



# KenGen

KENYA ELECTRICITY GENERATING COMPANY PLC

KGN-LEG-05 ~2019

TENDER FOR LEASING OF KENGEN PROPERTIES IN LAMU AND GARISSA.

*(OPEN NATIONAL)*

Kenya Electricity Generating Company PLC  
Stima Plaza Phase III, Kolobot Road, Parklands  
P.O. BOX 47936-00100  
NAIROBI.

Website: [www.kengen.co.ke](http://www.kengen.co.ke)

July, 2019

Leasing of KenGen Properties in Lamu & Garissa

## 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> </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	
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	xii. County of operations	
3	Duly filled priced schedules	<i>Prices quoted to be inclusive of all applicable taxes</i>
4	Duly filled and signed Form of Tender in the format provided in the tender document	
5	Duly filled and signed declaration form in the form provided OR Tender Security Submitted	
6	Bid document to be <b>serialized/paginated</b> on all pages	
7	Bidders are advised to use KenGen's tender document or ensure to align their bid to it	
8	Confirmation of a bid submission of one copy and one Original.	

## SECTION I

### INVITATION TO TENDER

The company invites sealed tenders from eligible candidates for **Lease of Office Space and residential units in Lamu and Garissa Town** whose specifications are detailed in the tender document.

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

Supply Chain Director

Tel: (254) (020) 3666000

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

Where the tender document may be collected upon payment of a non-refundable fee of **KES, 1,000.00** paid in cash or through a bankers cheque at any KenGen finance office. 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 copies are free of charge.

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

**There will be a Mandatory Site Visit on 12<sup>th</sup> July 2019 as from 10.00 a.m. and on at Lamu and Garissa respectively.**

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-LEG-05-2019 - TENDER FOR LEASING OF KENGEN PROPERTIES IN LAMU & GARISSA”** and addressed to:

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

On or before: (**17<sup>th</sup> July 2019 at 10.00 A.m.**). Tenders will be opened on (**17<sup>th</sup> July 2019 at 10.30 a.m.**) in the presence of tenderers' representative who choose to attend at the KenGen Pension Plaza 2, Tender Opening Room, Ground Floor.

*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

**SECTION II**  
**INSTRUCTIONS TO TENDERER**

**2.1 Eligible Tenderers**

- 2.1.1 This invitation for tenders is open to all tenderers eligible as described in the Appendix to Instructions to Tenderers. Successful tenderers shall be contracted for the stipulated duration from the date of commencement (hereinafter referred to as the term) specified in the schedule of requirements.
- 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 statement that the tenderer (including all members of a joint venture), is not associated, or have been associated in the past, directly or indirectly, with the firm or any of its officials 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 purpose of this invitation to tender.
- 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.5,000/=
- 2.2.3 The procuring entity shall allow the tenderer to review the tender document free of charge before purchase.

**2.3 Contents of Tender Documents**

- 2.3.1 The tender documents comprise the documents listed below and addenda issued in accordance with clause 2.7 of these instructions to tenderers.
- (i) Instructions to tenderers
  - (ii) General Conditions of Contract
  - (iii) Special Conditions of Contract
  - (iv) Schedule of particulars of tender
  - (v) Form of Tender
  - (vi) Price Schedules
  - (vii) Contract Form
  - (viii) Confidential Business Questionnaire Form
  - (ix) Tender security Form
  - (x) Performance security Form
  - (xi) Authorization Form
  - (xii) Declaration form
  - (xiii) Request for Review Form

2.3.2 The Tenderer is expected to examine all instructions, forms, terms and particulars 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 tender Documents**

2.4.1 A prospective tenderer making inquiry on the tender documents may notify the Procuring entity by post, fax or by email at the procuring entity's address indicated in the Invitation to Tender. 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 candidates who have received the tender documents.

2.4.2 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.

#### **2.5 Amendment of tender Documents**

2.5.1 At any time prior to the deadline for submission of tenders, the KenGen, 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 amendment.

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 KenGen, at its discretion, may extend the deadline for the submission of tenders.

