

**REPUBLIC OF KENYA**



**COUNTY ASSEMBLY OF SIAYA**

**TENDER FOR SUPPLY AND DELIVERY OF IT EQUIPMENT  
(SMART PHONES)**

**TENDER REF NO: CAS/ TEND/IT/3/2018/2019**

**CLOSING DATE: 13<sup>TH</sup> NOVEMBER 2018.**

**(N.B: CLOSING DATE EXTENDED TO 21<sup>ST</sup> NOVEMBER 2018)**

**IFMIS PORTAL REF. NO: 695456.1**

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## SECTION I - INVITATION FOR TENDERS

**Date: 29<sup>th</sup> OCTOBER 2018**

**TENDER REF. NO: CAS/TEND/3/2018/2019**

**TENDER NAME: SUPPLY AND DELIVERY OF IT EQUIPMENT  
(SMART PHONES)**

- 1.1 The County Assembly of Siaya invites Tenders from eligible candidates for Supply and delivery of IT Equipment (Smart Phones).
- 1.2 This Tender document is free of charge.
- 1.3 Prices quoted should be net inclusive of all taxes, and delivery costs, must be in Kenya Shillings and shall remain valid for 90 days from the closing date of the tender.
- 1.4 Completed tender documents are to be submitted on-line in the e-procurement Kenya Supplier portal: [www.supplier.treasury.go.ke](http://www.supplier.treasury.go.ke), and originals be enclosed in plain sealed envelopes, marked with the tender number and name and be deposited in the Tender Box situated at the **First floor, County Assembly of Siaya headquarters**, or be addressed to:

**The County Assembly Clerk,  
P.O.Box 7-40600,  
Siaya.**

So as to be received on or before, **Tuesday, 13<sup>th</sup> November 2018, at 12:00 noon.**

- 1.5 Tenders will be opened immediately thereafter in the presence of the candidates representatives who choose to attend at **Boardroom III, County Assembly of Siaya headquarters.**

**SIGNED:**

**ISAAC FELIX OLWERO,  
COUNTY ASSEMBLY CLERK.**

## SECTION II- INSTRUCTIONS TO TENDERERS

### **2.1. Eligible Tenderers**

**2.1.1** This Invitation for Tenders is National open tender and is eligible to citizen suppliers.

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

**2.1.3** Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or related to members of staff or board of the Procuring entity.

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

### **2.2 Cost of Tendering**

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

**2.2.2** There shall be no fee charged to participate in this procurement proceedings.

### **2.3 Contents of Tender Document**

**2.3.1** The tender documents comprise the documents listed below:

- (i) Instructions to Tenderers
- (ii) General Conditions of Contract
- (iii) Special Conditions of Contract
- (iv) Schedule of Requirements
- (v) Specifications of goods
- (vi) Form of Tender
- (vii) Price Schedules
- (viii) Confidential Business Questionnaire Form
- (ix) Tender security Form
- (x) Performance security Form (xi) Manufacturers Authorization Form

2.3.2 The Tenderer is expected to examine all instructions, forms, terms and specification in the tender documents. Failure to furnish all information required by the tender documents or to submit a tender not substantially responsive to the tender documents in every respect will be at the tenderers risk and may result in the rejection of its tender.

## **2.4 Clarification of Tender Documents**

2.4.1 A Candidate making inquiries of the tender documents may notify the Procuring entity by post, or by email at the procuring entity's address indicated in the Invitation for tenders. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of the tenders, prescribed by the procuring entity. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all candidates who have received the tender documents.

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

## **2.5 Amendment of Tender Documents**

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

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

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

## **2.6 Language of Tenders**

2.6.1 The tender prepared by the tenderer, as well as all correspondence and documents relating to the tender exchanged by the tenderer and the Procuring entity, shall be written in English language. Any printed literature furnished by the tenderer may be written in another language provided they are accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the tender, the English translation shall govern.

## **2.7. Documents Comprising the Tender**

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

- (a) A duly filled and completed Tender Form and a Price Schedule.
- (b) Tender security furnished.
- (c) Declaration Form.

## **2.8. Form of Tender**

2.8.1 The tenderer shall complete the Tender Form and the Price Schedule furnished in the tender documents, indicating the goods to be delivered.

## **2.9. Tender Prices**

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

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

2.9.3 Prices quoted by the tenderer shall remain fixed during the Term of the contract unless otherwise agreed by the parties. A tender submitted with an adjustable price tender will be treated as non-responsive and will be rejected.

## **2.10. Tender Currencies**

2.10.1 Prices shall be quoted in Kenya Shillings.

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

2.11.1 The tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if it's tender is accepted. The documentary evidence of the tenderer's qualifications to perform the contract if its tender is accepted shall establish to the Procuring entity's satisfaction that the tenderer has the financial and technical capability necessary to perform the contract.

## **2.12. Tender Security**

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

2.12.2 The tender security shall be **Kshs 100,000**.

2.12.3 The tender security is required to protect the Procuring entity against the risk of Tenderer's conduct which would warrant the security's forfeiture.

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

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

2.12.5 Any tender not secured in accordance with paragraph 2.12.1. and 2.12.3 shall be rejected by the Procuring entity as non-responsive.

2.12.6 Unsuccessful Tenderer's tender security will be discharged or returned as promptly as possible but not later than thirty (30) days after the expiration of the period of tender validity

2.12.7 The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, and furnishing the performance security.

2.12.8 The tender security may be forfeited:

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

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

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

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

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

2.14.1 The tenderer shall prepare an original and a soft copy of the tender, clearly marking each "ORIGINAL TENDER" and as appropriate. In the event of any discrepancy between them, the original shall govern.

2.14.2 The original documents 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 envelope, duly marking the envelope as “ORIGINAL TENDER”.

2.15.2 The outer envelopes shall:

- (a) be addressed to the Procuring entity at the address given in the Invitation to Tender.
- (b) bear tender number and name in the invitation to tender and the words, “DO NOT OPEN BEFORE Tuesday, 13<sup>th</sup> **November 2018, at 12:00 noon.**

2.15.3 The inner envelopes shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared “late”.

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

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

2.16.1 Tenders must be received by the Procuring entity at the address specified under paragraph 2.15.2 not later than Tuesday, 13<sup>th</sup> **November 2018, at 12:00 noon.** The Procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents 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.

2.16.2 Bulky tenders which will not fit the tender box shall be received by the procuring entity and recorded in a bulky documents register at the procurement offices.

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

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

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

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

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

## **2.18. Opening of Tenders**

2.18.1 The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, on Tuesday, 13<sup>th</sup> **November 2018, at 12:00 noon** and in the location specified in the invitation for tenders. The tenderers' representatives who are present shall sign a register evidencing their attendance.

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

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

## **2.19 Clarification of Tenders**

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

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

## **2.20 Preliminary Examination and Responsiveness**

- 2.20.1 The Procuring entity will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order.
- 2.20.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security forfeited. If there is a discrepancy between words and figures, the amount in words will prevail
- 2.20.3 The Procuring entity may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation provided such waiver does not prejudice or affect the relative ranking of any tenderer.
- 2.20.4 Prior to the detailed evaluation, pursuant to paragraph 2.20, the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one which conforms to all the terms and conditions of the tender documents without material deviations the Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.
- 2.20.5 If a tender is not substantially responsive, it will be rejected by the procuring entity and may not subsequently be made responsive by the tenderer by correction of the nonconformity.

## **2.21. Conversion to single currency**

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:

### Evaluation Criteria

S/NO	EVALUATION CRITERIA	MAXIMUM POINTS	REMARKS
1.	Mandatory requirements	Yes/ No	To assess compliance .Failure to submit any of the mandatory requirements leads to automatic disqualification.
2.	<b>Technical Requirements:</b>		
	a)Qualifications of staff	10	To assess professionalism.
	b)Proof of Past experience of supply of similar goods	20	To assess previous engagements.
	c) (i) Proof of physical location/premises	5	To determine ease of reference when need be.
	(ii)Proof of dealership/franchise agreement with manufacturer	5	To assess the authenticity of the gadgets to be delivered.
	d)Warranties and after sales services duration	10	To assess the aftersales relationship.
	e)Conformity to specifications	20	To assess the conformity of specifications required.

3.	<b>Financial capability requirements</b>		
	a)Certified audited accounts (last two years)	30	To assess the financial capacity of the tenderers.
	<b>TOTAL</b>	<b>100</b>	Pass mark shall be <b>70%</b>

2.22.3 The following evaluation methods shall also be applied.

- (a) Operational Plan
  - (i) The Procuring entity requires that the goods under the Invitation for Tenders shall be delivered at the time specified in the Schedule of Requirements.
- (b) Deviation in payment schedule
  - (i) Tenderers shall state their tender price for the payment on schedule outlined in the special conditions of contract. Tenders will be evaluated on the basis of this base price. Tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in tender price they wish to offer for such alternative payment schedule. The Procuring entity may consider the alternative payment schedule offered by the selected tenderer.

2.22.4 The tender evaluation committee shall evaluate the tender 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, as well as such other information as the Procuring entity deems necessary and appropriate under due diligence.

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.

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

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

## **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.

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

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

## **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.

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

2.27.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 2.29 the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.12

## **2.28 Signing of Contract**

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

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

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

2.28.4 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.

## **2.29 Performance Security**

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

2.29.2 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.

## **2.30 Corrupt or Fraudulent Practices**

2.30.1 The Procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts. A tenderer



shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.

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

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

### **2.31 Eligible Goods**

2.31.1 All goods to be supplied under the contract shall have their origin in eligible source countries.

2.31.2 For purposes of this clause, “origin” means the place where the goods are mined, grown, or produced. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially-recognized product results that is substantially different in basic characteristics or in purpose or utility from its components

2.31.3 The origin of goods is distinct from the nationality of the tenderer

### **2.32 Goods Eligibility and Conformity to Tender Documents**

2.32.1 The tenderer shall furnish, as part of its tender documents establishing the eligibility and conformity to the tender documents of all goods which the tenderer proposes to supply under the contract

2.32.2 The documentary evidence of the eligibility of the goods shall consist of a statement in the Price Schedule of the country of origin of the goods and services offered which shall be confirmed by a certificate of origin issued at the time of shipment.

2.32.3 The documentary evidence of conformity of the goods to the tender documents may be in the form of literature, drawings, and data, and shall consist of:

- (a) a detailed description of the essential technical and performance characteristic of the goods;
- (b) a list giving full particulars, including available source and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the goods for a period of two (2) years, following commencement of the use of the goods by the Procuring entity; and
- (c) a clause-by-clause commentary on the Procuring entity's Technical Specifications demonstrating substantial responsiveness of the goods and service to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.

2.32.4 For purposes of the documentary evidence to be furnished pursuant to paragraph 2.13.3(c) above, the tenderer shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by the Procurement entity in its Technical Specifications, are intended to be descriptive only and not restrictive. The tenderer may substitute alternative standards, brand names, and/or catalogue numbers in its tender, provided that it demonstrates to the Procurement entity's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

### **2.33 Procuring entity's Right to Vary quantities**

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

### **2.34 Procuring entity's Right to Accept or Reject Any or All Tenders**

2.34.1 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

## SECTION III GENERAL CONDITIONS OF CONTRACT

### 3.1. Definitions

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

- (a) “The Contract” means the agreement entered into between the Procuring entity and the tenderer, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- (b) “The Contract Price” means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations
- (c) “The Goods” means all of the equipment, machinery, and/or other materials, which the tenderer is required to supply to the Procuring entity under the Contract.
- (d) “The Procuring entity” means the organization purchasing the Goods under this Contract.
- (e) “The Tenderer” means the individual or firm supplying the Goods under this Contract.

### 3.2 Application

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

### 3.3. Standards

3.1.1 The Goods supplied under this Contract shall conform to the standards mentioned in the Technical Specifications.

### **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 **Twenty eight (28) days** of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the **performance security of 10% of the contract sum.**

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.

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 goods**

3.7.1 Delivery of the goods 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 of payment to be made to the contractor under this Contract shall be upon signing of contract and submission of the policy document.

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 Goods delivered 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 supply any or all of the goods 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, goods similar to those un-delivered and the Contractor shall be liable to the Procuring entity for any excess costs for such similar goods. 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 its delay in performance

or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

### **3.17 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 Email and confirmed in writing to the other party's address specified in the SCC.

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

### **3.18 Country of Origin**

3.18.1 For purposes of this clause, "Origin" means the place where the Goods were mined, grown or produced.

3.18.2 The origin of Goods and Services is distinct from the nationality of the tenderer.

### **3.19 Inspection and Tests**

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

3.19.2 The inspections and tests may be conducted in the premises of the tenderer or its subcontractor(s), at point of delivery, and/or at the Goods' final destination. If conducted on the premises of the tenderer or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring entity.

3.19.3 Should any inspected or tested goods fail to conform to the Specifications, the Procuring entity may reject the equipment, and the tenderer shall either replace the rejected equipment or make alterations necessary to make specification requirements free of costs to the Procuring entity.



3.19.4 The Procuring entity's right to inspect, test and where necessary, reject the goods after the Goods' arrival shall in no way be limited or waived by reason of the equipment having previously been inspected, tested and passed by the Procuring entity or its representative prior to the equipment delivery.

3.19.5 Nothing in paragraph 3.8 shall in any way release the tenderer from any warranty or other obligations under this Contract.

### **3.20 Packing**

3.20.1 The tenderer shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract.

3.20.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract

### **3.21 Delivery and Documents**

3.21.1 Delivery of the Goods shall be made by the tenderer in accordance with the terms specified by Procuring entity in its Schedule of Requirements and the Special Conditions of Contract

### **3.22 Insurance**

3.22.1 The Goods supplied under the Contract shall be fully insured against loss or damage incidental to manufacturer or acquisition, transportation, storage, and delivery in the manner specified in the Special conditions of contract.

### **3.23 Prices**

3.23.1 Prices charged by the tenderer for goods delivered and services performed under the Contract shall not, with the exception of any price adjustments authorized in Special Conditions of Contract, vary from the prices by the tenderer in its tender.

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

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

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

### **3.24 Assignment**

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

### **3.25 Subcontracts**

3.25.1 The tenderer shall notify the Procuring entity in writing of all subcontracts awarded under this Contract if not already specified in the tender. Such notification, in the original tender or later, shall not relieve the tenderer from any liability or obligation under the Contract

### **3.26 Termination for default**

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

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

3.26.2 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, equipment similar to those undelivered, and the tenderer shall be liable to the Procuring entity for any excess costs for such similar goods.

### **3.27 Liquidated Damages**

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

## **SECTION IV – SPECIAL CONDITIONS OF CONTRACT (SCC)**

### **4.1. CONDITIONS TO BE MET BY BIDDERS**

#### **Mandatory requirements:**

4.1.1 Must submit copies of the following documents;

- (a) PIN Certificate
- (b) Tax Compliance Certificate
- (c) Certificate of Registration/Incorporation
- (d) Single/ Unified business permit.
- (e) Bid bond of Kshs 100,000.

#### **Technical and Financial capabilities:**

4.1.2 Attach certified audited accounts for the last two years.

4.1.3 Attach certificates showing qualifications of directors and/or staff.

4.1.4 Attach evidence of past performance in supply and delivery of similar items.

4.1.5 Attach proof of physical location and evidence of Equipment, machinery and tools owned.

4.1.6 Attach evidence of Aftersales services and Warranty guarantee.

4.1.7 Attach Company profile.

4.1.8 Attach write-up on conformity to specifications.

## SECTION V - SCHEDULE OF REQUIREMENTS (TECHNICAL SPECIFICATIONS)

### 1.SUPPLY AND DELIVERY OF IT EQUIPMENT - 50 (FIFTY) NOTE 8 SMART PHONES.

Operating system	Android (Nougat) 7.1.1 upgradable to Android 8.0 (Oreo)
Display	6.3-inch Super AMOLED, 2960x1440
Processor	Qualcomm Snapdragon 835 or better
Storage	128 GB
Expandable	microSD up to 512GB
RAM	6GB
Dual back Camera	
Rear camera 1	12MP f/1.7, Dual Pixel auto focus, OIS
Rear camera 2	12MP f/2.4 telephoto, auto focus, OIS
Front camera	8MP f/1.7, auto focus
Connectivity	802.11ac Wi-Fi, MIMO Bluetooth 5.0 LE USB-C, Fast charging
Charging	Qi wireless Powermat wireless
Battery	3300mAh
Water resistance	IP68 rating
Security	One-touch fingerprint sensor Iris scanner
Dimensions	162.5 x 74.8 x 8.6 mm
Weight	Approximately 195g (6.9 ounces)
Stylus	Present
SIM	Hybrid Dual SIM
Network tech	GSM/HSPA/LTE
Sensors	Iris scanner, fingerprint (rear-mounted), accelerometer, gyro, proximity, compass, barometer, heart rate, SpO2

**SECTION VI PRICE SCHEDULE**

Name of tenderer \_\_\_\_\_ Tender Number \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_

NUMBER	ITEM DESCRIPTION	QUANTIT Y	UNIT PRICE	TOTAL PRICE	BRAND	COUNTY OF ORIGIN
1	NOTE 8 SMART PHONES (as per the given specs)	50				

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

*Note:* In case of discrepancy between unit price and total, the unit price shall prevail.

