments to the Contractor.

### **Tax Indemnity**

3.19.7 The Contractor shall indemnify and hold the Employer harmless from and against any and all liabilities, which the Employer may incur for any reason of failure by the Contractor to comply with any tax laws arising from the execution of the Contract whether during the term of the Contract or after its expiry.

3.19.8 The Contractor warrants to pay the Employer (within fourteen (14) days of demand by the Employer), an amount equal to the loss, liability or cost which the Employer determines has been (directly or indirectly) suffered by the Employer for or on account of the Contractor's Tax liability arising from the Contract.

3.19.9 Where the amount in 3.19.8 above remains unpaid after the end of the fourteen (14) days moratorium, the Employer shall be entitled to compensation for financing charges.

## SECTION IV

### SPECIAL CONDITIONS OF CONTRACT

4.1 Special conditions of contract (SCC) shall supplement the general conditions of contract, wherever there is a conflict between the GCC and the SCC, the provisions of the SCC herein shall prevail over those in the GCC.

4.2 Special conditions of contract with reference to the general conditions of contract.

REFERENCE OF GCC	SPECIAL CONDITIONS OF CONTRACT
3.7.1	The performance security shall be in the amount of <b>1% of the total contract price.</b>
3.10.1	<b>Delivery Period</b> <ul style="list-style-type: none"><li>• Delivery shall be within <b>3 months</b> after issuance of the order.</li></ul>
3.12.1	<b>Payment Terms and Conditions</b>  KenGen's payment terms are 30 days upon receipt of certified invoices and delivery notes confirming that the invoiced material has been delivered and is in accordance with the contract.  Payment shall be made through KenGen's cheque or telegraphic transfer for the amount of contract. The terms shall be strictly Delivered and Duty Paid (DDP) to Olkaria.
3.13.1	<b>Prices</b> <ul style="list-style-type: none"><li>• Prices shall be fixed during the Supplier's performance of the Contract and not subject to variation on any account.</li></ul>
3.18.2	<b>Arbitration</b> <ul style="list-style-type: none"><li>• Arbitration where necessary shall be by the Chartered Institute of Arbitrators Kenya Chapter or other International body.</li></ul>

**SECTION V**  
**SCHEDULE OF REQUIREMENTS**

SERVICE TAG	SYSTEM TAG	WARRANTY DESCRIPTION
3BGKYBX	POWER EDGE R710	PROSUPPORT PLUS AND NEXT BUSINESS DAY
3WKP4W1	POWER EDGE R710	PROSUPPORT PLUS AND NEXT BUSINESS DAY
4BGKYBX	POWER EDGE R710	PROSUPPORT PLUS AND NEXT BUSINESS DAY
4TWR4W1	POWER EDGE R710	PROSUPPORT PLUS AND NEXT BUSINESS DAY
5BGKYBX	POWER EDGE R710	PROSUPPORT PLUS AND NEXT BUSINESS DAY
8F874W1	POWER EDGE R710	PROSUPPORT PLUS AND NEXT BUSINESS DAY
C6HS3W1	POWER EDGE R710	PROSUPPORT PLUS AND NEXT BUSINESS DAY
F9GKYBX	POWER EDGE R710	PROSUPPORT PLUS AND NEXT BUSINESS DAY
G9GKYBX	POWER EDGE R710	PROSUPPORT PLUS AND NEXT BUSINESS DAY
H9GKYBX	POWER EDGE R710	PROSUPPORT PLUS AND NEXT BUSINESS DAY
CNS7XX1	PRECISION R5500	PROSUPPORT AND NEXT BUSINESS DAY
DKCC5W1	PRECISION R5500	PROSUPPORT AND NEXT BUSINESS DAY
DNF85W1	PRECISION R5500	PROSUPPORT AND NEXT BUSINESS DAY
JNS7XX1	PRECISION R5500	PROSUPPORT AND NEXT BUSINESS DAY
8ZJBWX1	POWERSVAULT MD1200	PROSUPPORT AND NEXT BUSINESS DAY
4Z02F5J	POWEREDGE R720	PROSUPPORT AND NEXT BUSINESS DAY
CZ02F5J	POWEREDGE R720	PROSUPPORT AND NEXT BUSINESS DAY
6Z02F5J	POWEREDGE R720	PROSUPPORT AND NEXT BUSINESS DAY
J4B0202	POWEREDGE R720	PROSUPPORT AND NEXT BUSINESS DAY