#### **2.6 Language of Tenders**

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**

2.7.1 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 2.12 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

## **2.8. Form of Tender**

2.8.1 The tenderer shall complete the Form of Tender and the Price Schedules furnished in the tender documents, indicating the particulars of the tender.

## **2.9. Tender Prices**

2.9.1 The tenderer shall indicate on the Price Schedules the unit prices and total tender price of the lease under the contract.

2.9.2 Prices indicated on the Price Schedule shall be the amounts to be paid by the tenderer to the KenGen for the particulars of the tender under the contract.

2.9.3 Prices indicated on the Price Schedule shall be inclusive of VAT and other taxes payable:

## **2.10. Tender Currencies**

2.10.1 Prices shall be quoted in Kenya Shillings unless otherwise stated in the appendix.

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

2.11.1 Pursuant to paragraph 2.1.1 and 2.1.2 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.

2.11.2 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.

## **2.12. Tender Security**

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

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

2.12.3 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 2.14.7

2.12.4 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form of an on-demand bank guarantee issued by a reputable bank located in Kenya or where the bank is located abroad, it must have a local correspondent bank.

2.12.5 The Tender Security may also be in the form of an on-demand guarantee issued by a reputable insurance company approved by the Authority and in the form provided in the tender documents or another form acceptable to the Procuring entity.

2.12.6 The tender security must be valid for at least thirty (30) days beyond the validity of the tender.

2.12.7 Any tender not secured in accordance with paragraph 2.14.1 and 2.14.3 will be rejected by the Procuring entity as non-responsive, pursuant to paragraph 2.22

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

2.12.9 The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 2.27 and furnishing the performance security, pursuant to paragraph 2.28

2.12.10 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 2.27

or

(ii) to furnish performance security in accordance with paragraph 2.28

### **2.13. Validity of Tenders**

2.13.1 Tenders shall remain valid for **120 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.

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 granting the request will not be required nor permitted to modify its tender.

### **2.14. Format and Signing of Tenders**

2.14.1 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.

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 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.

2.15.2 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 17<sup>th</sup> July, 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, 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 **17<sup>th</sup> July, 2019 at 10.00 a.m.**

2.16.2 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.

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

## **2.17. Modification and Withdrawal of Tenders**

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

during this interval may result in the Tenderer's forfeiture of its tender security, pursuant to paragraph 2.12.7.

## **2.18. Opening of Tenders**

- 2.18.1 The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, on **17<sup>th</sup> July, 2019 at 10.30 a.m.** and in the location specified in the Invitation of tender. The tenderers' representatives who are present shall sign a register evidencing their attendance.
- 2.18.2 The tender's 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.
- 2.18.3 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.

## **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 of the tender 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 sureties 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 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 non-conformity or irregularity in a tender which does not constitute a material deviation provided such waiver does not prejudice or affect the relative ranking of any tenderer.
- 2.20.4 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.

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 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 2.22

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

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

## **2.19 Preference**

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

## **2.20 Contacting the Procuring entity**

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

2.20.2 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.

## **2.21 Award of Contract**

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

2.21.1 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.

2.21.2 The determination will take into account the tenderer financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer,

pursuant to paragraph 2.12.3 as well as such other information as the Procuring entity deems necessary and appropriate.

2.21.3 A positive 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

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

(c) Procuring entity's Right to Vary quantities

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

(d) Procuring entity's Right to accept or Reject any or All Tenders

2.21.6 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

## **2.22 Notification of Award**

2.22.1 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.

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

2.22.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 2.28, the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.14

## **2.23 Signing of Contract**

2.23.1 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.

2.23.2 The parties to the contract shall have it signed within fifteen (15) days from the date of notification of contract award unless there is an administrative review request.

2.23.3 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.

## **2.24 Performance Security**

2.24.1 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.

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

## **2.25 Corrupt or Fraudulent Practices**

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

- (i) “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of 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;

2.25.2 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.

2.25.3 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 letting/ leasing, tenancy, of KenGen premises at Lamu and Garissa shall complement, supplement, or amend, the provisions on 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.