(Bidders are allowed to use separate sheet if space is not adequate)

**SECTION VII - STANDARD TENDER FORMS**

**FORM OF TENDER**

**To:  
THE COUNTY ASSEMBLY CLERK,  
COUNTY ASSEMBLY OF SIAYA,  
P.O.BOX 7-40600,  
SIAYA.**

**Date:.....**

Tender No:.....

Tender Name:.....

Dear Sir/Madam,

1. Having examined the Tender documents, we the undersigned, offer to supply the goods 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.

2. We undertake, if our Tender is accepted, to supply the goods in accordance with the conditions of the tender.

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

4. 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.

5. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2018

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[In the capacity of]

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

Stamp/Seal:.....



## CONFIDENTIAL BUSINESS QUESTIONNAIRE

You are requested to give the particular indicated in Part 1 and either Part 2(a), 2(b), or 2( c) Which ever applies to your type of business. You are advised that it is a serious offence to give false information on this Form.

**Part 1:**

Busines 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 .....

Stamp/ Seal.....

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

**TENDER SECURITY FORM**

Whereas [*name of Bidder*] .....(hereinafter called “the tenderer”) has submitted its bid dated [*date of submission of bid*]..... for the Supply of IT Equipment (Smart phones) (“hereinafter called the tender”)

KNOW ALL PEOPLE by these presents that WE [*name of bank/Insurnace company*]..... of [*name of country*]....., having our registered office at..... Hereby binds ourselves to the **COUNTY ASSEMBLY OF SIAYA**, in the sum of .....[*state the amount*] for which payment will 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
  - (a) fails or refuses to execute the Contract Form, if required; or
  - (b) fails or refuses to furnish the performance security, in accordance with the Instructions to tenders.

We undertake to pay to the procuring entity up to the above amount upon receipt of its first written demand, without the procuring entity having to substantiate its demand, provided that in its demand the procuring entity will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the 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 stated date.

Name of authorized Signatory:.....

Authorized Signature:.....

Official stamp of the Bank.....Date.....

**PERFORMANCE SECURITY FORM**

**To:**  
**COUNTY ASSEMBLY OF SIAYA,**  
**P.O.BOX 7-40600,**  
**SIAYA.**

WHEREAS ..... [*name of tenderer*]  
(Hereinafter called “the tenderer”) has undertaken, in pursuance of Contract No. \_\_\_\_  
\_\_\_\_\_ [*reference number of the contract*] dated \_\_\_\_\_ 20 \_\_\_\_\_  
\_\_\_\_\_ for Supply of .....  
[*description of goods*] (Hereinafter called “the Contract”)

AND WHEREAS it has been stipulated by you in the said Contract that the tenderer shall furnish you with a bank guarantee by a reputable bank/ Insurance company 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 argument, any sum of money 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.....  
Name of Official.....  
Signature.....  
Date.....  
Stamp/Seal.....

## MANUFACTURERS AUTHORIZATION FORM

To:  
County Assembly of Siaya  
P.O.BOX 7-40600  
Siaya.

WHEREAS ..... [*name of the manufacturer*] who are established and reputable manufacturers of ..... [*name and/or description of the goods*] having factories at ..... [*address of factory*] do hereby authorize ..... [*name and address of Agent*] to submit a tender, and subsequently negotiate and sign the Contract with you against tender No. .... [*reference of the Tender*] for the above goods manufactured by us.

We hereby extend our full guarantee and warranty as per the General Conditions of Contract for the goods offered for supply by the above firm against this Invitation for Tenders.

---

[*signature and stamp for and on behalf of manufacturer*]

*Note:* This letter of authority should be on the letterhead of the Manufacturer and should be signed by a competent person.