

REPUBLIC OF KENYA



**MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN
DEVELOPMENT AND PUBLIC WORKS**

**STATE DEPARTMENT FOR HOUSING
AND URBAN DEVELOPMENT**

**RENTING OF BUSINESS PREMISES AT
NGARA SHOPPING CENTRE, NAIROBI**

TENDER NO. MTHUD/HUD/CSHD/01/2020-2021.

TENDER DOCUMENTS

**ALL CORRESPONDENCE: The Principal Secretary
State Department for Housing and Urban
Development
P.O. BOX 30119 – 00100
NAIROBI**

**DIRECTOR
CIVIL SERVANTS HOUSING SCHEME**

SEPTEMBER, 2020

TABLE OF CONTENTS

	Page
INTRODUCTION.....	3
SECTION I - INVITATION TO TENDER.....	4
SECTION II - INSTRUCTIONS TO TENDERERS	5
APPENDIX TO INTRODUCTION TO TENDERERS.....	19
SECTION III - GENERAL CONDITIONS OF CONTRACT.....	21
SECTION IV - SPECIAL CONDITIONS OF CONTRACT	28
SECTION V - SCHEDULE OF PARTICULARS OF TENDER	30
SECTION VI - STANDARD FORMS	32
FORM OF TENDER.....	33
PRICE SCHEDULED.....	34
CONTRACT FORM.....	35
CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM.....	36
TENDER SECURITY FORM.....	37
PERFORMANCE SECURITY FORM.....	38
AUTHORIZATION FORM.....	39

INTRODUCTION

1. This standard tender document for letting, leasing, licensing, tenancy, franchise or management contracting has been prepared for use by public entities in Kenya.
2. The standard tender document has been prepared for general application in all cases where public entities wish to offer their assets, services or rights to the public at a fee. The standard tender document has been introduced to ensure that the assets, services or rights are offered to the public efficiently, competitively, fairly and in a transparent manner as required by the Public procurement regulations.
3. The following general directions should be observed when using the tender document.
 - a) Specific details should be furnished in the Invitation to Tender and in the Special Conditions of Contract. The final document to be provided to the tenderers should not have blank spaces or give options.
 - b) The Instructions to Tenderers and the General Conditions of Contract should remain unchanged. Any necessary amendments to these parts should be made through the Special Conditions of Contract and Appendix to Instructions to Tenderers respectively.
4. Information contained in the Invitation to Tender shall conform to the data and information in the tender documents to enable potential tenderers to decide whether or not to participate in the tender and shall indicate any important tender requirements.
 - a) The Invitation to tender shall be issued as an advertisement in accordance with the regulations or a letter of invitation addressed to tenderers who have expressed interest following an advertisement of a prequalification tender.
5. The cover of the tender document should be modified to include:
 - i. Tender No:
 - ii. Tender Name:

SECTION I - INVITATION TO TENDER

Date 16TH SEPTEMBER 2020

Tender Ref: Tender No: MTIHUD/HUD/CSHD/01/2020-2021

Tender name: (Renting of Business Premises- Ngara Shopping Centre)

1.1 The State Department of Housing and Urban Development invites sealed tenders from eligible candidates for Renting of Business premises at Ngara Shopping Centre.

1.2 Interested eligible candidates may obtain further information from and inspect the tender documents at the State Department of Housing and Urban Development on the 6th floor of Ardhi House during official working hours.

1.3 A complete set of tender documents may be obtained by interested candidates upon payment of a non-refundable fee of KShs. 1,000/= (Kenya Shillings One Thousand only) in cash payable to Principal Secretary/ State Department of Housing and Urban Development.

1.4 Completed tender documents are to be enclosed in plain sealed envelopes, marked with the tender number and name and be deposited in the tender Box at 6th floor, Ardhi House or be addressed to the State Department of Housing and Urban Development so as to be received on or before TUESDAY 6TH OCTOBER 2020 AT 11.00AM Prices quoted should be net inclusively all taxes and delivery costs, must be in Kenya Shillings and shall remain valid for ninety (120) days from the closing date of the tender.

