



**TENDER DOCUMENT**

**FOR**

**Purchase of Two (2) Go-Downs in Nairobi**

**A.C.A. / OT/005/2020-2021**

**National Water Plaza, 3<sup>rd</sup> Floor along Dunga Road, Industrial Area, Nairobi**

**ADVERTISEMENT DATE: 22<sup>nd</sup> December, 2020**

**CLOSING DATE & TIME: 19<sup>th</sup> January, 2021 at 10.00 a.m.**

## PART A

### SECTION I: INVITATION TO TENDER

#### RE: TENDER FOR PURCHASE OF TWO (2) GO-DOWNS IN NAIROBI

DATE: 22<sup>nd</sup> December, 2020

The Anti-Counterfeit Authority (ACA) invites sealed bids from eligible bidders for Purchase of two (2) Go-Downs within Nairobi and its environs, for use in storage of seized counterfeit goods.

- Interested eligible candidates may obtain a complete set of tender documents by downloading from ACA Website [www.aca.go.ke](http://www.aca.go.ke) or [www.supplier.treasury.go.ke](http://www.supplier.treasury.go.ke) free of charge. Bidders who download the documents MUST register their details with the Authority using the format provided in the tender document (registration form) and send to email address: [eprocurement@aca.go.ke](mailto:eprocurement@aca.go.ke).
- All clarifications and/or amendments will be published in ACA website [www.aca.go.ke](http://www.aca.go.ke) and tenderers are required to check for any addendums or amendments in the course of the bidding period prior to the closing date.
- Prices quoted should be **inclusive of all taxes** and must be in Kenya shillings and shall remain valid for **120 days** from the closing date.
- Bidders should ensure serialization of pages for each bid submitted including attachments.
- **Bidders should submit separate tender documents for each go-down.**
- The pre-bidding session will be held on **14<sup>th</sup> January, 2021** at the ACA Main Boardroom at **10:00am**
- Completed tender documents are to be delivered and deposited in the tender box located at the National Water Plaza, 3<sup>rd</sup> floor along Dunga Road industrial Area, Nairobi indicating the subject line: - **ACA/OT/005/2020-2021 PURCHASE OF TWO (2) GO-DOWNS** so as to reach **THE Ag. EXECUTIVE DIRECTOR, ANTI-COUNTERFEIT AUTHORITY, P.O. BOX 47771-00100 NAIROBI**, on or before **19<sup>th</sup> January, 2021 at 10.00 a.m.** Tenders will be opened immediately thereafter in the presence of bidders and/or their representatives who choose to attend.

**Late bids shall be rejected.**

All Covid-19 protocols and guidelines by the Ministry of Health will be observed during pre-bid session and opening of tenders.

**Ag. EXECUTIVE DIRECTOR**

## **SECTION II: INSTRUCTIONS TO TENDERERS**

### **2.1 Eligible Tenderers**

2.1.1. This Invitation to tender is nationally open to all tenderers. Government Institutions, Cooperative Societies and Pension Funds with appropriate premises for sale are encouraged to apply.

2.1.2 Public Procurement and Asset Disposal ACT No. 33 of 2015 Sec 55. (1) States that:-A person is eligible to bid for a contract in procurement or an asset being disposed, only if the person satisfies the following criteria Eligibility to bid.(a) the person has the legal capacity to enter into a contract for procurement or asset disposal; (b) the person is not insolvent, in receivership, bankrupt or in the process of being wound up;(c) the person, if a member of a regulated profession, has satisfied all the professional requirements; (d) the procuring entity is not precluded from entering into the contract with the person under section 38 of this Act;(e) the person and his or her sub-contractor, if any, is not debarred from participating in procurement proceedings under Part XI of this Act; (f) the person has fulfilled tax obligations;(g) the person has not been convicted of corrupt or fraudulent practices; and (h) is not guilty of any serious violation of fair employment laws and practices.