TENDERER'S NAME: \_\_\_\_\_

TENDERER'S SIGNATURE: \_\_\_\_\_

COMPANY'S RUBBER STAMP: \_\_\_\_\_

DELIVERY PERIOD: \_\_\_\_\_

TENDER VALIDITY PERIOD: \_\_\_\_\_

---

Tender for Warranty Upgrade of Dell Hardware in Olkaria 1AU and Olkaria IV Power Plants

## SECTION VI

### DESCRIPTION OF SERVICES

KenGen would like to renew the warranty period of Dell Hardware at Olkaria IAU and Olkaria IV Power Station at the Geothermal Business Area in Naivasha

- Most of the hardware is out of warranty and hence requires to be reinstated.
- Warranty period shall be **30 days** after closing date of the tender to the end of support date of each of the workstations/servers or storage.( End of support dates are indicated in the table below)
- Find below the Dell Hardware

SERVICE TAG	SYSTEM TAG	WARRANTY DESCRIPTION	WARRANTY END DATE	BIDDERS OFFER (KEY IN WARRANTY END DATE)
3BGKYBX	POWER EDGE R710	PROSUPPORT PLUS AND NEXT BUSINESS DAY		
3WKP4W1	POWER EDGE R710	PROSUPPORT PLUS AND NEXT BUSINESS DAY		
4BGKYBX	POWER EDGE R710	PROSUPPORT PLUS AND NEXT BUSINESS DAY		
4TWR4W1	POWER EDGE R710	PROSUPPORT PLUS AND NEXT BUSINESS DAY		
5BGKYBX	POWER EDGE R710	PROSUPPORT PLUS AND NEXT BUSINESS DAY		
8F874W1	POWER EDGE R710	PROSUPPORT PLUS AND NEXT BUSINESS DAY		
C6HS3W1	POWER EDGE R710	PROSUPPORT PLUS AND NEXT BUSINESS DAY		
F9GKYBX	POWER EDGE R710	PROSUPPORT PLUS AND NEXT BUSINESS DAY		
G9GKYBX	POWER EDGE R710	PROSUPPORT PLUS AND NEXT BUSINESS DAY		
H9GKYBX	POWER EDGE R710	PROSUPPORT PLUS AND NEXT BUSINESS DAY		
CNS7XX1	PRECISION R5500	PROSUPPORT AND NEXT BUSINESS DAY		
DKCC5W1	PRECISION R5500	PROSUPPORT AND NEXT BUSINESS DAY		
DNF85W1	PRECISION R5500	PROSUPPORT AND NEXT BUSINESS DAY		
JNS7XX1	PRECISION R5500	PROSUPPORT AND NEXT BUSINESS DAY		
8ZJBWX1	POWERSVAULT MD1200	PROSUPPORT AND NEXT BUSINESS DAY		
4Z02F5J	POWEREDGE R720	PROSUPPORT AND NEXT BUSINESS DAY		
CZ02F5J	POWEREDGE R720	PROSUPPORT AND NEXT BUSINESS DAY		

6Z02F5J	POWEREDGE R720	PROSUPPORT AND NEXT BUSINESS DAY		
J4B0202	POWEREDGE R720	PROSUPPORT AND NEXT BUSINESS DAY		

TENDERER'S NAME: \_\_\_\_\_

TENDERER'S SIGNATURE: \_\_\_\_\_

COMPANY'S RUBBER STAMP: \_\_\_\_\_

DELIVERY PERIOD: \_\_\_\_\_

**SECTION VII**  
**PRICE SCHEDULE OF SERVICES**

SERVICE TAG	SYSTEM TAG	REINSTATEMENT FEE	COST OF WARRANTY	TOTAL COST
		(KShs)	(KShs)	(KShs)
3BGKYBX	POWER EDGE R710			
3WKP4W1	POWER EDGE R710			
4BGKYBX	POWER EDGE R710			
4TWR4W1	POWER EDGE R710			
5BGKYBX	POWER EDGE R710			
8F874W1	POWER EDGE R710			
C6HS3W1	POWER EDGE R710			
F9GKYBX	POWER EDGE R710			
G9GKYBX	POWER EDGE R710			
H9GKYBX	POWER EDGE R710			
CNS7XX1	PRECISION R5500			
DKCC5W1	PRECISION R5500			
DNF85W1	PRECISION R5500			
JNS7XX1	PRECISION R5500			
8ZJBWX1	POWERSVAULT MD1200			
4Z02F5J	POWEREDGE R720			
CZ02F5J	POWEREDGE R720			
6Z02F5J	POWEREDGE R720			
J4B0202	POWEREDGE R720			
<b>SUB-TOTAL</b>				
<b>16% VAT</b>				
<b>DISCOUNT (Indicate favorable discount)</b>				
<b>OTHER CHARGES (if any)</b>				
<b>GRAND TOTAL</b>				

**Delivery Period**

TENDERER'S NAME: \_\_\_\_\_

TENDERER'S SIGNATURE: \_\_\_\_\_

COMPANY'S RUBBER STAMP: \_\_\_\_\_

DELIVERY PERIOD: \_\_\_\_\_



**SECTION VIII**  
**STANDARD FORMS**

**8.1 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 provide the services ( ..... *(insert service description)* in conformity with the said tender documents for the sum of ..... *(total tender amount in words and figures)* or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

2. We undertake, if our Tender is accepted, to provide the services in accordance with the service 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 ..... *(Procuring entity)*.

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 \_\_\_\_\_

**Note:** In accordance with **Clause 82** of the **Public Procurement and Asset Disposal Act 2015**  
**“The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.**

**8.2 MANDATORY CONFIDENTIAL BUSINESS QUESTIONNAIRE**

*(Must be filled by all applicants or Tenderers' who choose to participate in this tender)*

*Name of Applicant(s).....*

You are requested to give the particulars in Part 1 and either Part 2 (a), 2 (b) or 2 (c), whichever applies to your type of business. Part 2 (d) to part 2 (i / j) must be filled. You are advised that giving wrong or false information on this Form will lead to automatic disqualification of your tender or termination of your contract or debarment of your firm at your cost.

***Part 1 – General***

Business Name:.....Certificate of Incorporation /  
Registration No.....  
Location of business premises:  
Country .....Physical address .....  
Town .....Building.....  
Floor.....Plot No.....  
Street / Road .....  
Postal Address ..... Postal / Country Code.....  
Telephone No's.....Fax No's.....E-mail address  
Website .....  
Contact Person (*Full Names*) ..... Direct / Mobile No's.....  
Title ..... Power of Attorney (**Yes / No**)  
If **yes**, attach written document.  
Nature of Business (*Indicate whether manufacturer, distributor, etc*) .....

**(Applicable to Local suppliers only)**

Local Authority Trading License No. .... Expiry Date.....  
KRA PIN No.....  
Value of the largest single assignment you have undertaken to date  
(**USD/KShs**) .....  
Was this successfully undertaken? **Yes / No**. ....  
(If **Yes**, attach reference)  
Name (s) of your banker (s).....  
Branches ..... Tel. No's.....

***Part 2 (a) – Sole Proprietor (if applicable)***

Full names.....  
Nationality..... Country of Origin.....  
Company Profile .....  
(*Attach brochures or annual reports in case of public company*)

***Part 2 (b) – Partnerships (if applicable)***

Give details of partners as follows:

**Full Names Nationality Citizenship Details Shares**

1.....  
2.....

Company Profile .....

**Part 2 (c) – Registered Company (if applicable - as per the CR12 form)**

Private or public .....

Company Profile ..... (Attach brochures or annual reports in case of public companies)

State the nominal and issued capital of the Company

Nominal KShs .....

Issued KShs .....

List of top ten (10) shareholders and distribution of shareholding in the company. Give details of all directors as follows:-

**Full Names Nationality Citizenship Details Shares**

1.....

2.....

**Part 2 (d) – Debarment**

I/We declare that I/We have not been debarred from any procurement process and shall not engage in any fraudulent, corrupt, coercive and obstructive acts with regard to this or any other tender by the KENGEN and any other public or private institutions.

Full Names .....

Signature .....

Dated this.....day of .....2019.

In the capacity of.....

Duly authorized to sign Tender for and on behalf of .....

**Part 2 (e) – Bankruptcy / Insolvency / receivership.**

I/We declare that I/We have not been declared bankrupt or insolvent by the competent Authorities in Kenya and neither are we under receivership:

Full Names .....

Signature .....

Dated this.....day of .....2019.

In the capacity of .....

Duly authorized to sign Tender for and on behalf of.....

**Part 2 (f) – Criminal Offence**

I/We, (Name (s) of Director (s)):-

a) .....

b) .....

Have not been convicted of any criminal offence relating to professional conduct or the making of false statements or misrepresentations as to its qualifications to enter into a procurement contract within a period of three (3) years preceding the commencement of procurement proceedings.

Signed .....

For and on behalf of M/s .....

In the capacity of .....

Dated this.....day of .....2019.

Suppliers' / Company's Official Rubber Stamp.....

**Part 2 (g) – Conflict of Interest**

I/We, the undersigned state that I / We have no conflict of interest in relation to this procurement:

- a) .....
- b) .....

For and on behalf of M/s .....

In the capacity of .....

Dated this.....day of.....2019

Suppliers' / Company's Official Rubber Stamp.....

**Part 2 (h) – Interest in the Firm:**

Is there any person/persons in KENGEN or any other public institution who has interest in the Firm? Yes/No ..... (*Delete as necessary*)

Institution.....

.....

*(Title) (Signature) (Date)*

**Part 2(i) – Experience: NOTE: THIS SECTION IS MANDATORY ONLY IF IT FORMS PART OF TECHNICAL EVALUATION. IT'S ALSO NOT NECESSARY FOR ALREADY PRE-QUALIFIED OR DIRECT PROCUREMENT FIRMS. ITS ALSO NOT APPLICABLE FOR AGPO FIRMS TENDERS.**

Please list here below similar projects accomplished or companies / clients you have supplied with similar items or materials in **the years prescribed.**

	Company Name	Country	Contract/Order No.	Value	Contact person (Full Names)	E-mail address	Cell phone No.
1							
2							

**Part 2 (i or j) – Bank account details:**

AGPO firms must provide evidence from their bank that the account to which KenGen shall make payment has a youth or a woman or a PWD listed in the **CR12 form/partnership deed/sole proprietor certificate** as a MANDATORY signatory of that account,- **Sec.157 (11) of PPADA:**

**Account No:**.....**Name of the person(s) in the CR12 form OR in the partnership deed OR in the sole proprietor certificate**...../.....

**ID No(s):**...../.....**Signature and stamp of the authorized Banker Representative**.....**Date**.....

**Part 2(j or k) – Declaration**

I / We, the undersigned state and declare that the above information is correct and that I / We give KENGEN authority to seek any other references concerning my / our company from whatever sources deemed relevant, e.g. Office of the Registrar of Companies, Bankers, etc.

Full names .....

Signature.....

For and on behalf of M/s .....

In the capacity of .....  
Dated this .....day of .....2019.  
Suppliers' / Company's Official Rubber Stamp.....

### **8.3 TENDER SECURING DECLARATION FORM**

*[If required, the **Bank /Tenderer** shall fill in this Guarantee form in accordance with the instructions indicated in brackets.]*

*[Insert bank's name, and address of issuing branch or office]*

**Beneficiary:** *[insert name and address of Procuring Entity]*

**Date:** *[insert date]*

**TENDER GUARANTEE No.:** *[insert number]*

We have been informed that *[insert name of the Tenderer; if a joint venture, list complete legal names of partners]* (hereinafter called "the Tenderer") has submitted to you its Tender dated *[insert date]* (hereinafter called "the Tender") for the execution of *[insert name of Contract]* under Invitation for Tenders No. *[insert IFT number]* ("the IFT").

Furthermore, we understand that, according to your conditions, Tenders must be supported by a Tender Guarantee.

At the request of the Tenderer, we *[insert name of bank ]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in figures expressed in the currency of the Purchaser's Country or the equivalent amount in an international freely convertible currency]* (*[insert amount in words]*) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Tenderer is in breach of its obligation(s) under the Tender conditions, because the Tenderer;

- a) Has withdrawn its Tender during the period of Tender validity specified by the Tenderer in the Form of Tender; or
- b) Does not accept the correction of errors in accordance with the Instructions to Tenderers (hereinafter "the ITT") of the IFT; or
- c) Having been notified of the acceptance of its Tender by the Procuring Entity during the period of Tender validity;
  - (i). Fails or refuses to execute the Contract Form, if required, or
  - (ii). Fails or refuses to furnish the Performance Security, in accordance with the ITT.

This Guarantee shall expire;

- a) If the Tenderer is the successful Tenderer, upon our receipt of copies of the Contract signed by the Tenderer and of the Performance Security issued to you by the Tenderer;  
or
- b) If the Tenderer is not the successful Tenderer, upon the earlier of;
  - (i) Our receipt of a copy of your notification to the Tenderer that the Tenderer was unsuccessful, or
  - (ii) Thirty days after the expiration of the Tenderer's Tender.

Consequently, any demand for payment under this Guarantee must be received by us at the office on or before that date.

\_\_\_\_\_  
*[signature(s) of authorized representative(s)]*

*[Signature of the bank]* \_\_\_\_\_

**8.4 CONTRACT FORM**

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

**WHEREAS the Employer** invited tenders for ..... ] and has accepted a tender by the tenderer  
for the supply of ..... 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 Procuring entity’s Notification of Award and Tenderer’s Acceptance
  - (g) Applicable addenda and clarifications
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 goods 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 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 by \_\_\_\_\_ the \_\_\_\_\_ (for the Procuring entity

Signed by \_\_\_\_\_ the \_\_\_\_\_ (for the tenderer in the presence of \_\_\_\_\_  
\_\_\_\_\_

**PERFORMANCE SECURITY FORM**

**(To be on the Banks Letterhead)**

To .....

*[name of Procuring entity]*

**WHEREAS** ..... *[name of tenderer]* (hereinafter called “the tenderer”) has undertaken, in pursuance of Contract No. \_\_\_\_\_ *[reference number of the contract]* for 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:

**NOW 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]*



**F. MANUFACTURER AUTHORIZATION FORM**

To [name of the Procuring entity] .....

**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 authorized.

**(A) SITE VISIT CERTIFICATE**



This is to certify that **(IN BLOCK LETTERS)**

Name:.....

Cell Phone No:.....

Email:.....

Being the authorized representative of **(IN BLOCK LETTERS)**

M/S [*Firm/Company*].....

Official Tel No.....

Official Email:.....

Participated in the organized inspection visit of the site of the works for:

**TENDER FOR WARRANTY UPGRADE OF DELL HARDWARE IN OLKARIA 1AU AND OLKARIA IV POWER PLANTS**

Held on..... Day of..... 20.....

**OFFICIAL USE:-**

Signed.....  
(KenGen's Representative)

.....  
(Name of KenGen's Representative)

.....  
(Designation)

**NOTE:**

1. This form is to be completed at the time of the organized site visit.
2. Bidder to bring along with him duly filled site visit certificate during the site visit.