1.5 Prices quoted should be net inclusively all taxes and delivery costs must be in Kenya shillings and remain valid for 120days from the closing date.

1.6 The tenders will be opened immediately thereafter in the presence of the candidates representatives who choose to attend at State Department for Housing & Urban Development, Ardhi House, 6th floor at Board room.

PRINCIPAL SECRETARY
STATE DEPARTMENT FOR HOUSING AND URBAN
DEVELOPMENT

SECTION II - INSTRUCTIONS TO TENDERERS

TABLE OF CLAUSE

	Page
Eligible Tenderers	6
Cost of Tendering.....	6
Contents of Tender documents.....	6
Clarification of Tender document.....	7
Amendments of tender Document.....	7
Language of Tenderers.....	8
Documents comprising to tender	8
Form of Tender.....	8
Tender prices.....	8
Tender currencies.....	9
Tenderers eligibility and qualifications.....	9
Tender security.....	9
Validity of tenders.....	10
Format and signing of tenders.....	10
Sealing and marking of tenders.....	11
Deadline for submission of tenders.....	12
Modification and withdrawal of tender.....	12
Opening of tenders.....	13
Clarification of tenders.....	13
Preliminary examination.....	13
Conversion and comparison of tenders.....	14
Evaluation and comparison of tenders	14
Contacting the procuring entity.....	15
Post qualification.....	16
Award criteria.....	16
Procuring entity's right to vary quantities.....	16
Procuring entity's Right to accept or reject any Or all tenders.....	16
Notification of award.....	17
Signing of Contract.....	17
Performance security.....	18
Corrupt or Fraudulent practices.....	18
Appendix to instructions to tenderers.....	19

SECTION II - INSTRUCTIONS TO TENDERERS

Eligible Tenderers

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.

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.

Tenderers shall provide the qualification 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 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.

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

2.2 Cost of Tendering

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.

The price to be charged for the tender document shall not exceed Kshs.5000/=.

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

2.3 Contents of Tender Documents

The tender documents comprise the documents listed below and addenda issued in accordance with clause 2.7 of these instructions to tenderers.

Instructions to tenderers
General Conditions of Contract
Special Conditions of Contract
Schedule of particulars of tender
Form of Tender

Price Schedules
Contract Form
Confidential Business Questionnaire Form
Tender Security Form
Performance security Form
Authorization Form
Declaration form
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

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.

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

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

All prospective tenderers who have obtained the tender documents will be notified of the amendment by post, fax or email and such amendment will be binding on them.

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

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

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; 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

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

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

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 2.20.5.

2.10. Tender Currencies

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

2.11. Tenderers Eligibility and Qualifications

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.

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

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

The tender security shall be in the amount not exceeding 2 per cent of the tender price

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

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

- A bank guarantee.
- Such insurance guarantee approved by the authority.
- Letter of credit.

Any tender not secured in accordance with paragraph 2.12.1. and 2.12.3 will be rejected by the Procuring entity as non-responsive, pursuant to paragraph 2.20.5

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

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

The tender security may be forfeited:

- a) if a tenderer withdraws its tender during the period of tender validity in the case of a successful tenderer, if the tenderer fails:
 - b) to sign the contract in accordance with paragraph 2.29 or to furnish performance security in accordance with paragraph 2.30
- If the tenderer rejects a correction of an arithmetic error in the tender.

2.13. Validity of Tenders

Tenders shall remain valid for 60 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.

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.

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.

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

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.

The inner and outer envelopes shall:

be addressed to the Procuring entity at the address given in the Invitation to Tender:

The Principal Secretary
State Department of Housing and Urban Development
P. O. Box 30119-00100
NAIROBI

Bear the tender number and name in the Invitation to Tender and the words “DO NOT OPEN BEFORE 6TH OCTOBER 2020 AT 11:00 AM”.

bear tender number and name in the Invitation to Tender and the words, “DO NOT OPEN BEFORE as per tender notice and amendment to tender notice, if any:

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”.