Sec (2) States that:- A person or consortium shall be considered ineligible to bid, where in case of a corporation, private company, partnership or other body, the person or consortium, their spouse, child or sub-contractor has substantial or controlling interest and is found to be in contravention of the provisions of subsection (1) (e), (f), (g) and (h). Sec (3) states that:-Despite the provisions of subsection (2), a person or other body having a substantial or controlling interest shall be eligible to bid where (a) such person has declared any conflict of interest; and (b) performance and price competition for that good, work or service is not available or can only be sourced from that person or consortium. Sec (4) states that:- A State organ or public entity shall require a person to provide evidence or information to establish that the criteria under subsection (1) are satisfied. Sec (5) states that:- A State organ or public entity shall consider as ineligible a person for submitting false, inaccurate or incomplete information about his or her qualifications.

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 ACA, 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 tender documents will be sold in accordance with the invitation to tender.

2.2.3 ACA shall allow the tenderer to review the tender document.

## **2.3 Contents of Tender Documents**

2.3.1. The tender document comprises of the documents listed below and addenda issued in accordance with clause 2.5 of these instructions to tenders:

- I. Instructions to tenderers
- II. Price schedules
- III. Form of tender
- IV. Confidential business questionnaire form
- V. Contract form

2.3.2 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 post, fax or 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 not later than seven (7) days prior to the deadline for the submission of tenders, prescribed by ACA. Written copies of the ACA's 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. ACA 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, ACA, 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, ACA, 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.

## **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 provided Form of Tender and the Price Schedule accordingly.

## **2.9 Tender Prices**

- 2.9.1 The tenderer shall indicate on the price schedule the unit cost per square metre and total for the Go-down.
- 2.9.2 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. 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**

Prices shall be quoted in Kenya Shillings only.

## **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.

## **2.12 Tender Security**

2.12.1 All tenders are required to ensure the tender securing declaration form is duly filled, signed and stamped.

## **2.13 Validity of Tenders**

2.13.1 Tenders shall remain valid for **120 days** or as specified in the invitation to tender after date of tender opening prescribed by the ACA, pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the ACA as non-responsive.

2.13.2 In exceptional circumstances, before the expiry of the period during which tenders shall remain valid the accounting officer of the ACA may extend that period. The accounting officer of ACA shall give in writing notice of an extension to each person who submitted a tender.

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

2.14.1 The tenderer shall prepare two copies of the tender, clearly/marketing each **“ORIGINAL TENDER” and “COPY OF TENDER,”** as appropriate. In the event of any discrepancy between the two, the original copy 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 tender and the copy in an outer envelope, duly marking with the tender name and tender number and the words: **“DO NOT OPEN BEFORE” 19<sup>th</sup> January, 2021**” and shall be addressed to the address given in the invitation to tender.
- 2.15.2 The envelope shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared **“late”**.
- 2.15.3 If the outer envelope is not sealed and marked as required by paragraph 2.15.2, ACA 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 ACA at the address specified in the invitation to tender not later than **19<sup>th</sup> January, 2021**.
- 2.16.2 ACA 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 ACA 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 ACA 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 ACA may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

## **2.18 Opening of Tenders**

- 2.18.1 ACA will open all tenders in the presence of tenderers' representatives who choose to attend, on **19<sup>th</sup> January, 2021** 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 ACA, at its discretion, may consider appropriate, will be announced at the opening.

## **2.19 Clarification of Tenders**

- 2.19.1 To assist in the examination, evaluation and comparison of tenders the ACA 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 ACA in the procuring entity's tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderer's tender.

## **2.20 Preliminary Examination and Responsiveness**

- 2.20.1 ACA 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 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.
- 2.20.3 ACA 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, ACA 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. ACA 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 ACA and may not subsequently be made responsive by the tenderer by correction of the nonconformity.

## **2.21 Conversion to a Single Currency**

Prices shall be quoted in Kenya Shillings only.



## **2.22 Evaluation and Comparison of Tenders**

Tenderers who fail to meet mandatory requirements will have their bids considered non-responsive. Evaluation of mandatory requirements will form the first stage of tender evaluation and tenderers who fail at this stage will have their bids rejected.

2.22.1 ACA will evaluate and compare the tenders which have been determined to be substantially responsive.

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

## **2.23. Contacting ACA**

2.23.1 No tenderer shall contact ACA on any matter relating to its tender, from the time of the tender opening to the time of award.