INSTRU-CTIONS TENDERERS REFERENCE	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERERS
2.1.1	The tender is open to all eligible tenderers ready to lease the office or residential premises and yards.
2.1.2/3	Declaration of No Conflict of Interest is incorporated in the Confidential Business Questionnaire
2.2.1	The tenderer shall bear the cost associated with the preparation and submission of the tender, and KenGen 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 fees charged for a complete set of tender document is Kenya shillings On thousand (KShs 1000) only. Downloading from the KenGen website is free of charge.
2.2.9	Prices shall be quoted in Kenya shillings unless otherwise stated in the appendix. Note: the prices quoted in the form of tender shall be final and not subject to any correction or amendment.
2.3.2.	There will be compulsory site visit to be communicated through an addendum.
2.13.1	Bidder must furnish a tender security in the amount of Kenya shillings Fifty Thousand (KShs 50,000/-) in the form approved insurance companies or bank guarantee. Tender security must be valid for at least 30days beyond the tender validity
2.13.1	Tender validity period is 120 days from the date of tender opening.
2.5.3	In exceptional circumstances, KenGen may extend the period of the tender validity. The communication and the responses thereto shall be made in writing. A tenderer will not be required nor permitted to modify its tender.
2.15.2	Time, date and place for bid opening are: <b>17<sup>th</sup> July, 2019 at 10.30 a.m.</b> Place: Stima plaza Street: Kolobot Road City: Nairobi Country: Kenya
2.20/2.22	<p><b>Evaluation criteria:</b></p> <p><b>Preliminary evaluation:</b></p> <ul style="list-style-type: none"> <li>➤ Certificate of Registration or Incorporation in Kenya.</li> <li>➤ Valid tax compliance certificate.</li> <li>➤ Duly filled, signed and stamped confidential Business questionnaire provided.</li> <li>➤ Tax compliance certificate.</li> </ul>

2.25.1	<ul style="list-style-type: none"> <li>➤ Completely filled, signed and stamped price schedules</li> <li>➤ Site visit certificate for each plot/property bided for..</li> <li>➤ Submission of the required number of copies (one original one copy of the bid document)</li> <li>➤ PIN certificates</li> <li>➤ Copies of Directors' IDs/Passports and PINs</li> <li>➤ Tender security in the amount of Kenya shillings Fifty Thousand (KShs 50,000/-)</li> </ul> <p><b>Technical evaluation:</b></p> <p>Tenderer to declare/ state their/ his/ her Intended use of the property which must be legal and authorized under Kenyan law.</p> <p>Leasehold history &amp; status of the tenderer Duly filled, signed and stamped confidential Business questionnaire provided. Completely filled, signed and stamped price schedules.</p> <p><b>Price evaluation:</b></p> <p>The highest evaluated bidder per plot shall be recommended for award of the lease.</p>
	<p><i>KenGen may at its own discretion conduct due diligence on the eligible bidders to establish their ability to perform the contract.</i></p>

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

### **3.1. Definitions**

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

- (a) “The Contract” means the agreement entered into between the 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 procuring entity under the Contract by the tenderer for the full and proper performance of the contractual obligations
- (c) “The Procuring entity” means the organization offering the particulars of the tender under this Contract
- (d) “The Contractor” means the organization or firm procuring the particulars of tender under this Contract.
- (e) “GCC” means the General Conditions of Contract
- (f) “SCC” means the Special Conditions of Contract
- (g) “Day” means calendar day

### **3.2. Application**

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

### **3.3. Standards**

3.3.1 The services provided under this Contract shall conform to the standards mentioned in the schedule of particulars of the tender.

### **3.4. Use of Contract Documents and Information**

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

3.4.2 The Contractor shall not, without the Procuring entity’s prior written consent, make use of any document or information enumerated in paragraph 2.4.1 above.

3.4.3 Any document, other than the Contract itself, enumerated in paragraph 2.4.1 shall remain the property of KenGen and shall be returned (all copies) to the Procuring entity on completion of the contractor’s performance under the Contract if so required by the Procuring entity.