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

2.16. Deadline for Submission of Tenders

2.16.1 Tenders must be received by the Procuring entity at the address specified under paragraph 2.15.2 not later than as per tender notice and amendment to tender notice, if any:

2.16.2 The Procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 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.

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.

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

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

The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, as per tender notice and in the location specified in the Invitation to Tender. The tenderers' representatives who are present shall sign a register evidencing their attendance.

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.

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.

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

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.

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.

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 2.20

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

Operational plan proposed in the tender;

Deviations in payment schedule from that specified in the Special Conditions of Contract

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

(a) Operational Plan

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

(b) Deviation in payment schedule

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

Tenders will be evaluated on the basis of this base price. Tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in tender price they wish to offer for such alternative payment Schedule.

The Procuring entity may consider the alternative payment schedule offered by the selected tenderer.

Preference where allowed in the evaluation of tenders shall not exceed fifteen per cent (15%). The evaluation committee shall evaluate the tenders within 30 days from the date of opening the tender.

2.23. Contacting the Procuring entity

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

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

2.24 Post-qualification

2.24.1 The Procuring entity will verify and determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.

2.24.2 The determination will take into account the tenderer financial and technical capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 2.11.2, as well as such other information as the Procuring entity deems necessary and appropriate.

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

2.25 Award Criteria

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

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

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

2.26. Procuring entity's right to accept or reject any or all tenders

2.26.1 The Procuring entity reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the Procuring entity's action. If the Procuring entity determines that none of the tenders is responsive, the Procuring entity shall notify each tenderer who submitted a tender.

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

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.

2.27 Notification of Award

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

2.27.2 The notification of award will constitute the formation of the contract subject to the signing of the contract between the tenderer and the procuring entity pursuant to clause 2.29. Simultaneously the unsuccessful tenderers shall be notified that their tenders have been unsuccessful.

2.27.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 2.30, the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.12

2.29 Signing of Contract

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

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

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

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

2.30 Performance Security

2.30.1 The successful tenderer shall furnish the performance security in accordance with the Appendix to instructions to tenders, in a form acceptable to the Procuring entity. The performance security shall be a rent security deposit equivalent to three (3) months' rent.

2.30.2 Failure by the successful tenderer to comply with the requirement of paragraph 2.29 or paragraph 2.30.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Procuring entity may make the award to the next lowest evaluated tender or call for new tenders.

2.31 Corrupt or Fraudulent Practices

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

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

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 regarding the particulars of the tender shall complement, supplement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provision 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.

EVALUATION CRITERIA:

INSTRUCTIONS TO TENDERERS REFERENCE	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
2.1.1	The invitation is open to all interested bidders
2.12.2	<p><u>EVALUATION AND COMPARISON OF TENDERS:</u></p> <p>The tenders will be evaluated in three stages as follows:</p> <p><u>A) STAGE ONE: MANDATORY REQUIREMENTS</u></p> <p>Submit a Copy of Certificate of Incorporation or Registration for the Bidder (the company submitting the tender) or copy of National ID/Letter of administration where the tenderer is an individual landlord.</p> <p>Submit a Copy of Valid Tax Compliance Certificate from KRA for the Bidder</p> <p>Tender Security of a total amount of One Hundred Thousand Shillings Only (KES. 100,000) in the format prescribed by PPADA.</p> <p>Proof of site attendance visit. Site visit to be on 1ST OCTOBER 2020 Valid business permit</p> <p>Declaration stating that the bidder has NOT been debarred by Public Procurement Regulatory Authority (PPRA).</p> <p>Submit a Signed Declaration statement that the bidder has not been involved in corrupt or fraudulent practices.</p> <p>Duly, filled, signed and stamped: Confidential Business Questionnaire, Form of Tender and; Price Schedule.</p> <p>N/B: ALL THE ABOVE MUST BE MET TO QUALIFY FOR THE 2ND STAGE.</p>
INSTRUCTIONS TO TENDERERS REFERENCE	<p><u>B) STAGE TWO: TECHNICAL EVALUATION</u></p> <p>Candidates that will have passed Technical Evaluation (i.e. those that offered items which are compliant with the desired technical specifications) will have their financial proposals evaluated.</p> <p>The pass mark for technical specifications shall be 70%- see</p>