2.23.2 Any effort by a tenderer to influence ACA 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 An evaluation committee may, after tender evaluation, but prior to the award of the tender conduct due diligence and present the report in writing to confirm and verify the qualifications of the tenderer who submitted the lowest evaluated responsive tender.

### **b) Award Criteria**

2.24.2 Subject to paragraph 2.12 ACA 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.

2.24.3 ACA 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 ACA action. If ACA determines that none of the tenderers is responsive; ACA shall notify each tenderer who submitted a tender.

2.24.4 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, ACA 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 ACA pursuant to clause 2.28. 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, ACA 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 Within fourteen (14) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to ACA.
- 2.26.2 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

## **2.27 Performance Security**

- 2.27 Bidders will not be required to provide a performance security but instead the successful bidder will be required to provide a written declaration that he/she will not withdraw nor introduce new conditions after contract award.

## **2.28 Corrupt or Fraudulent Practices**

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

## EVALUATION CRITERIA

The evaluation and comparison of tenders shall be as follows: -

- a) Confirmation of compliance with mandatory requirements. Bidders who fail to comply with any of the mandatory requirements shall be treated as non-responsive and rejected at this stage.
- b) Technical evaluation: Bidders who are responsive under the mandatory evaluation criteria shall be evaluated as per the Technical Evaluation Criteria set out under Instructions to tenderers. **The technical evaluation shall be undertaken in three stages.** Bidders are required to score above 30 out of 60 Marks in stage one to qualify for further evaluation under stage two (site visit). Bidders are required to get a combined score of 70 marks and above in stage one and two to proceed to stage three for Structural, Architectural and other Specialist works Integrity check. Only bidders who qualify in stage three will proceed to Financial Evaluation.
- c) Financial Evaluation: The bidders who are responsive under the technical criteria shall be evaluated and ranked from the lowest to the highest. The financial evaluation shall also take into consideration any conditions attached to the bids. The successful bid shall be the lowest evaluated price (cost per square metre).

## I. MANDATORY REQUIREMENTS

- a. Duly completed standard forms as follows:
  - ✓ Price Schedule Form
  - ✓ Form of Tender
  - ✓ Confidential Business Questionnaire
  - ✓ Tender Securing Declaration
  - ✓ Registration Form
- b. National Identification Card or Certificate of Incorporation or certificate of Registration or any other proof of identity/identification for the registered owner(s) and the Agent (where applicable)
- c. Copy of KRA PIN Certificate for the owner and the Agent (where applicable)
- d. Copy of the title document
- e. Serialization/Pagination of the Document
- f. Letter of Authorization from the owner (where an agent is bidding)
- g. Provide approved design drawings for Architectural and Structural
- h. A search showing the current owner of the property/space

**ONLY Bids that meet all the mandatory requirements will proceed to the technical evaluation stage.**

## II. TECHNICAL EVALUATION

<b>Stage One</b>			
			<b>Total Score</b>
Go-down to have a total usable floor space measuring between 697 and 1,115 square metres	<b>Above 883 sq. mts.</b>	<b>25 marks</b>	<b>25 marks</b>
	<b>697 sq. mts. - 883 sq. mts.</b>	<b>20 marks</b>	
		<b>0 marks</b>	
	<b>Below 697 sq. mts.</b>		
Go-down be located within Nairobi and its environs (The reference point will be the ACA HQ)	<b>Below 15kms</b>	<b>25marks</b>	<b>25 marks</b>
	<b>15kms-35kms</b>	<b>20 marks</b>	
	<b>Above 35kms</b>	<b>5 marks</b>	
Provide as built drawings	<b>10marks</b>	<b>10marks</b>	<b>10marks</b>
<b>Sub-Total</b>			<b>60 marks</b>
<b>Stage Two</b>			
Site visit	Have Power, Water, and sewerage connection	<b>10 marks</b>	<b>40 marks</b>
	Be in a secure environment with a perimeter wall and a gate	<b>10 marks</b>	
	Have adequate Parking and offloading space	<b>10 marks</b>	
	Have good road Accessibility	<b>5 marks</b>	
	Have provisions for office space, washrooms and a kitchen	<b>5 marks</b>	

**N.B: ONLY Bids that scores 70% pass Mark will proceed to the final evaluation stage (Financials).**

### **III. FINANCIAL EVALUATION**

The Go-down offer price should be indicated **IN THE FORM OF TENDER**. The successful bid shall be the lowest evaluated price (**cost per square metre**).