### **3.5. Patent Rights**

3.5.1 The Contractor 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**

- 3.6.1 Within twenty eight (28) 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 SCC
- 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 KenGen and shall be in the form of:
- (a) Cash.
  - (b) A bank guarantee.
  - (c) Such insurance company guarantee approved by the Authority.
  - (d) A letter of credit.
- 3.6.4 The performance security will be discharged by the Procuring entity and returned to the Contractor not later than thirty (30) days following the date of completion of the Contractor's performance of obligations under the Contract, including any warranty obligations, under the Contract.

### **3.7. Delivery of services and Documents**

- 3.7.1 Delivery of the services shall be made by the Contractor in accordance with the terms specified KenGen in the schedule of requirements and the special conditions of contract.

### **3.8. Payment**

- 3.81. The method and conditions of payment to be made to the procuring entity under this Contract shall be specified in the SCC
- 3.82. Payment shall be made promptly by the contractor, but in no case later than sixty (60) days after submission of an invoice or claim by the procuring entity.

### **3.9. Prices**

- 3.9.1 Prices charged by KenGen for particulars provided under the Contract shall not, with the exception of any price adjustments authorized in SCC vary from the prices quoted by the Contractor 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 amendments signed by the parties.
- 3.9.2 Contract price variations shall not be allowed for contract not exceeds one year (12 months)
- 3.9.3 Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price.
- 3.9.4 Price variation requests shall be processed by KenGen within 30 days of receiving the request.

### **3.10. Assignment**

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

### **3.11. Termination for Default**

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

- (a) If the Contractor 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 Contractor fails to perform any other obligation(s) under the Contract
- (c) If the Contractor in the judgment of the Procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the contract

3.11.2 In the even 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 un-delivered, and the Contractor shall be liable to the Procuring entity for any excess costs for such similar services. However the contractor shall continue performance of the contract to the extent not terminated.

### **3.12. Termination for insolvency**

3.12.1 The Procuring entity may at 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 prejudice 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 under the contract is terminated and the date on which such termination becomes effective.

### **3.14 Resolution of Disputes**

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

3.14.2 If after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute either party may require

that the dispute be referred for resolution to the formal mechanisms specified in the SCC.

### **3.15. Governing Language**

- 3.15.1. 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. Applicable Law**

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

### **3.17 Force Majeure**

- 3.17.1 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.

### **3.18 Notices**

- 3.1.1 Any notices given by one party to the other pursuant to this contract shall be sent to the other party by post, Fax or Email and confirmed in writing to the other party's address specified in the SCC.
- 3.1.2 A notice shall be effective when delivered or on the notices effective date, whichever is later.

## SECTION IV - SPECIAL CONDITIONS OF CONTRACT

- 4.1 Special condition of contract shall supplement the General Conditions of Contract. Whenever there is a conflict between the GCC and the SCC, the provisions of the SCC herein shall prevail over those in the GCC.
- 4.2 Special Conditions of Contract as relates to the GCC.

REFERENCE OF GCC	SPECIAL CONDITIONS OF CONTRACT
3.6	The performance bond shall not be required for this tender. Alternatively, the tenant shall be required to pay a three months' rent deposit lasting for the lease period
3.7	Contract period shall be 6 years i.e. term of the lease for the properties.
3.8	KenGen payment terms are that rent shall be paid quarterly in advance clear of all deductions and subject to an annual escalation of ten percent per annum
3.9	Prices to be paid by the tenderer for the lease performed under the contract shall not vary from the prices by the tenderer in its tender at least before the first 12 months of the contract. All prices quoted by the tenders must be inclusive of all taxes.
3.14	Dispute, controversy or claim between the parties arising out of this contract or breach, termination or invalidity thereof shall be referred to arbitration in accordance with the provisions of the arbitration Act.
	Kenya Electricity Generating Company PLC Stima Plaza Phase III, Kolobot Road, Parklands P.O. BOX 47936-00100 NAIROBI
	Standard terms & conditions of lease will be stipulated in the Lease Agreement and will include but not limited following Lessee : <ul style="list-style-type: none"> <li>(a) To pay rent quarterly in advance at the times and in the manner that will be specified in the lease agreement clear of all deductions whatsoever;</li> <li>(b) Upon execution of the lease deposit with the lessor a non- interest bearing deposit equivalent to three months rent as security for the full and faithful performance of every provision of the lease to be performed by the lessee.</li> <li>(c) To pay for all water and electricity consumed on the said Land/buildings as shown on the said meter as and when the bills thereof are rendered to the Lessee;</li> <li>(d) To keep the Lessor indemnified against any actions claims or demands arising out of the Lessee's failure to pay any such bills as aforesaid;</li> <li>(e) To keep the said land / buildings in good and substantial Lessee able repair and condition;</li> </ul>

	<p>(f) To permit any caretaker employed by the Lessor to enter the said Land/buildings in the ordinary course of his duty in the company of a member of the Lessee's staff (excepting only in the case of emergency);</p> <p>(g) Not to transfer sublet or part with the possession of the said land/buildings or any part thereof without the written consent of the Lessor</p> <p>(h) Not without the consent in writing of the Lessor first had and obtained to use the said land or any part thereof otherwise than as stated in the bid ;</p> <p>(i) Not to do or permit nor suffer to be done upon or within the said land/building anything which in the opinion of the Lessor (which opinion shall be final and conclusive) may be or become a nuisance or annoyance to or in any way interfere with the quiet user of the other portions of the land or any adjoining or neighboring land;</p> <p>(j) To perform and observe all covenants agreements conditions restrictions stipulations and provisions affecting the said Land/buildings and under which the said piece of land upon which the Building is erected is held <b>AND</b> not at any time to do or permit or suffer anything whereby the title to the said piece of land may be voided or forfeited <b>AND</b> at all times to keep indemnified the Lessor and its estate and effect from and against all actions proceedings costs damages claims demands and liability for or in respect of any breach which may be committed during the said term of any of the said covenants agreements conditions restrictions stipulations and provisions;</p> <p>5. The Lessee:-</p> <p>(a) Will not hold nor suffer to be held any auction upon the said premises;</p> <p>(b) Will not waste or permit to be wasted any water in the said premises;</p> <p>(c) Will give immediate notice to the Lessor in case of fire or accidents in the said land/buildings;</p> <p>6. The Lessor will</p> <p>(a) Pay all rates taxes charges outgoings impositions and assessments which may be imposed or assessed on the Land or any part thereof by the Government of Kenya or County Government.</p> <p>(b) To permit the Lessee paying the rent and performing and observing the covenants and agreements in the lease or implied and on its part to be performed and observed peaceably and quietly to possess and enjoy the Land/buildings during the Term without any interruption from or by the Lessor or any person or persons lawfully claiming from or under him.</p> <p>7. <b>PROVIDED ALWAYS that :</b></p> <p>(a) <b>Loss and Damage;</b> Notwithstanding any contrary provisions of the Lease, Lessor shall not be responsible for any loss of or damage to property of Lessee or of others located on the Land, except where caused by the willful act or omission or negligence of Lessor , or Lessor's agents, employees or contractors, provided, however, that if Lessee shall notify Lessor in writing of repairs which are the responsibility of Lessor, and Lessor shall fail to commence and diligently prosecute to completion said repairs promptly after such</p>
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	<p>notice, and if after the giving of such notice and the occurrence of such failure, loss of or damage to Lessee's property shall result from the condition as to which Lessor has been notified, Lessor shall indemnify and hold harmless Lessee from any loss, cost or expense arising there from.</p> <p>(b) <b>Force Majeure;</b> In the event that Lessor or Lessee shall be delayed or hindered in or prevented from the performance of any act other than Lessee's obligation to make payments of rent, additional rent, and other charges required hereunder, by reason of strikes, lockouts, unavailability of materials, failure of power, restrictive governmental laws or regulations, riots, insurrections, the act, failure to act, or default of the other party, war or other reason beyond its control, then performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay. Notwithstanding the foregoing, lack of funds shall not be deemed to be a cause beyond control of either party.</p> <p>(c) <b>Removal of additional erections, fixtures;</b> the Lessee may on determination or sooner determination of the Term sever, remove and repossess any erections fixtures or additions erected or made by it at its own cost upon or to the premises doing as little injury as may be to the premises by such removal and making good such damage as may unavoidably be done.</p> <p>(d) <b>Costs;</b> the lessee will be responsible for the legal charges incurred in connection with the preparation and completion of the Lease.</p> <p>(e) <b>Disputes;</b> That all questions in dispute between the parties and all claims for compensation (if any) or otherwise not eventually settled and agreed between the parties will be referred to arbitration in accordance with the provisions of the Arbitration Act or other the Act or Acts for the time being in force in Kenya in relation to arbitration.</p> <p>(f) <b>Option to renew;</b> If at the expiry of the Term the Lessee wishes to obtain a further lease of the Land and signifies such desire by notice in writing delivered to the Lessor Three months at least before the expiry of the Term and if there is at the date of the said notice no outstanding breach of the covenants and agreements contained and on the part of the Lessee to be performed and observed then the Lessor may renew the lease on such terms and conditions as would be mutually agreed.</p> <p>(g) <b>Early termination;</b> Either Party may terminate lease Agreement with or without cause by giving the other Party three (3) months prior written notice of its intention to do so.</p> <p>(h) <b>Notices;</b> All notices required under lease shall be in writing and shall in the case of notices to the Lessor be sufficiently served if addressed to the Lessor's Property Manager at its registered office in Nairobi and delivered there and in the case of notice to the Lessee be sufficiently served if addressed to it and delivered or left at its last known address in Kenya or posted to such address by registered post</p>
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	<p>and so that any notice so posted shall be deemed to have been served within Three days following the date of posting.</p> <p>(i) <b>Invalidity of Particular provision;</b> If any term or provision of the Lease or the application to any person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of the Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of the Lease shall be valid and be enforced to the fullest extent permitted by law.</p> <p>(j) <b>Relationship of the Parties;</b> Nothing contained in the lease shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of principal and agent or of partnership or of a joint venture between the parties hereto, it being understood and agreed that neither any provision contained in the , nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Lessor and Lessee.</p>
3.18.1	<i>Arbitration where necessary shall be by the Chartered Institute of Arbitrators Kenya Chapter.</i>

**SECTION V - SCHEDULE OF PARTICULARS OF TENDER**

**Notes on preparation of the Schedule of the Particulars of Tender**

- 5.1 The schedule of particulars of tender shall be included in the tender documents by the procuring entity and shall cover, at the minimum, a description of the assets, services or facilities being offered and full particulars of the same.
- 5.2 The objectives of the Schedule of Particulars of Tender is to provide sufficient information to enable tenderers to prepare their tenders comprehensively, efficiently and accurately. In particular the price schedule for which a form is provided in Section VI must be carefully completed.
- 5.3 In addition, the Schedule of Particulars of Tender together with the price schedules should serve as a basis in the event of particulars of tender variation at the time of award of contract pursuant to instruction to tenderers paragraph 2.26

**SECTION V - DETAILS OF ASSETS, SERVICES OR FACILITIES BEING OFFERED**

**1. LAMU TOWN**

**A) LR.NO. LAMU/ BLOCK1/1200 LAMU**

The properties are located within Lamu Island and are developed as follows:-

LAMU/ BLOCK1/1200 LAMU-

	Unit	Description	Comments
	Office Block	4 no. offices	Tenderers to visit and confirm property details for themselves
		Meeting room	
		Ablution Block	
	2No- Semi detached 2 bedroomed bungalows	Each bungalow has 2 bedrooms	
	A residential block	With 4 No. 2 bedroomed units	

**B) LR.NO. LAMU/ BLOCK1/811 LAMU**

Located opposite the KenGen’s Lamu Office block within Lamu Island. The plot is developed with:-

	Unit	Description	Comments
	Former Power House	GCI clad power house Unit	Tenderers to visit and confirm property details for themselves



**(2) L.R. NO. GARISSA TOWN BLOCK 1/409 - OLD RESIDENTIAL UNITS**

**Location:** This is situated due south west of Garissa Girls Secondary School and near Ainul Qamar Hotel and is developed with the following:-

- i. Two (2) residential blocks of total eight (8) single rooms with an external ablution
- ii. A block with two (2) single rooms each with a kitchenette and a common shower room with a water closet.
- iii. A one (1) bedroom unit with:-kitchenette, shower room with a water closet.

	<b>Premises</b>	<b>Approximate plinth area in Square feet</b>	<b>Remarks</b>
	Residential Block 1	1640	Tenderers to visit and confirm property details for themselves
	Residential Block 2		
	Main House ( 1- bedroomed)		
	Ablution Block		

**NB:**

- a) The tenant/s will pay for electricity and water consumed in the premises    b) The premises is being leased as is i.e. no repairs will be undertaken by the lessor

**PRICE SCHEDULE FORM**

**1) LAMU TOWN**

**a) LAMU/ BLOCK1/1200 LAMU**

Item no.	Premises- LAMU/ BLOCK1/ LAMU	State the use to which the property will be put	Quoted total rent per month (Kshs) Exclusive of taxes	Quoted total rent per month (Kshs) inclusive of taxes eg VAT
	Office Block			
	2No - Semi detached 2 bedroomed bungalows			
	A residential block With 4 No. 2 bedroomed units			
<b>TOTALS (KSHS)</b>				

**B) LAMU/ BLOCK1 / 811**

	Premises LAMU/ BLOCK1 / 811	State the use to which the property will be put	Quoted total rent per month (Kshs) Exclusive of taxes	Quoted total rent per month (Kshs) inclusive of taxes eg VAT
	Former Power House			
<b>TOTALS ( KSHS )</b>				

## 2) GARISSA TOWN

Item no.	Premises LR. NO. Garissa Town Block 1/409 (old residential units)	State the use to which the property will be put	Quoted total rent per month (Kshs.) Exclusive of taxes	Quoted total rent per month (Kshs) inclusive of taxes e.g. VAT
	Residential Block 1			
	Residential Block 2			
	Main House (1- bedroomed)			
<b>TOTALS ( KSHS)</b>				

**NB:** The payable Rent quoted will be payable quarterly in advance. VAT and any other rental taxes will be borne by the tenant.

\_\_\_\_\_  
Signature of tenderer

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 deliver, install and commission ( ..... (insert equipment description) in conformity with the said tender documents for the sum of ..... (total tender amount in words and figures) or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

2. We undertake, if our Tender is accepted, to deliver install and commission the equipment in accordance with the delivery schedule specified in the Schedule of Requirements.

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

4. We agree to abide by this Tender for a period of **120 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.**

**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**]  
[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 \_\_\_\_\_  
\_\_\_\_\_

*(Amend accordingly if provided by Insurance Company)*

**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 (**US**

**D/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 Name)	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 as a youth, 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  
.....

**TENDER SECURITY FORM**  
(To be on the Banks Letterhead)

**WHEREAS** ..... [*name of the tenderer*]  
(hereinafter called “the tenderer”) has submitted its tender dated  
..... [*date of submission of tender*] for .....  
..... [*name and/or description of the equipment*]  
(hereinafter called “the Tender”)

**KNOW ALL PEOPLE** by these presents that **WE** ..... of  
..... having our registered office at  
..... (hereinafter called “the Bank”), are bound unto  
the **Kenya Electricity Generating Company Limited** (hereinafter called  
“the Procuring entity”) in the sum of ..... for which  
payment well and truly to be made to you, the Bank binds itself,  
its successors, and assigns by these presents.

Sealed with the Common Seal of the said Bank this \_\_\_\_ day of \_\_\_\_  
20

**THE CONDITIONS** of this obligation are:-

1. If the tenderer withdraws its Tender during the period of tender validity specified by the tenderer on the Tender Form; or
2. If the tenderer, having been notified of the acceptance of its Tender by the Procuring entity during the period of tender validity:
  - (a) fails or refuses to execute the Contract Form, if required; or
  - (b) fails or refuses to furnish the performance security in accordance with the Instructions to tenderers;

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

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

(Amend accordingly if provided by Insurance Company)

**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]