	<p>specification schedule provided on page 28, Part V</p> <p><u>C) STAGE THREE: FINANCIAL EVALUATION</u></p> <p>The bidder with the highest evaluated proposal (both technical and financial proposals) will be recommended for the award of the contract.</p> <p>In case of discrepancy between unit price and total, the unit price shall prevail.</p> <p>If there is a tie on the highest quoted price between two firms, the firm with the highest technical points will be recommended for award.</p> <p>Government valuation shall be used as a reserve price.</p>
2.15.2	Tenders must be submitted on or before the closing date, not later than...6 TH OCTOBER 2020 at 11.00 a.m.
2.16.1	The Centre will open all tenders in the presence of tenderer's representatives, who choose to attend on 6 TH OCTOBER 2020 at 11.00 AM.

SECTION III - GENERAL CONDITIONS OF CONTRACT

TABLE OF CLAUSES

	Page
Definitions.....	21
Application.....	21
Standards.....	21
Use of Contract documents and information.....	21
Patent rights.....	22
Performance security.....	22
Delivery of services and documents.....	23
Payment.....	23
Prices.....	23
Assignment.....	23
Termination for default.....	23
Termination for insolvency.....	24
Termination for convenience.....	25
Resolution of disputes.....	25
Governing language.....	25
Applicable law.....	25
Force Majeure.....	25
Notices	25

SECTION III GENERAL CONDITIONS OF CONTRACT

3.1. Definitions

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

“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.

“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.

“The Procuring entity” means the organization offering the particulars of the tender under this Contract.

“The Contractor” means the organization or firm procuring the particulars of tender under this Contract.

“GCC” means the General Conditions of Contract

“SCC” means the Special Conditions of Contract

“Day” means calendar day

3.2. Application

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

3.3. Standards

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 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.

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 contractor’s performance under the Contract if so required by the Procuring entity.

3.5. Patent Rights

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

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.

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:

- i. Cash.
- ii. A bank guarantee.
- iii. Such insurance company guarantee approved by the Authority.
- iv. A letter of credit.

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

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

The method and conditions of payment to be made to the procuring entity under this Contract shall be specified in the SCC.

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

Prices charged by the procuring entity 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.

Contract price variations shall not be allowed for contract not exceeds one year (12 months).

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

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

3.10. Assignment

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:

- i. 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.
- ii. If the Contractor fails to perform any other obligation(s) under the Contract
- iii. 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.

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 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 the extent not terminated.

3.12. Termination for insolvency

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

The State Department of Housing and Urban Development 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.

For the remaining part of the contract after termination, the State Department of Housing and Urban Development may elect to cancel the services and pay to the contractor an agreed amount for partially completed services.

3.14 Resolution of Disputes

The State Department of Housing and Urban Development 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

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

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

3.17 Force Majeure

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

3.18 Notices

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.

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

SECTION IV - SPECIAL CONDITIONS OF CONTRACT

Notes on Special Conditions of Contract

1. The clauses in this section are intended to assist the procuring entity in providing contract- specific information in relation to corresponding clauses in the General Conditions of Contract.
2. The Provisions of Section IV complement the General Conditions of Contract included in Section III, specifying contractual requirements linked to the special circumstances of the procuring entity and the particulars of the tender. In preparing Section IV, the following aspects should be taken into consideration.

Information that complement provisions of Section III must be incorporated; and amendments and/or supplements to provisions of Section III, as necessitated by the circumstances of the particulars of the tender must also be incorporated.

3. Section III should remain unchanged and can only be amended through the SCC Section IV.

Clauses to be included in this part must be consistent with the public procurement law and the regulations.