#### **Due diligence**

The Authority will conduct due diligence. This will include but not exclusive to the below:

- An official Search from the Registrar of Lands will be undertaken by the Authority.
- Approvals from relevant authorities will be required e.g. NEMA, County Government etc.
- Report from the Government Valuer.
- Report from a Government structural Engineer on structural integrity of the property.

**Adverse report or findings will lead to disqualification.**

**PART B**

**GENERAL AND SPECIFIC CONDITIONS**

**SECTION III - GENERAL CONDITIONS OF CONTRACT**

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### **3.1. Definitions**

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

- (a) “The Contract” means the agreement entered into between the Procuring entity and the tenderer, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- (b) “The Contract Price” means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations
- (c) “The Services” means services to be provided by the tenderer including any documents, which the tenderer is required to provide to the Procuring entity under the Contract.
- (d) “The Procuring entity” means the organization procuring the services under this Contract
- (e) “The Contractor” means the organization or firm providing the services under this Contract.
- (f) “GCC” means the General Conditions of Contract contained in this section.
- (g) “SCC” means the Special Conditions of Contract
- (h) “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 requirements.

### **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 thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring entity in connection therewith, to any person other than a person employed by the 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 the Procuring entity and shall be returned (all copies) to the Procuring entity on completion of the contract's or 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 fourteen (14) 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 the Procuring entity and shall be in the form of:

- a) Cash.
- b) A bank guarantee.
- c) Such insurance guarantee approved by the Authority.
- d) Letter of credit.
- e) Guarantee by a deposit taking microfinance institution, Sacco society, the Youth Enterprise Development Fund or the Women Enterprise Fund.

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

### **3.9. Prices**

- 3.9.1 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 quoted by the tenderer in its tender or in the procuring entity's request for tender validity extension 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 contracts not exceeding 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 the procuring entity 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 to perform 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 Contract 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 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 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 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 entities 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**

3.14.1 The procuring entity and the contractor shall make every effort to resolve amicably by direct informal negotiations and 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 expressly 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 it's 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**

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

## **SPECIFIC CONDITIONS**

1. Copy of official Certificate of Search from the Registrar of Lands of not more than one month from date of tender advertisement.
2. A declaration on oath by the owner that the property is free from litigation, adverse claim or any encumbrances. The property also should not be declared as a public utility or declared under Ndungu-land commission report as illegally and irregularly acquired. (In case the property is charged, there should be a letter of undertaking to discharge at the seller's cost before commencement of sale).
3. The Authority will conduct site visit to confirm the technical suitability. There will also be Structural, Architectural and other Specialist works Integrity check conducted by the relevant Government body to confirm fitness. Adverse report or findings will lead to disqualification.

## PART C

### STANDARD FORMS

Notes on the standard Forms

<b>NO.</b>	<b>FORM</b>	<b>DESCRIPTION</b>
<b>1.</b>	<b>Price Schedule Form</b>	The price schedule form must be completed and submitted with the tender
<b>2.</b>	<b>Form of Tender</b>	The form of Tender <b>MUST</b> be completed by the tenderer and submitted with the tender documents. It must also be duly signed by duly authorized representatives of the tenderer
<b>3.</b>	<b>Tender Securing Declaration Form</b>	The tenderer shall ensure the tender securing declaration form is duly filled, signed, and stamped.
<b>4.</b>	<b>Confidential Business Questionnaire Form</b>	This form must be completed by the tenderer and submitted with the tender documents
<b>5.</b>	<b>Registration Form</b>	The tenderer shall ensure the registration form is duly filled, signed, and stamped.

## **PRICE SCHEDULE**

**The schedule shall constitute the financial bid.**

<b>S/NO.</b>	<b>LR. NO.</b>	<b>FLOOR AREA</b>	<b>COST PER SQUARE METRE</b>	<b>TOTAL COST</b>
1.				

**N.B. Total cost carried to Form of Tender**

**FORM OF TENDER**

Date \_\_\_\_\_

To: Sir/Madam

Having examined the Tender documents including Addenda Nos.....[insert addenda numbers], the receipt of which is hereby duly acknowledged, we, the undersigned, offer to

.....  
..... in conformity with the said tender documents for the amount per Go-Down of Kshs..... or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

We undertake, if our tender is accepted, to deliver the Services in accordance with the delivery schedule specified in the Schedule of Requirements. We agree to abide by this tender for the tender validity period specified in Clause 2.13 of the Appendix to Instructions to tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period. We are not participating, as tenderers, in more than one tender in this tendering process. Our firm, its affiliates or subsidiaries – including any subcontractors or suppliers for any part of the contract – has not been declared ineligible by the Government of Kenya under Kenyan laws. Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.

We understand that you are not bound to accept the lowest or any tender you may receive. We certify/confirm that we comply with the eligibility requirements as per ITT Clause 3 of the Tender documents

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

(Name)----- [Signature]

[In the capacity of]

Duly authorized to sign Tender for and on behalf of \_\_\_\_\_

**Signature and Rubber Stamp of tenderer**



## CONFIDENTIAL BUSINESS QUESTIONNAIRE

You are requested to give the particulars indicated in Part 1 and either Part 2 (a), 2(b) or 2(c) Whichever applied to your type of business?

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

### Part 1 General

Business Name.....

Location of Business Premises .....

Plot No, .....

Street/Road.....

Postal address ..... Tel No. ....

Fax..... Email.....

Nature of Business.....

RegistrationCertificateNo.....

Maximum value of business which you can handle at any one time –

Kshs.....

Name of your

bank.....Branch.....

	<p style="text-align: center;"><b>Part 2 (a) – Sole Proprietor</b></p> <p>Your name in full.....</p> <p>Age.....Nationality.....</p> <p>Country of Origin..... Citizenship.....</p>
	<p style="text-align: center;"><b>Part 2 (b) – Partnership</b></p> <p>Given details of partners as follows</p> <p>Name Nationality Citizenship details Shares</p> <p>1. ....</p> <p>...</p> <p>2. ....</p> <p>...</p>
	<p style="text-align: center;"><b>Part 2 (c) – Registered Company</b></p> <p>Private or Public</p> <p>State the nominal and issued capital of company</p> <p>Nominal Kshs.....</p> <p>Issued Kshs.....</p> <p>Given details of all directors as follows</p> <p>Name Nationality Citizenship details Shares</p> <p>1. ....</p> <p>2. ....</p> <p>3. ....</p>
	<p>Date.....Signature of Candidate.....</p>



**TENDER SECURING DECLARATION**

Date: ..... Tender

No.: .....

To: .....

*[Insert complete name of Procuring Entity]*

We, the undersigned, declare that:

We understand that, according to your conditions, tenders must be supported by a Tender- Securing Declaration. We accept that our future ability to tender shall be jeopardized if we are in breach of our obligation(s) under the Tender conditions, because we:

- (a) Have withdrawn our Tender during the period of Tender validity specified in the Form of Tender; or
- (b) Having been notified of the acceptance of our Tender by the Purchaser during the period of Tender validity, (i) fail or refuse to execute the Contract, if required.

We understand this Tender Securing Declaration shall expire if we are not the successful Tenderer, upon the earlier of (i) our receipt of your notification to us of the name of the successful Tenderer; or (ii) twenty-eight days after the expiration of our Tender.

Name: .....

*[Insert complete name of person signing the Tender Securing Declaration]*

Signed: .....

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

In the capacity of.....

*[Insert legal capacity of person signing the Tender Securing Declaration]*

Dated: .....

Stamped: .....

**REGISTRATION FORM**

**PURCHASE OF GO-DOWNS**

**RFP NO: ACA/OT/005/2020-2021**

Bidders Name	
Postal address	
Telephone contact	
Email contact	
Authorized person's Name	
Position of authorized person	