SECTION IV – SPECIAL CONDITIONS OF CONTRACT

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.

Special Conditions of Contract as relates to the GCC.

GCC REFERENCE	SPECIAL CONDITIONS OF CONTRACT
3.8.1	Payment will be at the commencement of the contract period.
3.16.1	The Laws of Kenya
3.18.1	Address of procuring entity: Principal Secretary State Department of Housing and Urban Development P.O. Box 30119-00100 <u>NAIROBI</u>

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 objective 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 - SCHEDULE OF REQUIREMENTS

S/No.	Description of Premises	Floor	Lettable Area (sq.ft.)	Remarks
1.	Shop 4	Ground	516	Whole
2.	Shop 8	First	441	Whole
3.	Restaurant	Ground & First	1388	Whole
		Pergola Terrace on Ground	377	

To ensure a healthy mix of businesses in the Centre, bidders with the following uses will not be given preference as they already exist:

- a) Pharmacy/Chemist
- b) Salon/Barber shop
- c) Laundry/Dry cleaning business
- d) Branding business
- e) Cereals and Grocery

Please note each bidder will only be considered for one premises.

Proposed Lease Terms

- a) Tenure: Government will grant a lease of the property for a lease term of at least five years and three months renewable upon compliance with lease conditions.
- b) The prospective tenant will be responsible for the payment of all rates, taxes, services and other outgoings.
- c) The prospective tenant will be responsible for keeping the internal parts of the property in good state of repair and maintenance.
- d) The prospective tenant will be responsible for keeping the Government fully indemnified against all claims and liabilities which may be made against the Government.
- e) The prospective tenant will not be permitted to assign part or the whole of the premises without the prior written consent of the Government. Such consent should not be unreasonably withheld.
- f) The prospective tenant will not be permitted to erect any pole, mast or aerial on any part of the outside of the premises except for the installation of a telephone.
- g) No alterations/additions to the premises will be permitted other than with the Government prior written consent. Such alterations will not include extensions to increase usable area.
- h) Any option to terminate the lease early will be by three (3) months' prior notice by either party. Immediate notice to terminate will be given if there is breach of the terms by the tenant.
- i) The lease will contain such terms as the Government considers appropriate.
- j) The prospective tenant will be expected to comply with licensing requirements of relevant authorities prior to engaging in business and provide the Ministry with the copies of the licenses if demanded.
- k) The prospective tenant will be expected not to create any nuisance such as pollution, noise and obstruction among others.
- l) The winning bidders will be required to pay a security deposit equivalent to three months' rent.

The under-listed businesses will not be permitted to be carried out in the shops:

- a) Stocking of wines and spirits.
- b) Operating of a bar/sale of beer.
- c) Other illicit trades including stocking, storing or selling illegal drugs.

- d) Entertainments like discos and cinema among others.
- e) Conversion of shop into a place of public meetings.

TECHNICAL SPECIFICATIONS

S/No.	DESCRIPTION	ATTRIBUTES
	Proposed Use	Permitted user which is compatible with a residential neighborhood Preferable use in order to ensure a healthy mix of businesses in the Centre
	Experience	Proven similar business experience in terms of years Client Reference
	Financial capacity	Bank statements for the last six (6) months Specify. Submit audited accounts for the last three (3) years.

TECHNICAL SPECIFICATIONS EVALUATION CRITERIA

S/No.	DESCRIPTION	WEIGHT	SCORE
1.	Proposed Use	30	
	Permitted user (20marks) Preferable use (10 marks)		
2.	Experience	16	
	<ul style="list-style-type: none"> • Proven similar business experience in years (None = 0, ≥ 1 but $\leq 3 = 5$marks and above 3 = 10marks.) • Client reference (Specify and 1 mark for each client to a maximum of three (3)) (None = 0, Available = 3marks and Relevant = 3marks.) 		
3.	Financial capacity	32	
	Bank statements for the last one (1) year (One mark for each month submitted to a maximum of 12 marks)		
	Bank statements must adequately support quarterly payment of rent and service charge. (Adequate for: One quarter = 5marks; Two quarters = 10marks; Three quarters = 15marks Four quarters = 20marks)		

SECTION VI - STANDARD FORMS

Notes on the sample Forms

Form of Tender

The form of Tender must be completed by the tenderer and submitted with the tender documents. It must also be duly signed by duly authorized representatives of the tenderer.

Price Schedule Form

The price schedule form must similarly be completed and submitted with the tender.

Contract Form

The contract form shall not be completed by the tenderer at the time of submitting the tender. The contract form shall be completed after contract award and should incorporate the accepted contract price.

Confidential Business Questionnaire Form

This form must be completed by the tenderer and submitted with the tender documents.

Tender Security Form

When required by the tender documents the tenderer shall provide the tender security either in the form included herein or in another format acceptable to the procuring entity. The tender security form must be completed by the tender and submitted with the tender.

Performance Security Form

The performance security form should not be completed by the tenderers at the time of tender preparation. Only the successful tenderer will be required to provide performance security in the form provided herein or in another form acceptable to the procuring entity.

Authorization Form

When required by the tender documents this form must be completed and submitted with the tender documents. This form will be completed by the principal where the tenderer is an agent.

Form of Tender

To:

Date _____

Gentlemen and/or Ladies: -

Having examined the Tender documents, (Insert numbers)
the receipt of which is hereby duly acknowledged, we the undersigned, offer to procure (the
particulars of the tender) under this tender in conformity with the said Tender document 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.

We undertake, if our Tender is accepted, to abide by the conditions of the tender.

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

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

We understand that you are not bound to accept the highest or any Tender you may
receive.

Dated this _____ day of _____, 2020

[Signature]

[In the capacity of]

Duly authorized to sign Tender for and on behalf of _____

Price Schedule Form

S/No	Description of Premises	Unit of Issue	Qty	Unit Cost (Ksh.)	Total Cost (Ksh.)
	Office space	Sq. Ft.			
	Service Charge	Sq. Ft.			

NB: - ALL PRICES QUOTED MUST BE INCLUSIVE OF ALL TAXES.

Specify other terms of the Offer which the Procuring Entity needs to be aware of at pre-contract stage:

.....

Signature of tenderer:

CONTRACT FORM

THIS AGREEMENT made the _____ day of _____ 2019 between the State Department of Housing and Urban Development of Nairobi [country of Procurement entity] (hereinafter called “the Procuring entity”) of the one part and [name of tenderer] of [city and country of tenderer] (hereinafter called “the tenderer”) of the other part:

WHEREAS the Procuring entity invited tenders for the renting of businesses premises at Ngara Shopping Centre and has accepted a tender by the tenderer for the supply of the services in the sum of _____ [contract price in words in figures] (hereinafter called “the Contract Price”).

NOW THIS AGREEMENT WITNESSTH 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 Details of cover
 - d) the General Conditions of Contract
 - e) the Special Conditions of Contract; and
 - f) the Procuring Entity’s Notification of Award
3. In consideration of the payments to be made by the Procuring entity to the tenderer as hereinafter mentioned, the tenderer hereby covenants with the Procuring entity to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Procuring entity hereby covenants to pay the tenderer in consideration of the provision of the services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the contract at the times and in the manner prescribed by the contract.

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

Signed, sealed, delivered by _____ the _____ (for the Ministry of Energy and Petroleum)

Signed, sealed, delivered by _____ the _____ (for the tenderer) in the presence of _____

CONFIDENTIAL BUSINESS QUESTIONNAIRE

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

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

Part _____ General:

Business Name

.....

Location of business premises

.....

Plot No. Street/Road

.....

Postal Address

Tel. No.

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

Nature of business

.....

Registration Certificate No.

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

Kshs.....

Name of your bankers..... Branch

Part 2(a) – Sole Proprietor:

Your name in full..... Age

Nationality Country of origin

Citizenship details.....

Party 2(b) – Partnership

Give details of partners as follows

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

Part 2 (c) – Registered Company:

Private or public.....

State the nominal and issued capital of the company –

Nominal Kshs..

Issued Kshs.....

Give details of all directors as follows

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

Date..... Signature of Tenderer

TENDER SECURITY FORM

Whereas [name of Tenderer] (hereinafter called <the tenderer> has submitted its bid dated [date of submission of bid] for [particulars] (hereinafter called <the tender>).

KNOW ALL PEOPLE by these presents that WE [name of bank] of [name of country], having our registered office at [name of procuring entity] (hereinafter called <the procuring entity> in the sum of [state the amount] for which payment well and truly to be made to the said procuring entity, 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 procuring entity on the Form; or
2. If the tender, having been notified of the acceptance of its tender by the procuring entity during the period of tender validity:
 - Fails or refuses to execute the Contract Form, if required; or
 - Fails or refuses to furnish the performance security, in accordance with the Instructions to tenders.
 - Refuses correction of arithmetic errors in the tender.

We undertake to pay to the procuring entity up to the above amount upon receive 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 conditions, specifying the occurred condition(s).

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:

WHEREAS.....[Name of tenderer]
(Hereinafter called “the tenderer”) has undertaken, in pursuance of Contract No. _____
_____ [Reference number of the contract] dated _____ 20 _____
to supply
[Description of materials and spares] (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 a sum specified therein as security for compliance with the Tenderer’s performance obligations in accordance with the Contract

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

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the tenderer, up to a total of
[amount of the guarantee in words and figures], 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 of sums within the limits of [Amount of guarantee] as aforesaid, without your 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 _____

Signature and seal of the Guarantors

[Name of bank of financial institution]

[Address]

[Date]

(Amend accordingly if provided by Insurance Company)

AUTHORIZATION FORM

To

WHEREAS

[Name of the tenderer]

Who are established and reputation dealers in..... *[Type of business]*
having registered offices at *[Address of principal]* do hereby authorizing..... *[Name and address of tenderer]* to submit a tender, *[reference of the tender]* for the stated *(particulars of tender)*.

We hereby extend our full guarantee and warranty as per the General Conditions of Contract for the services to be provided against this Invitation for Tenders.

[Signature for and on behalf of the tenderer]

LETTER OF NOTIFICATION OF AWARD

To: _____

RE: Tender No. _____

Tender Name _____

This is to notify that the contract/s stated below under the above mentioned tender have been awarded to you.

Please acknowledge receipt of this letter of notification signifying your acceptance.

The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.

You may contact the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.

(*FULL PARTICULARS*) _____

SIGNED FOR ACCOUNTING OFFICER

REQUEST FOR REVIEW FORM

FORM RB 1
REPUBLIC OF KENYA
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO..... OF.....20.....

BETWEEN
..... APPLICANT

AND
..... RESPONDENT

Request for review of the decision of the State Department of Housing and Urban Development ofdated the...day of20..... in the matter of Tender No.....of 20...

REQUEST FOR REVIEW

I/We, the above named Applicant(s), of address:
Physical address.....Fax No.....Tel. No.....Email....., hereby request the Public Procurement Administrative Review Board to review the whole/part of the above mentioned decision on the following grounds, namely:

- 1.
- 2.
- etc.

By this memorandum, the Applicant requests the Board for an order/orders that: - 1.

- 1.
- 2.
- Etc

SIGNED (Applicant)

Dated on..... day of/.....20.....

FOR OFFICIAL USE ONLY

Lodged with the Secretary Public Procurement Administrative Review Board on day of20.....

SIGNED



Board Secret
**MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING,
URBAN DEVELOPMENT AND PUBLIC WORKS**
STATE DEPARTMENT FOR HOUSING & URBAN DEVELOPMENT
CIVIL SERVANTS HOUSING SCHEME FUND
CERTIFICATE OF SITE ATTENDANCE

Name of Bidder:

Address:

Date of visit:

Name of Bidder's Representative:

ID. No.:

Signature:

Client's Representative:

Signature:

Date:

