



**TENDER FOR PROVISION OF NATIONAL PUBLIC OPINION  
SURVEY ON PERCEPTIONS TOWARD NUCLEAR ENERGY IN  
KENYA.**

**TENDER NO. KNEB/OT/DPRA/02/18/19**

**MAY 2019**

**ALL CANDIDATES ARE ADVISED TO READ CAREFULLY THIS  
PREQUALIFICATION DOCUMENT IN ITS ENTIRETY BEFORE  
MAKING ANY BID**

THE KENYA NUCLEAR ELECTRICITY BOARD  
KAWI COMPLEX, OFF REDCROSS ROAD  
P. O. Box 26374-00100  
**NAIROBI**

*Telephones:* +254-20-5138300  
*Website:* [www.nuclear.co.ke](http://www.nuclear.co.ke)

**DATE: 7<sup>th</sup> May 2019**

**TENDER REFERENCE. NO KNEB/OT/DPRA/02/18/19 - FOR PROVISION OF NATIONAL PUBLIC OPINION SURVEY ON PERCEPTIONS TOWARD NUCLEAR ENERGY IN KENYA.**

**DESCRIPTION OF THE KENYA NUCLEAR ELECTRICITY BOARD**

The Kenya Nuclear Electricity Board (KNEB) was established through Legal Notice No. 131 of 16<sup>th</sup> November, 2012 under the State Corporations Act (Cap 446). The Board is a successor to the Nuclear Electricity Project Committee that was established through Legal Notice No. 14188 of 26<sup>th</sup> November 2010.

**1.1 Mandate of the Board**

The mandate of KNEB is to:-

- a) Promote and expedite the development of Nuclear Electricity in Kenya.
- b) Develop policies and propose legislation necessary for the successful implementation of Kenya's Nuclear Power Programme.
- c) Undertake Public Education and awareness of Kenya's Nuclear Power Programme.
- d) Identify, prepare and facilitate implementation of a roadmap for Kenya's Nuclear Power Programme.
- e) In collaboration with relevant Government agencies, develop a Comprehensive Legal and Regulatory Framework for Nuclear Electricity Generation in Kenya.
- f) Develop Human Resources Capacity to ensure that Kenya has the requisite manpower to successfully establish and maintain a Nuclear Power Programme.
- g) Identify appropriate sites in Kenya for construction of Nuclear Power Plants and related amenities.
- h) Enter into collaborative programmes related to Nuclear Electricity Research and Development with other international and national Boards.
- i) Establish a Library and Information Center on Nuclear Science and Technology.
- j) Perform any other duties which may be necessary for the execution of its mandate.

## **1.2 Our Vision**

To provide safe, efficient and reliable nuclear technology for electricity generation.

## **1.3 Our Mission**

To promote safe and secure application of nuclear technology for sustainable electricity generation and distribution in Kenya.

## **1.4 Our Values**

- a) Safety and security
- b) Clean Environment
- c) Integrity
- d) Professionalism
- e) Transparency and Accountability
- f) Innovation
- g) Efficiency

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## SECTION I - INVITATION TO TENDER

**DATE: 7<sup>th</sup> May 2019**

1.1 The Kenya Nuclear Electricity Board invites bids from eligible tenderers for;

**TENDER FOR PROVISION OF NATIONAL PUBLIC OPINION SURVEY ON PERCEPTION TOWARDS NUCLEAR ENERGY IN KENYA.**

**(TENDER NO. KNEB/OT/DPRA/02/18/19)**

Tenderers may obtain further information from The Manager, Procurement, KNEB at Block C Kawi House, Off Red Cross Road, P.O. Box 26374-00100, Nairobi, Kenya.

### 1.2 Obtaining tender document

The Tender document shall be posted to KNEB website ([www.nuclear.co.ke](http://www.nuclear.co.ke)) with effect from 7<sup>th</sup> May 2019 and eligible candidates may view download, prepare and submit the completed document as instructed here below.

### 1.3 Submission of Tender Documents and closing date

Completed tender documents should be enclosed in plain sealed envelopes bearing no identification of the Tenderer and clearly marked only as :-

**“Tender No: KNEB/OT/DPRA/02/18/19 - TENDER FOR PROVISION OF NATIONAL PUBLIC OPINION SURVEY ON PERCEPTION TOWARDS NUCLEAR ENERGY IN KENYA”**

with the instructions “Do not open before **23<sup>rd</sup> May 2019** and addressed to:

The Chief Executive Officer,  
The Kenya Nuclear Electricity Board.,  
Kawi complex, off Red Cross road  
P O Box 26374-00100  
NAIROBI – KENYA.

and dropped into the Tender Box located at the main reception of Kenya Nuclear Electricity Board on 2<sup>nd</sup> Floor Kawi Complex , wing “C” so as to reach the office on or before the closing date on **23.05.2019 at 10.00 a.m.** The tenders will be opened shortly after the deadline.

### 1.4 Tender Opening

The Tenders shall be opened immediately thereafter in the main boardroom located at 4<sup>th</sup> floor Kawi Complex , wing “C” in the presence of applicants who may choose to attend. Late bids shall not be accepted.

Any Queries and clarification should be directed to:

*Telephones: +254-20-5138300*

*E-mail 1: Hotieno@nuclear.co.ke*

*E-mail 2: Mmwangi@nuclear.co.ke*

*E-mail 3: Emusyoka@nuclear.co.ke*

## SECTION II - TENDER SUBMISSION CHECKLIST

Tender Submission Format

Bidders are advised to clearly label their documents according to the tender submission checklist.

No	Item	Tick Where Provided
	Tender Security – Bank Guarantee or Letters of Credit (issued by Banks Licensed by the Central Bank of Kenya),	
1.	Company Profile	
2.	Confidential Business Questionnaire (CBQ)	
3.	Certificate of Confirmation of Directors and Shareholding (C.R. 12)	
4.	AGPO certificate for special group	
5.	Declaration Form and letter of Application form	
6.	Copy of pin certificate	
7.	Copy of Valid Tax Compliance Certificate	
8.	Copy of Company or Firm's Registration Certificate	
9.	Certificates, employment contracts & testimonials of their staff	
10.	Financial statements. The audited financial statements required must be those that are reported within eighteen (18 calendar months of the date of the prequalification document ) OR Certified copies of bank statements covering a period of at least six, months prior to the date of the prequalification document.	
	Submission of names with full contacts of five (5) organizations where similar services have been carried out.	
	Submission of Certificates, employment contracts, CVs for key researchers showing affiliation to relevant Consultancy bodies (provide copies of certificate of memberships)	

## **SECTION III - INSTRUCTIONS TO TENDERERS**

### **3.1 Definitions**

In this tender, unless the context or express provision otherwise requires: -

- a) *Any reference to any Act shall include any statutory extension, amendment, modification, re-amendment or replacement of such Act and any rule, regulation or order made there-under.*
- b) *“Date of Tender Document” shall be the start date specified on the KNEB tender document*
- c) *“Day” means calendar day and “month” means calendar month.*
- d) *“KEBS” wherever appearing means the Kenya Bureau of Standards or its successor(s) and assign(s) where the context so admits.*
- e) *“KENAS” wherever appearing means the Kenya National Accreditation Service or its successor(s) and assign(s) where the context so admits*
- f) *“PPRA” wherever appearing means The Public Procurement Regulatory Authority or its successor(s) and assign(s) where the context so admits.*
- g) *Reference to “the tender” or the “Tender Document” includes its appendices and documents mentioned hereunder and any reference to this tender or to any other document includes a reference to the other document as varied supplemented and/or replaced in any manner from time to time.*
- h) *“The Procuring Entity” means The Kenya Nuclear Electricity Board and where the context so admits (hereinafter referred to as Kenya Nuclear Electricity Board abbreviated as KNEB).*
- i) *“The Tenderer” means the person(s) submitting its Tender for the supply, installation and commissioning (where applicable) of the goods in response to the Invitation to Tender.*
- j) *Where there are two or more persons included in the expression the “Tenderer”, any act or default or omission by the Tenderer shall be deemed to be an act, default or omission by any one or more of such persons.*
- k) *Words importing the masculine gender only, include the feminine gender or (as the case may be) the neutral gender.*
- l) *Words importing the singular number only include the plural number and vice-versa and where there are two or more persons included in the expression the “Tenderer” the covenants, agreements and obligations expressed to be made or performed by the Tenderer shall be deemed to be made or performed by such persons jointly and severally.*



- m) *KNEB's "authorized person" shall mean its CEO & Accounting officer who is designated by the PPAD Act 2015 to exercise such power, authority or discretion as is required under the tender and any contract arising therefrom, or such other KNEB staff delegated with such authority.*
- n) *Citizen suppliers-means a person/firm wholly owned and controlled by person(s) who are citizens of Kenya.*
- o) *Local suppliers- a firm shall be qualified as a local supplier if it is registered in Kenya.*

### **3.2 Eligible Tenderers**

3.2.1 A tenderer is eligible to bid for this contract only if the tenderer satisfies the following criteria—

- a) the tenderer has the legal capacity to enter into a contract for procurement or asset disposal;
- b) the tenderer is not insolvent, in receivership, bankrupt or in the process of being wound up;
- c) the tenderer, if a member of a regulated profession, has satisfied all the professional requirements;
- d) the tenderer and his or her sub-supplier, if any, is not debarred;
- e) the tenderer has fulfilled tax obligations;
- f) the tenderer has not been convicted of corrupt or fraudulent practices; and
- g) is not guilty of any serious violation of fair employment laws and practices.

In addition, this Invitation to Tender is open to all Tenderers eligible as described in the ***Appendix to Instructions to Tenderers***.

Successful Tenderers shall supply the goods in accordance with this tender and the ensuing contract. Notwithstanding any other provisions of this tender, the following are not eligible to participate in the tender: -

- a) KNEB's employees, its Board or any of its committee members.
- b) Any tenderer submitting false, inaccurate or incomplete information about their qualifications.
- c) where in case of a corporation, private company, partnership or other body, the tenderer, their spouse, child or sub-supplier has substantial or controlling interest and is found to be in contravention of the provisions of section 3.2.1 above.

- 3.2.5 Despite the provisions of section 3.2.1 a tenderer having a substantial or controlling interest shall be eligible to bid where—
- (a) such tenderer has declared any conflict of interest; and
  - (b) performance and price competition for that good, work or service is not available or can only be sourced from that tenderer.
- 3.2.6 For the purposes of this paragraph, any relative i.e. spouse(s) and child(ren) of any person mentioned in sub-paragraph 3.2.1 is also ineligible to participate in the tender. In addition, a Cabinet Secretary shall include the President, Deputy President or the Attorney General of GoK.
- 3.2.7 Tenderers shall provide the qualification information statement that the Tenderer (including sub suppliers) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by KNEB to provide consulting services and/ or goods for the preparation of the design, specifications, and other documents to be used for the procurement of the goods under this Invitation to Tender.
- 3.2.8 Tenderers shall not be under declarations as prescribed at Section XII.
- 3.2.9 Tenderers who are not under these declarations shall complete the Declaration Form strictly in the form and content as prescribed at Section XII.
- 3.2.10 Those that are under the Declaration as prescribed at Section XII whether currently or in the past shall not complete the Form. They will submit a suitable Form giving details, the nature and present status of their circumstances.

### **3.3 *Joint Venture***

- 3.3.1 Tenders submitted by a joint venture of two or more firms, as partners shall comply with the following requirements: -
- a) the Tender Form and in case of a successful tender, the Contract Agreement Form, shall be signed so as to be legally binding on all partners of the joint venture.
  - b) one of the partners shall be nominated as being lead supplier, and this authorization shall be evidenced by submitting a Power of Attorney signed by legally authorized signatories of all the partners.
  - c) The Power of Attorney which shall accompany the tender, shall be granted by the authorized signatories of all the partners as follows:-
    - (i. for local bidders, before a Commissioner of Oaths or a Notary Public or
    - ) Magistrate of the Kenyan Judiciary.

- (ii.) for a foreign bidder, before a Notary Public, or the equivalent of a Notary Public, and in this regard the bidder shall provide satisfactory proof of such equivalence.
  - d) the lead supplier shall be authorized to incur liability and receive instructions for and on behalf of any and all the partners of the joint venture and the entire execution of the contract including payment shall be done exclusively with the lead supplier.
- 3.3.2 All partners of the joint venture shall be liable jointly and severally for the execution of the contract in accordance with the contract terms, and a relevant statement to this effect shall be included in the authorization mentioned in paragraph 3.3.1 (b) above as well as in the Form of Tender and the Contract Agreement Form (in case of the accepted tender).
- 3.3.3 A copy of the agreement entered into by the joint venture partners shall be submitted with the tender.

### ***3.4 Cost of Tendering***

- 3.4.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and KNEB will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

### ***3.5 Contents of the Tender Document***

- 3.5.1 The Tender Document comprises the documents listed below and Addendum (where applicable) issued in accordance with paragraph 3.7 of these Instructions to Tenderers: -
  - a. *Invitation to Tender*
  - b. *Instructions to Tenderers*
  - c. *Appendix to Instructions to Tenderers*
  - d. *Schedule of Requirements*
  - e. *Price Schedule for Services and/ or goods*
  - f. *Evaluation Criteria*
  - g. *General Conditions of Contract*
  - h. *Special Conditions of Contract*
  - i. *Tender Form*
  - j. *Declaration Form*
  - k. *Contract Form*
  - l. *Performance Security Form*

3.5.2 The Tenderer is expected to examine all instructions, forms, provisions, terms and specifications in the Tender Document. Failure to furnish all information required by the Tender Document or to submit a tender not substantially responsive to the Tender Document in every respect will be at the Tenderer's risk and may result in the rejection of its Tender.

3.5.3 All recipients of the documents for the proposed Contract for the purpose of submitting a tender (*whether they submit a tender or not*) shall treat the details of the documents as "Private and Confidential".

### **3.6 Clarification of Documents**

A prospective Tenderer requiring any clarification of the Tender Document may notify the Procurement Officer in writing and ensure receipt is acknowledged at KNEB's Physical address indicated on the Tender Document. KNEB will respond in writing to any request for clarification of the Tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of Tenders, prescribed by KNEB. Written copies of KNEB's response (*including an explanation of the query but without identifying the source of inquiry*) will be published and accessible to all prospective Tenderers on the KNEB's tendering portal.

### **3.7 Amendment of Documents**

3.7.1 At any time prior to the deadline for submission of Tenders, KNEB, 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 amendment.

3.7.2 All prospective Tenderers that have registered in the portal for the Tender will be notified of the amendment(s) (*hereinafter referred to or otherwise known as addendum*) in writing and will be binding on them.

3.7.3 In order to allow prospective Tenderers reasonable time in which to take the amendment into account in preparing their Tenders, KNEB, at its discretion, may extend the deadline for the submission of Tenders.

### **3.8 Language of Tender**

The Tender prepared by the Tenderer, as well as all correspondence and documents relating to the tender, exchanged between the Tenderer and KNEB, shall be written in English language. Any printed literature furnished by the Tenderer written in any other language shall be 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. The

English translation shall be on the Tenderer's letterhead and shall be signed by the duly authorized signatory signing the Tender and stamped with the Tenderer's stamp.

### ***Documents Comprising the Tender***

The Tender prepared and submitted by the Tenderers shall include but not be limited to all the following components: -

- a) *Declaration Form, Tender Form and a Price Schedule completed in compliance with paragraphs 3.2, 3.10, 3.11 and 3.12.*
- b) *Documentary evidence established in accordance with paragraph 3.13 that the Tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted.*
- c) *Documentary evidence established in accordance with paragraph 3.14 that the services and/ or goods and any ancillary thereto to be provided by the Tenderer conform to the tender documents, and,*
- d) *Tender Security furnished in accordance with paragraph 3.17*
- e) *A detailed list of previous customers as prescribed for similar services and/ or goods on tender and their contact addresses shall be submitted with the Tender for the purpose of reference, or for evaluation where the Details of Service so dictate.*
- f) *And all other documents indicated in Section II (Tender Submission Checklist)*

### ***3.10 Tender Form***

The Tenderer shall complete and sign the Tender Form and all other documents furnished in the Tender Document, indicating the services and/ or goods to be performed, a brief description of the services and/ or goods, quantity (where applicable), and prices amongst other information required.

### ***3.11 Tender Prices***

3.11.1 The Tenderer shall indicate on the appropriate Price Schedule, the unit prices (where applicable) and total tender price of the services and/ or goods it proposes to provide under the contract.

3.11.2 Prices indicated on the Price Schedule shall be of all costs for the services and/ or goods including insurances, duties, Value Added Tax (V.A.T) and other taxes payable. No other basis shall be accepted for evaluation, award or otherwise.

3.11.3 Tender prices to be submitted (quoted) by the Tenderer shall remain fixed for the contract duration.

3.11.4 A price that is derived by a disclosed incorporation or usage of an international accepted standard formula shall be acceptable within the meaning of this paragraph.

### **3.12 Tender Currencies**

3.12.1 For services and/ or goods that the Tenderer will provide from within or outside Kenya, the prices shall be quoted in Kenya Shillings, or in another freely convertible currency in Kenya. The currency quoted must be indicated clearly on the Price Schedule of Services and/ or goods.

3.12.2 The exchange rate to be used for currency conversion shall be the Central Bank of Kenya selling rate prevailing on the Tender closing date. *(Please visit the Central Bank of Kenya website).*

### **3.13 Tenderer's Eligibility and Qualifications**

3.13.1 Tenderer shall furnish, as part of its Tender, documents establishing the Tenderer's eligibility to tender and its qualifications to perform the contract if its Tender is accepted.

3.13.2 The documentary evidence of the Tenderer's qualifications to perform the contract if its Tender is accepted shall be established to KNEB's satisfaction –

*a) that, in the case of a Tenderer offering to perform the services and/ or goods under the contract which the Tenderer is not the Principal, the Tenderer has been duly authorized by the Manufacturer, Principal or Producer to provide the services and/ or goods. The authorization shall strictly be in the form and content as prescribed in the*

*Manufacturer's or Principal's Authorization Form in the Tender Document*

*b) that the Tenderer has the financial capability necessary to perform the contract. The Tenderer shall be required to provide the documents as specified in the Appendix to Instructions to Tenderers including a current Tax Compliance Certificate issued by the relevant tax authorities.*

*c) that the Tenderer has the technical and production capability necessary to perform the contract.*

*that, in the case of a Tenderer not doing business within Kenya, the Tenderer is or will be (if awarded the contract) represented by an agent in Kenya equipped, and able to carry out the Tenderer's maintenance, repair, spare parts and stocking obligations prescribed in the Conditions of Contract and or in the Details of Service.*

*e) that the Tenderer is duly registered and is a current member of a recognized body or institution accredited and or pertaining to that service.*

3.13.3 The Tenderer will furnish KNEB with a copy of the accreditation or recognition certificate as applicable. KNEB reserves the right to subject the certificate to authentication.

3.13.4 Tenderers with a record of unsatisfactory or default in performance obligations in any contract shall not be considered for evaluation or award. For the avoidance of doubt, this shall include any Tenderer with unresolved case(s) in its obligations for more than two (2) months in any contract.

### **3.14 Conformity of Services and/ or goods to Tender Documents**

3.14.1 The Tenderer shall furnish, as part of its tender, documents establishing the conformity to the Tender Document of all services and/ or goods that the Tenderer proposes to perform under the contract.

3.14.2 The documentary evidence of conformity of the services and/ or goods to the Tender Document may be in the form of literature, drawings, and data, and shall (where applicable) consist of: -

- a) a detailed description of the essential technical and performance characteristics of the services and/ or goods whether in catalogues, drawings or otherwise,*
- b) a list giving full particulars, including available source and current prices of spare parts, special tools and other incidental apparatus necessary for the proper and continuing performance of the services and/ or goods for a minimum period of two (2) years following commencement of the provision of the services and/ or goods to KNEB, and,*
- c) duly completed Statement of Compliance to KNEB's Details of Service demonstrating substantial responsiveness of the service to those Details or, a statement of deviations and exceptions to the provisions of the Details of Service.*

3.14.3 For purposes of the documentary and other evidence to be furnished pursuant to subparagraphs 3.14.1, 3.14.2 and paragraph 3.15, the Tenderer shall note that standards for workmanship, material, and equipment, designated by KNEB in its Details of Service are

intended to be descriptive only and not restrictive. The Tenderer may adopt higher standards in its Tender, provided that it demonstrates to KNEB's satisfaction that the substitutions ensure substantial equivalence to those designated in the Details of Service.

### **3.15 *Demonstration(s), Inspection(s) and Test(s)***

- 3.15.1 Where required in the tender, all Tenderers shall demonstrate ability of performance of the required service in conformity with the Details of Services and/ or goods.
- 3.15.2 KNEB or its representative(s) shall have the right to inspect/ test the Tenderer's capacity, equipment, premises, and to confirm their conformity to the tender requirements. This shall include the quality management system. KNEB's representative(s) retained for these purposes shall provide appropriate identification at the time of such inspection/ test.
- 3.15.3 KNEB shall meet its own costs of the inspection/ test. Where conducted on the premises of the Tenderer(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to KNEB.
- 3.15.4 Demonstration, Inspection/ Test Report(s) shall be completed upon conclusion of the inspection/ tests. This Report will be considered at time of evaluation and or award.

### **3.16 *Warranty***

- 3.16.1 Where required in the Tender, all Tenderers must also provide a Warranty that services and/ or goods to be rendered in the Tenderer's bid have no defect arising from manufacture, materials or workmanship or from any act or omission of the Tenderer that may develop under normal use or application of the services and/ or goods under the conditions obtaining in Kenya.
- 3.16.2 This warranty will remain valid for the period indicated in the special conditions of contract after the services and/ or goods, or any portion thereof as the case may be, have been rendered.

### **3.17 *Tender Security***

- 3.17.1 The Tenderer shall furnish, as part of its Tender, a tender security for the amount specified in the Appendix to Instructions to Tenderers.
- 3.17.2 The tender security shall be either one of the following:-
  - a) an original Bank Guarantee by a bank licensed by Central Bank of Kenya (CBK).



- b) An original Guarantee by a deposit taking Microfinance Institution, Sacco Society, Youth Enterprise Development Fund or the Women Enterprise Fund licensed by the relevant bodies in Kenya.
  - c) An original tender security from an insurance company approved by PPRA
- 3.17.3 The tender security is required to protect KNEB against the risk of the Tenderer's conduct which would warrant the security's forfeiture pursuant to paragraph 3.17.10.
- 3.17.4 The Tender Security shall be denominated in Kenya Shillings or in another freely convertible currency in Kenya. A Tender Security in form of a Bank Guarantee should be from a commercial bank licensed by the Central Bank of Kenya.
- 3.17.5 The Tender Security shall be valid for **thirty (30) days** beyond the validity of the tender.
- 3.17.6 KNEB shall seek authentication of the Tender Security from the issuing bank. It is the responsibility of the Tenderer to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KNEB. The period for response shall not exceed five (5) days from the date of KNEB's query. Should there be no conclusive response by the bank within this period, such Tenderer's Tender Security may be deemed as invalid and the bid rejected.
- 3.17.7 Any Tender not secured in accordance with this paragraph will be rejected by KNEB as non-responsive, pursuant to paragraph 3.27.
- 3.17.8 The unsuccessful Tenderer's Tender Security will be released as promptly as possible, in any of the following circumstances: -
- a) *the procurement proceedings are terminated*
  - b) *KNEB determines that none of the submitted Tenders is responsive*
  - c) *a contract for the procurement is entered into.*
- 3.17.9 The successful Tenderer's Tender Security will be released upon the successful Tenderer's signing the contract, pursuant to paragraph 3.39 and furnishing an authentic Performance Security, pursuant to paragraph 3.38.
- 3.17.10 The Tender Security shall be forfeited –
- a) *if the Tenderer withdraws its Tender after the deadline for submitting Tenders but before the expiry of the period during which the Tenders must remain valid*
  - b) *if the Tenderer fails to enter into a written contract in accordance with paragraph*

- c) *if the successful Tenderer fails to furnish the performance security in accordance with paragraph 3.38*
- d) *if the Tenderer fails to extend the validity of the tender security where KNEB has extended the tender validity period in accordance with paragraph 3.18.*

### **3.18 Validity of Tenders**

- 3.18.1 Tenders shall remain valid for **One Hundred and Twenty (120) days** after the date of tender opening as specified in the Invitation to Tender or as otherwise may be prescribed by KNEB, pursuant to paragraph 3.22. A Tender that is valid for a shorter period shall be rejected by KNEB as non-responsive.
- 3.18.2 In exceptional circumstances, KNEB may extend the Tender validity period. The extension shall be made in writing. The tender security provided under paragraph 3.17 shall also be extended. A Tenderer shall not be required nor permitted to modify its tender during the extended period

### **3.19 Alternative Offers**

Only main offers shall be considered, as alternative offers are not acceptable.

### **3.20 Preparation and Signing of the Tender**

- 3.20.1 The Tender shall be typed or written in indelible ink. It shall be signed by the Tenderer or a person or persons duly authorized to bind the Tenderer to the contract.
- 3.20.2 The authorization shall be indicated by a written Power of Attorney granted by the Tenderer to the authorized person , if the person is not a director/ partner before any of the following persons:-
  - a) *For local Tenderers, a Commissioner of Oaths or a Notary Public or a Magistrate of the Kenyan Judiciary.*
  - b) *For foreign Tenderers, a Notary Public in the country of the Tenderer.*

In either case above, the Power of Attorney shall accompany the Tender where if applicable.

- 3.20.3 All pages of the Tender, including un-amended printed literature, shall be initialled by the person or persons signing the Tender and serially numbered.
- 3.20.4 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 initialled by the person or persons signing the Tender.

3.20.5 KNEB will assume no responsibility whatsoever for the Tenderer's failure to comply with or

observe the entire contents of this paragraph 3.21.

3.20.6 Any Tender not prepared and signed in accordance with this paragraph may be rejected by KNEB as non-responsive, pursuant to paragraph 3.27.

### ***3.21 Number of Sets of and Tender Format***

3.21.1 The Tenderer shall prepare and seal 3 (three) complete sets of its Tender, identifying the Tender Number and Tender name and clearly marking the "ORIGINAL TENDER", "COPY 1 OF TENDER" and "COPY 2 OF TENDER", as appropriate in envelopes or packages. Each set shall be properly bound together. The copy shall be a replica of the Original. Each copy will be deemed to contain the same information as the Original. If the envelopes or packages are not sealed and marked as required by this paragraph, KNEB will assume no responsibility whatsoever for the Tender's misplacement or premature opening.

### ***3.22 Deadline for Submission of Tenders***

3.22.1 Tenders must be received by KNEB by the date and time specified in Invitation to tender.

3.22.2 KNEB may, at its discretion, extend this deadline for submission of Tenders by amending the tender documents in accordance with paragraph 3.7, in which case all rights and obligations of KNEB and the Tenderer previously subject to the initial deadline, will therefore be subject to the deadline as extended.

### ***3.23 Modification and Withdrawal of Tenders***

3.23.1 The Tenderer may modify or withdraw its Tender after it has submitted, provided that the modification, including substitution or withdrawal of the Tender is received by KNEB prior to the deadline prescribed for submission of tenders.

3.23.2 No Tender may be modified after the deadline for submission of Tenders.

3.23.3 No Tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period during which the Tender must remain valid except where KNEB extends the initial validity period. Any withdrawal of a Tender during this interval shall result in forfeiture of the Tenderer's Tender Security except where KNEB extends the initial validity period.

### ***3.24 Opening of Tenders***

3.24.1 KNEB shall open all Tenders promptly at the date and time at the location specified in the Invitation to Tender or as may otherwise be indicated.

- 3.24.2 The Tenderer's names, tender modifications or withdrawals, the presence or absence of requisite Tender Security and such other details as KNEB, at its discretion, may consider appropriate, will be announced at the opening.
- 3.24.3 At the Tender opening, tender prices, discounts, and such other details as KNEB, at its discretion, may consider appropriate will be read out.
- 3.24.4 The Tenderers or their representatives may attend the opening and those present shall sign a register evidencing their attendance.

### ***3.25 Process to be Confidential***

- 3.25.1 After the opening of tenders, information relating to the examination, clarification, evaluation and comparisons of tenders and recommendations arising therefrom shall not be disclosed to a Tenderer or other person(s) not officially concerned with such process until conclusion of that process.
- 3.25.2 Conclusion of that process shall be deemed to have occurred, at the latest, by the date and time KNEB notifies the successful bidder(s). In any event, official disclosure by KNEB of any information upon conclusion of that process may only be to the unsuccessful bidders and may contain only the information permissible by law in summary form.
- 3.25.3 Any effort by a Tenderer to influence KNEB or any of its staff members in the process of examination, evaluation and comparison of tenders and information or decisions concerning the Tender may result in the disqualification of the Tenderer.

### ***3.26 Clarification of Tenders and Contacting KNEB***

- 3.26.1 To assist in the examination, evaluation and comparison of Tenders KNEB 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.
- 3.26.2 The Tenderer is required to provide timely clarification or substantiation of the information that is essential for effective evaluation of its qualifications. It is the responsibility of the Tenderer to provide in writing the clarification or substantiation which should reach KNEB within five (5) days from the date of KNEB's query. Such writing may include by electronic mail, facsimile or postal mail. Should there be no conclusive response within this period, it shall result in the Tenderer's disqualification.
- 3.26.3 Save as is provided in this paragraph and paragraph 3.26 above, no Tenderer shall contact KNEB on any matter related to its Tender, from the time of the tender opening to the time the successful Tenderer is announced.

3.26.4 Any effort by a Tenderer to influence KNEB in its decisions on tender evaluation, tender comparison, tender recommendation(s) or signing of Agreement may result in the disqualification of the Tenderer.

### **3.27 *Preliminary Evaluation and Responsiveness***

3.27.1 Prior to the detailed Technical and Financial evaluation, KNEB will determine the substantial responsiveness of each Tender. For purposes of this tender, a substantially responsive Tender is one that conforms to the requirements of Preliminary Evaluation. KNEB's determination of a Tender's responsiveness is to be based on the contents of the Tender itself without recourse to extrinsic evidence.

3.27.2 KNEB will examine the Tenders to determine whether they conform to the set Evaluation Criteria .

3.27.3 Notwithstanding the contents of the foregoing sub-paragraphs, if a Tender is not substantially responsive, it will be rejected at the earliest stage of evaluation by KNEB and cannot subsequently be made responsive by the Tenderer by correction of any non-conformity.

### **3.28 *Minor Deviations, Errors or Oversights***

3.28.1 KNEB may waive any minor deviation in a Tender that does not materially depart from the requirements of the goods and or services and/ or goods set out in the Tender Document.

3.28.2 Such minor deviation -

*3.28.2.1 shall be quantified to the extent possible,*

*3.28.2.2 shall be taken into account in the evaluation process, and,*

*3.28.2.3 shall be applied uniformly and consistently to all qualified Tenders duly received by KNEB.*

3.28.3 KNEB may waive errors and oversights that can be corrected without affecting the substance of the Tender.

### **3.29 *Technical Evaluation and Comparison of Tenders***

3.29.1 KNEB will further evaluate and compare the Tenders that have been determined to be substantially responsive, in compliance to the Details of Services and/ or goods set out in the Tender Document and as per the prescribed Evaluation Criteria.

3.29.2 The Operational Plan is a critical aspect of the Tender. KNEB requires that the Services and/ or goods shall be performed at the time specified in the Schedule of Requirements. KNEB's

evaluation of a tender will also take into account the Operational Plan proposed in the Tender. Tenderers offering to perform longer than KNEB's required delivery time will be treated as non-responsive and rejected.

### **3.30 *Financial Evaluation***

- 3.30.1 The financial evaluation criteria and comparison shall be as set out in the Evaluation Criteria. The comparison shall be
- a) of the price including all costs as well as duties and taxes payable on all the materials to be used in the provision of the Services and/ or goods.
  - b) deviations in Payment Schedule from that specified in the Special Conditions of Contract
- 3.30.2 Where other currencies are used, KNEB will convert those currencies to the same currency using the selling exchange rate ruling on the date of tender closing provided by the Central Bank of Kenya- where applicable.

### **3.31 *Preferences***

- 3.31.1 In the evaluation of tenders, exclusive preference shall firstly be given to citizen service providers where the amount of the tender as evaluated is below Ksh. 500 Million in respect of works, goods and services and/ or goods.
- 3.31.2 Where a person is entitled to more than one preference scheme, the scheme with the highest advantage to the person shall be applied.
- 3.31.3 For purposes of this paragraph the Tenderer shall submit with its Tender, a valid copy of certificate of Confirmation of Directorships and Shareholding issued **and signed** by either the Registrar of Companies or Registrar of Business Names. KNEB reserves the right to subject the certificate to authentication.

### **3.32 *Debarment of a Tenderer***

A Tenderer who gives false information in the Tender about its qualification or who refuses to enter into a contract after notification of contract award shall be forward to PPRA for consideration of debarment from participating in future public procurement.

### ***3.33 Confirmation of Qualification for Award***

- 3.33.1 KNEB may confirm to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.
- 3.33.2 The confirmation will take into account the Tenderer's financial, technical, and performance capabilities. It will be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to paragraph 3.13 as well as confirmation of such other information as KNEB deems necessary and appropriate. This may include factory, office and other facilities inspection and audits.
- 3.33.3 An affirmative confirmation will be a prerequisite for award of the contract to the Tenderer. A negative confirmation will result in rejection of the Tenderer's Tender, in which event KNEB will proceed to the next lowest evaluated responsive tender to make a similar confirmation of that Tenderer's capabilities to perform satisfactorily.

### ***3.34 Award of Contract***

- 3.34.1 KNEB will award the contract to the successful Tenderer whose Tender has been determined to be substantially responsive, compliant with the evaluation criteria and has been determined to be the lowest evaluated tender, and further, where deemed necessary, that the Tenderer is confirmed to be qualified to perform the contract satisfactorily.
- 3.34.2 Award will be done as indicated in the Appendix to Instructions to Tenderers.

### ***3.35 Termination of Procurement Proceedings***

- 3.35.1 KNEB may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 3.35.2 KNEB shall give prompt notice of the termination to the Tenderers, and, on request from any Tenderer, give its reasons for termination within fourteen (14) days of such request.

### ***3.36 Notification of Award***

- 3.36.1 Prior to the expiration of the period of tender validity, KNEB shall notify the successful Tenderer in writing that its Tender has been accepted.
- 3.36.2 The notification of award shall not constitute the formation of the contract until one is finally signed by both parties.

- 3.36.3 Simultaneously, and without prejudice to the contents of paragraph 3.27, on issuance of Notification of Award to the successful Tenderer, KNEB shall notify each unsuccessful Tenderer.
- 3.36.4 A notification of the tender outcome does not reduce the validity period for any tender security whether the Tenderer is successful or not, except where such tender security is officially released to the Bank and/or the Tenderer and such Bank discharged of all its obligations by KNEB prior to the expiry of its stated validity period.

### **3.37 *Signing of Contract***

- 3.37.1 At the same time as KNEB notifies the successful Tenderer that its Tender has been accepted, KNEB will send the Tenderer the Contract Agreement provided in the Tender Document together with any other necessary documents incorporating all agreements between the Parties.
- 3.37.2 Within fourteen (14) days of the date of notification of award, the successful Tenderer shall only sign the Contract Form and all the documents specified in that Form and return them to KNEB within that period of fourteen (14) days.
- 3.37.3 KNEB shall sign and date the Contract not earlier than fourteen (14) days from the date of notification of contract award. Further, KNEB shall not sign the contract until and unless the authentic performance security is received in accordance with paragraph 3.37.
- 3.37.4 Failure of the successful Tenderer to sign the Contract, the award shall be annulled and its tender security forfeited in which event KNEB shall notify the next lowest evaluated Tenderer that its Tender has been accepted.
- 3.37.5 Paragraph 3.34 together with the provisions of this paragraph 3.36 will apply with necessary modifications with respect to the Tenderer notified under sub-paragraph 3.36.4.

### **3.38 *Performance Security***

- 3.38.1 After fourteen (14) days of the date of notification of intent of award from KNEB, the successful Tenderer shall furnish KNEB with a Performance Security which shall be an original Bank Guarantee that is strictly in the form and content as prescribed in the Performance Security Form (Bank Guarantee) in the Tender Document.
- 3.38.2 The Performance Security shall be issued by a commercial bank licensed by the Central Bank of Kenya. The bank must be located in Kenya.
- 3.38.3 The Performance Security shall be the sum of ten percent (10%) of the contract value. It shall be in the currency of the contract price.



- 3.38.4 KNEB shall seek authentication of the Performance Security from the issuing bank. It is the responsibility of the successful Tenderer to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KNEB. The period for response shall not exceed three (3) days from the date of KNEB's query. Should there be no conclusive response by the Bank within this period, such successful Tenderer's Performance Security may be deemed as invalid.
- 3.38.5 Failure of the successful Tenderer to furnish an authentic Performance Security, the award shall be annulled and the Tender Security forfeited, in which event KNEB may notify the next lowest evaluated Tenderer that its Tender has been accepted.
- 3.38.6 Paragraph 3.36, 3.37 together with the provisions of this paragraph 3.38 will apply with necessary modifications, and as far as circumstances permit, with respect to the Tenderer notified under sub-paragraph 3.37.4.

### **3.39 Corrupt or Fraudulent Practices**

- 3.39.1 KNEB requires that Tenderers observe the highest standard of ethics during the procurement process and execution of contracts. When used in the present Regulations, the following terms are defined as follows: -
- a) *“Corrupt practice” means the offering, giving, receiving or soliciting of any thing of value to influence the action of public official in the procurement process or in contract execution;*
  - b) *“Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of KNEB, and includes collusive practice among Tenderers (prior to or after Tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive KNEB of the benefits of free and open competition.*
- 3.39.2 KNEB will nullify its notification of award if it determines that the Tenderer recommended has engaged in corrupt or fraudulent practices in competing for the contract in question.
- 3.39.3 Further, a Tenderer who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.
- 3.40 The formulae for determining the Financial Score (Sf) shall, unless an alternative formulae is indicated in the Appendix “ITC”, be as follows:-

$Sf = 100 \times \frac{F_m}{F}$  where Sf is the financial score; F<sub>m</sub> is the lowest priced financial proposal and F is the price of the proposal under consideration. Proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weights (T=the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + p = 1) as indicated. The combined technical and financial score, S, is calculated as follows:-  $S = St \times T \% + Sf \times P \%$ .

The firm achieving the highest combined technical and financial score will be invited for negotiations.

## ***INSTRUCTIONS TO TENDERERS***

The following information regarding the particulars of the tender shall complement and or amend the provisions of the Instructions to Tenderers *hereinafter abbreviated as ITT*. Wherever there is a conflict between the provisions of the ITT and the Appendix, the provisions of the Appendix herein shall prevail over those of the ITT.

<b><i>No.</i></b>	<b><i>ITT Reference Clause</i></b>	<b><i>Particulars of Appendix</i></b>
1.	<b><i>3.2.1 Eligible Tenderers</i></b>	This tender is open to all registered firms in the Republic Kenya qualified in carrying out Social Research
2.	<b><i>3.9 (e) Documents Comprising the Tender – List of Previous Customers</i></b>	The Tenderer shall submit names with full contact as well as physical addresses of previous customers of similar services and/ or goods and recommendation letters from 5 previous customers confirming satisfactory delivery and performance
3.	<b><i>3.17Tender Security</i></b>	Original Tender Security shall be Ksh. 50,000.00 in the form of Bank Guarantee or Letters of Credit issued by Banks Licensed by the Central Bank of Kenya or from an Insurance company approved by PPRA and valid for at 150 days from the date of tender opening
4.	<b><i>3.34 &amp; 3.36 Award of Contract</i></b>	Award shall be to the <b><i>highest combined score</i></b> bidder
5.	<b><i>3.38 Performance Security</i></b>	Supplier who will be awarded the contract will be required to provide a 10% performance bond in the form of Bank Guarantee or Letters of Credit issued by Banks Licensed by the Central Bank of Kenya if the value of the contract is above Ksh.1,000,000

***SECTION IV - SCHEDULE OF REQUIREMENTS***

**TERMS OF REFERENCE AND REQUIREMENTS FOR PROVISION OF NATIONAL  
OPINION SURVEY ON PERCEPTIONS TOWARD NUCLEAR ENERGY IN KENYA  
TENDER NO. KNEB/OT/DPRA/02/18/19**

The assignment will include pre-assignment activities, design and development of a survey Instrument, sampling, and administration of the survey instrument, data analysis and preparation of preliminary and final reports.

Objective of the Survey

- i. Collect data on the level of awareness amongst stakeholders.
- ii. Analysis of the data collected and identify the knowledge gaps.
- iii. Provide expert advice to KNEB on the most effective way to address the gaps established.
- iv. Run one National opinion poll survey i.e. follow -up to the 2015 baseline survey

**THE SCOPE OF THE SURVEY**

Survey shall be carried out and administered to respondents drawn from the Forty Seven (47) Counties of Kenya and mapped KNEB stakeholder categories.

***Specific Terms of Reference***

- i. Preparation and submission of a timetable for conducting the assignment.
- ii. Carrying out a pre-survey briefing to the Director, Publicity & Advocacy
- iii. Agreeing on the sample details
- iv. Design and development of an appropriate survey questionnaire
- v. Conducting the survey – administration of the survey questionnaire to the sample
- vi. Data collection and analysis
- vii. Results, interpretation and recommendations
- viii. Post survey briefing to the Management
- ix. Preparation and submission of survey findings report

Name of Tenderer

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Signature of duly authorized person signing the Tender

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Name and Designation of duly authorized person signing the Tender

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Stamp or Seal of Tenderer

***SECTION V - PRICE SCHEDULE***

**PRICE SCHEDULE FOR PROVISION OF NATIONAL OPINION SURVEY ON PERCEPTIONS TOWARD NUCLEAR ENERGY IN KENYA TENDER NO. KNEB/OT/DPRA/02/18/19**

<b>No</b>	<b>Services</b>	<b>Total price (Ksh. VAT Exclusive)</b>
<b>1.</b>	Data collection analysis preparation of reports and may other research related costs(please give details in a proper format)	
	<b>Total Value Ksh. VAT Exclusive</b>	
	<b>Add VAT amount</b>	
	<b>Grand Total Ksh. VAT inclusive</b>	

**NOTE**

- The currency quoted must be in Kenya Shillings.

Name of Tenderer

\_\_\_\_\_

Signature of duly authorized person signing the Tender

\_\_\_\_\_

Name and Designation of duly authorized person signing the Tender

\_\_\_\_\_  
Stamp or Seal of Tenderer

## **SECTION VI - EVALUATION CRITERIA**

**6.1:** Evaluation of duly submitted tenders will be conducted in accordance with the following Mandatory requirements: -

- i. Submission of Company Profile
- ii. Ascertain that an Original Bid Bond/Tender Security in the form of Bank Guarantee or Letters of Credit (issued by Banks Licensed and/ or recognized by the Central Bank of Kenya), in required amount and strictly in the prescribed format attached has been submitted.)
  - It also entails Checking its validity, i.e. 150 days (30 days beyond tender validity period)
- iii. Submission and considering the Confidential Business Questionnaire ( template attached):-, that it,
  - a) Is fully filled.
  - b) Details correspond to the related information in the bid.
- iv. Submission of Certificate of Confirmation of Directors and Shareholding (C.R. 12)
- v. Submission of valid AGPO certificate in case of special group
- vi. Submission of duly completed and signed Declaration Form in the prescribed format attached
- vii. Submission of duly completed and signed Tender Form in the prescribed format attached
- viii. Submission of copy of PIN certificate
- ix. Submission of Copy of Valid Tax Compliance Certificate valid for at least up to the tender closing date
- x. Submission of copy of Company or Firm's Registration Certificate
- xi. Submission of Certificates, employment contracts & Curriculum Vitae ( CV) of key staff
- xii. Submission of audited Financial statements. The audited financial statements required must be those that are reported within eighteen (18) calendar months of the date of the tender document )
- xiii. Names with full contact as well as physical addresses of previous, customers of similar goods and reference letters from at least Five (5) previous customers.
- xiv. Submission of Proposed approach and methodology to be adopted for the assignment including tools to be used, estimated time and report architecture

Only bidders who meet the mandatory requirements will proceed for technical evaluation

### **6.2 : Technical Evaluation Stage**

The tenders shall be evaluated using the following criteria and score points with total of 100marks:

#### **1. Team Qualification and experience; (30 marks)**

Qualifications of the team to handle the assignment. CVs and **certified certificates (by head of organization)** in statistics/mathematics/research or related field must be attached in order to score marks.

<i>Team</i>	<i>Qualification</i>	<i>Marks</i>
Lead	Post graduate degree or related field	2
Consultant	Undergraduate or related field	3
	Relevant experience in carrying out surveys or related services (indicate the contacts of the organization) > 10 years - 15 marks 5 - 10 years - 7 marks Below 5 years will score zero	15
	Two	Post graduate degree
assistant staff	Undergraduate	3
	Relevant experience in carrying out surveys or related services (indicate the contacts of the organization) > 7 years - 5 marks 4 - 7 years - 3 marks Below 3 years will score zero	5

**2. Firm's experience; (20 marks)**

Experience of the firm in the provision of survey consultancies or comparable assignment to other entities of similar characteristics; employee or customer satisfaction survey services with more than (10 billion assets base) providing orders, contracts or recommendation letters (*these must have amount of services done in order to score any marks*) from previous clients with complete telephone and email addresses.

<i>Qualification</i>	<i>Marks</i>
More than 10 years	20
5 to 10 years	10
Below 5 years	5

**3. Methodology (20 marks)**

Proposed approach and methodology to be adopted for the assignment including tools to be used, estimated time and report architecture.

<i>Item</i>	<i>Marks</i>
Understanding the terms of reference	3
Technical approach and methodology including proposed concept design	5
Finalization and reporting	5
Firm's organization and team Composition	2
Work plan and Activity Schedule	5

**4. Financial capability (20 marks)**

The average turnover of the entity for the last three fiscal years. ***To submit audited financial statements for the last three years. Unaudited financial statements will score zero.***

<i>Item</i>	<i>Amounts (Kshs)</i>	<i>Marks</i>
Average turnover	Above 20 million	20
	10 - 20 million	15
	Below 10 million	5

**5. Referees (10 marks)**

The bidder to provide Five recommendation letters from previous clients within the last five years (2 marks for each) for provision of survey services or similar assignments.

Tenders will proceed to the financial evaluation stage if they score a minimum of 80 marks and above in the criteria. Technical score will carry a weighting of 80%.

**6.3 : Financial Evaluation.**

The Financial of qualified firms will be opened and checked for any arithmetical errors and any anomalies.

- The Total price VAT inclusive MUST be indicated on the price schedule duly signed and stamped by the tenderer.

The formulae for determining the financial scores is the following:

$$Sf = 100 \times FM/F \text{ where } Sf \text{ is the financial score;}$$

FM is the lowest priced financial proposal and F is the price of the proposal under consideration. The lowest priced bidder shall score 20%



**The combined technical and financial scores shall be determined using the formula in clause 3.40 in the ITC. The Weights given to The Technical (T) and Financial Proposals (P) are:**

**T=0.80 P= 0.20**

**Successful bidder will be the highest combined score and Successful bidder may be invited by the vendor for Negotiations.**

## **VII – GENERAL CONDITIONS OF CONTRACT**

The General Conditions of Contract *hereinafter referred abbreviated as the GCC* shall form part of the Conditions of Contract in accordance with the law and KNEB’s guidelines, practices, procedures and working circumstances. The provisions in the GCC will apply unless an alternative solution or amendment is made under other parts of the Contract including the Special Conditions of Contract.

### **7.1 Definitions**

In this contract, the following terms shall be interpreted as follows: -

- a) *“Day” means calendar day and “month” means calendar month.*
- b) *“The Contract” means the agreements entered into between KNEB and the Supplier, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.*
- c) *“The Contract Price” means the price payable to the Supplier under the contract for the full and proper performance of its contractual obligations.*
- d) *“The Services and/ or goods” means services and/ or goods or art thereof to be provided by the Supplier and includes all of the materials and incidentals, which the Supplier is required to perform and provide to KNEB under the contract.*
- e) *“The Procuring Entity” means The Kenya Power Pension or its successor(s) and assign(s) where the context so admits (hereinafter abbreviated as KNEB).*
- f) *“The Supplier” means the individual or firm providing the services and/ or goods under this contract or his/ her/ its permitted heir(s), personal representative(s), successor(s) or permitted assign(s) where the context so admits. For the avoidance of doubt this shall mean the successful Tenderer(s) pursuant to the tender.*
- g) *Wherever used in the contract, “performance” shall be complete or be deemed to be complete, unless the circumstances indicate otherwise, when the services and/ or goods have been performed in accordance with the Contract and where KNEB does not signify its approval to the Supplier, but without giving notice of dissatisfaction, on the expiration of thirty (30) days from date of documented completion of performance of the service.*

### **7.2 Application**

These General Conditions shall apply to the extent that provisions of other parts of the contract do not supersede them.

### **7.3 *Standards***

The Services and/ or goods supplied under this contract shall conform to the standards mentioned in the Details of Service.

### **7.4 *Use of Contract Documents and Information***

- 7.4.1 The Supplier shall not, without KNEB'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 KNEB in connection therewith, to any person other than a person employed by the Supplier in the performance of the contract.
- 7.4.2 The Supplier shall not, without KNEB's prior written consent, make use of any document or information enumerated in clause 7.4.1 above.
- 7.4.3 Any document, other than the contract itself, enumerated in clause 7.4.1 shall remain the property of KNEB and shall be returned (including all copies) to KNEB on completion of the Supplier's performance under the contract if so required by KNEB.

### **7.5 *Patent Rights***

The Supplier shall indemnify KNEB against all third party claims of infringement of patent, trademark, or industrial design rights arising from provision of the services and/ or goods or any part thereof.

### **7.6 *Performance Security***

- 7.6.1 Within fourteen (14) days of the date of the notification of contract award, the Supplier shall furnish to KNEB the Performance Security which shall be an original Bank Guarantee that is strictly in the form and content as prescribed in the Performance Security Form (Bank Guarantee) in the Tender Document.
- 7.6.2 The Performance Security shall be issued by a commercial bank licensed by the Central Bank of Kenya. The bank must be located in Kenya.
- 7.6.3 The Performance Security shall be the sum of ten percent (10%) of the contract price. It shall be in the currency of the contract price.
- 7.6.4 Failure of the Supplier to furnish the Performance Security, the award shall be annulled and the Tender Security forfeited, in which event KNEB may notify the next lowest evaluated Tenderer that its Tender has been accepted.

- 7.6.5 The proceeds of the Performance Security shall be payable to KNEB as compensation for any loss resulting from the Supplier's failure to comply with its obligations in accordance with the contract without KNEB being required to demonstrate the loss it has suffered.
- 7.6.6 The Performance Security shall be valid for a minimum of sixty (60) days after satisfactory delivery for both Foreign and Local Suppliers.
- 7.6.7 KNEB shall seek authentication of the Performance Security from the issuing bank. It is the responsibility of the Supplier to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KNEB. The period for response shall not exceed three (3) days from the date of KNEB's query. Should there be no conclusive response by the Bank within this period, such Supplier's Performance Security may be deemed as invalid and the Contract nullified, unless information to the contrary is received by KNEB two (2) days before the expiry of the Supplier's Tender Security.
- 7.6.8 Subject to the provisions of this contract, the Performance Security will be discharged by KNEB and returned to the Supplier not earlier than thirty (30) days following the date of completion of the Supplier's obligations under the contract, including any warranty obligations, under the contract.

## ***7.7 Inspection and Tests***

- 7.7.1 KNEB or its representative(s) shall have the right to inspect and/or to test the services and/ or goods to confirm their conformity to the contract specifications. KNEB shall notify the Supplier in writing in a timely manner, of the identity of any representative(s) retained for these purposes. Such visit and or inspection/ test shall in no way prejudice KNEB's rights and privileges.
- 7.7.2 In appropriate circumstances, Inspection/ Test Report(s) shall be completed upon conclusion of the inspection/ tests.
- 7.7.3 The inspections and tests may be conducted in the premises of the Supplier or its subsupplier(s). If conducted on the premises of the Supplier or its subsupplier(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to KNEB.
- 7.7.4 Should any inspected or tested services and/ or goods fail to conform to the specifications, KNEB may reject the Service(s), and the Supplier shall either replace or remedy the rejected services and/ or goods or make alterations necessary to meet specification requirements free of cost to KNEB.
- 7.7.5 KNEB's right to inspect, test and where necessary, reject the services and/ or goods after provision shall in no way be limited or waived by reason of the services and/ or goods

having previously been inspected, tested and passed by KNEB or its representative(s) prior to the services and/ or goods performance / delivery.

7.7.6 For the avoidance of doubt, any acknowledgement by KNEB on the Supplier's or sub-supplier's document shall not be conclusive proof or evidence of satisfactory performance without duly authorized approval by KNEB.

7.7.7 Nothing in this clause 7.7 shall in any way release the Supplier from any warranty or other obligations under this Contract.

### **7.8 *Packaging and Labelling***

7.8.1 Where applicable, the Supplier shall provide such packaging of the material and equipment as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract.

7.8.2 The method of packaging, labeling and marking shall comply strictly with such special requirements as shall be specified and attached to the Contract and particular Order.

7.8.3 The labelling, marking and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract.

7.8.4 The materials and equipment shall be packed in good condition suitable for sea/air/road/rail dispatch. Hazard in transit to the final destination shall include rough handling and storage in tropical conditions.

7.8.5 The Supplier shall enclose a packing list in each package and all documents relating to the Order shall show the Tender reference number and name against the items or package indicating the supplier or supplier's agent as the consignee.

### **7.9 *Delivery and Documents for Materials/ Equipment***

7.9.1 Where applicable, delivery of the materials/ equipment shall be made by the Supplier to the place and in accordance with the terms specified by KNEB in its Schedule of Requirements or as may be otherwise indicated.

7.9.2 The Supplier shall notify KNEB of the full details of the delivered materials/ equipment by delivering the materials/ equipment with a full set of the following documents: -

a) *Supplier's invoice showing the materials/ equipment description, quantity, unit price and total price*

b) *Delivery note*

c) *Packing list identifying contents of each package*

7.9.3 It is the responsibility of the Supplier to ensure that the delivery documents are received by KNEB at the designated delivery point at the time of delivery.

#### **7.10 Insurance**

7.10.1 The Supplier shall be responsible for and keep in force current appropriate insurance covers for its property and persons engaged in the performance and or provision of the Services and/ or goods under the contract.

7.10.2 The Supplier shall (*except in respect to losses, injuries or damage resulting from any act or neglect of KNEB*) indemnify and keep indemnified KNEB against all losses and claims for injuries or damage to any person or property whatsoever which may arise out of or in consequence of the contract and against all claims, demands, proceedings, damages, costs, charges, and expenses whatsoever in respect thereof or in relation thereto.

#### **7.11 Payment**

7.11.1 Payments shall be made promptly by KNEB and shall not be less than thirty (30) days from completion of satisfactory performance and submission of invoice together with other required and related documents or as otherwise prescribed in the contract.

7.11.2 Payment shall primarily be through KNEB's cheque or Real Time Gross Settlement (*RTGS*) or telegraphic transfer. Where applicable, a copy of a valid Performance Security, stamped, certified as authentic by KNEB, shall form part of the documents to be presented to KNEB before any payment is made.

#### **7.12 Interest**

Interest payment by KNEB is inapplicable in the contract.

#### **7.13 Prices**

7.13.1 Subject to clause 7.14 herein below, prices charged by the Supplier for services and/ or goods performed under the contract shall be fixed for the period of the contract with no variations.

7.13.2 A price that is derived by a pre-disclosed incorporation or usage of an internationally accepted standard formula shall not be deemed to be a price variation within the meaning of this clause.

#### **7.14 Variation of Contract**

KNEB and the Supplier may vary the contract only in accordance with the following: -

- a) *the quantity variation of services and/ or goods shall not exceed twenty percent (20%) of the original contract quantity.*
- b) *The cumulative value variation shall not exceed twenty five percent (25%) of the original contract value.*
- c) *the quantity variation must be executed within the period of the contract.*

#### **7.15 Assignment**

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

#### **7.16 Subcontracts**

7.16.1 The Supplier shall notify KNEB in writing of all subcontracts awards under this contract if not already specified in the tender. Such notification, in the original tender or obligation under the Contract shall not relieve the Supplier from any liability or obligation under the Contract.

7.16.2 In the event that an award is given and the contract is sub-contracted, the responsibility and onus over the contract shall rest on the Supplier who was awarded.

#### **7.17 Termination of Contract**

7.17.1 KNEB may, without prejudice to any other remedy for breach of contract, by written notice sent to the Supplier, terminate this contract in whole or in part due to any of the following:

-

- a) *if the Supplier fails to perform any or all of the services and/ or goods within the period(s) specified in the contract, or within any extension thereof granted by KNEB.*
- b) *if the Supplier fails to perform any other obligation(s) under the contract.*
- c) *if the Supplier, in the judgment of KNEB has engaged in corrupt or fraudulent practices in competing for or in executing the contract.*
- d) *by an act of force majeure.*
- e) *if the Supplier becomes insolvent or bankrupt*
- f) *if the Supplier has a receiving order issued against it, compounds with its creditors, or an order is made for its winding up (except for the purposes of its amalgamation or reconstruction), or a receiver is appointed over its or any part of its undertaking*

*or assets, or if the Supplier suffers any other analogous action in consequence of debt.*

*g) if the Supplier abandons or repudiates the Contract.*

7.17.2 In the event that KNEB terminates the contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, services and/ or goods similar to those undelivered or not rendered, and the Supplier shall be liable to KNEB for any excess costs for such similar services and/ or goods and or any other loss PROVIDED that the Supplier shall not be so liable where the termination is for convenience of KNEB.

7.17.3 The Parties may terminate the Contract by reason of an act of *force majeure* as provided for in the contract.

7.17.4 The Contract may automatically terminate by reason of an act of *force majeure* as provided for in the Contract.

#### **7.18 *Liquidated Damages***

Notwithstanding and without prejudice to any other provisions of the contract, if the Supplier fails to perform any or all of the services and/ or goods within the period specified in the contract, KNEB shall, without prejudice to its other remedies under the contract, deduct from the contract prices, liquidated damages sum equivalent to 0.5% of the performance price per day of delay of the delayed due services and/ or goods up to a maximum of ten percent (10%) of the performance price of the delayed due services and/ or goods.

#### **7.19 *Warranty***

7.19.1 Where applicable, the Supplier warrants that the Services and/ or goods provided under the contract are of the highest quality or current specification and incorporate all recent improvements unless provided otherwise in the contract. The Supplier further warrants that any materials/ equipment provided under this contract shall have no defect arising from manufacture, materials or workmanship or from any act or omission of the Supplier that may develop under normal use of the materials/ equipment provided under the conditions obtaining in Kenya.

7.19.2 This warranty will remain valid for the period indicated in the special conditions of contract after the goods, or any portion thereof as the case may be, have been delivered to the final destination indicated in the contract.

7.19.3 KNEB shall promptly notify the Supplier in writing of any claims arising under this Warranty.



- 7.19.4 Upon receipt of such a notice, the Supplier shall, with all reasonable speed, remedy the defective services and/ or goods without cost to KNEB.
- 7.19.5 If the Supplier having been notified, fails to remedy the defect(s) within a reasonable period, KNEB may proceed to take such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which KNEB may have against the Supplier under the contract.

### **7.20 *Resolution of Disputes***

- 7.20.1 KNEB and the Supplier may make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the contract.
- 7.20.2 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 resort to resolution before a recognized local forum for the resolution of disputes.

### **7.21 *Language and Law***

The language of the contract and the law governing the contract shall be the English language and the laws of Kenya respectively unless otherwise stated.

### **7.22 *Waiver***

Any omission or failure by KNEB to exercise any of its rights or enforce any of the penalties arising from the obligations imposed on the Supplier shall in no way, manner or otherwise howsoever, alter, amend, prejudice, vary, waive or be deemed to alter, amend, prejudice, vary, waive or otherwise whatsoever any of KNEB's powers and rights as expressly provided in and as regards this contract.

### **7.23 *Force Majeure***

- 7.23.1 Force majeure means any circumstances beyond the control of the parties, including but not limited to:
- a) *war and other hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition or embargo;*
  - b) *ionizing radiation or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosives*

*or other hazardous properties of any explosive nuclear assembly or nuclear components thereof;*

- c) rebellion, revolution, insurrection, military or usurped power & civil war;*
- d) riot, commotion or disorder except where solely restricted to employees servants or agents of the parties;*
- e) un-navigable storm or tempest at sea.*

7.23.2 Notwithstanding the provisions of the contract, neither party shall be considered to be in default or in breach of its obligations under the Contract to the extent that performance of such obligations is prevented by any circumstances of *force majeure* which arise after the contract is entered into by the parties.

7.23.3 If either party considers that any circumstances of *force majeure* are occurring or have occurred which may affect performance of its obligations it shall promptly notify the other party and provide reasonable proof of such circumstances.

7.23.4 Upon the occurrence of any circumstances of *force majeure*, the Supplier shall endeavour to continue to perform its obligations under the contract so far as is reasonably practicable. The Supplier shall notify KNEB of the steps it proposes to take including any reasonable alternative means for performance, which is not prevented by *force majeure*. The Supplier shall not take any such steps unless directed so to do by KNEB.

7.23.5 If the Supplier incurs additional costs in complying with KNEB's directions under sub clause 7.23.4, then notwithstanding the provisions of the contract, the amount thereof shall be agreed upon with KNEB and added to the contract price.

7.23.6 If circumstances of *force majeure* have occurred and shall continue for a period of twenty one (21) days then, notwithstanding that the Supplier may by reason thereof have been granted an extension of time for performance of the contract, either party shall be entitled to serve upon the other seven (7) days' notice to terminate the contract. If at the expiry of the period of twenty-eight (28) days, *force majeure* shall still continue, the contract shall terminate.

**SECTION VIII – SPECIAL CONDITIONS OF CONTRACT**

The Special Conditions of Contract *hereinafter abbreviated as SCC* shall form part of the Conditions of Contract. They are made in accordance with the law and KNEB’s guidelines, practices, procedures and working circumstances. They shall amend, add to and vary the GCC. The clauses in this section need not therefore, be completed but must be completed by KNEB if any changes to the GCC provisions are deemed necessary. Whenever there is a conflict between the GCC and SCC, the provisions of the SCC shall prevail over those in the GCC.

No.	GCC Reference Clause	Particulars of SCC
1.	7.11.1 Terms of Payment	Payment is thirty (30) days from completion of satisfactory performance and submission of invoice together with other required and related documents

**SCHEDULE OF PAYMENT**

*Payment shall be made as per below schedule;*

1. (20% of the contract price) upon submission and acceptance of the Draft Report and submission of an invoice; and
2. (80% of the contract price) upon submission and acceptance of the Final Report and submission of an invoice.

**SECTION IX - TENDER FORM**

Date:

Tender No.

**To:**

The Kenya Nuclear Electricity Board

Kawi Complex, Off Redcross Road

P. O. Box 26374-00100

**Nairobi**

Ladies and Gentlemen,

1. Having read, examined and understood the Tender Document including all Addenda, the receipt of which is hereby duly acknowledged, we, the undersigned Tenderer, offer services of ..... (*insert service/works description*) in accordance and conformity with the said tender document for the sum of .....(*total tender amount inclusive of all taxes in words and figures*) or such sums as may be ascertained in accordance with the Price Schedule attached herewith and made part of this Tender.
2. We undertake, if our Tender is accepted, to provide the services in accordance with the delivery schedule specified in the Description of works schedule.
3. If our Tender is accepted, we will obtain the performance security of a licensed bank in Kenya in a sum equivalent to ten percent (10%) of the contract price for the due performance of the contract, in the form(s) prescribed by KNEB.
- 4.\* We agree to abide by this Tender for a *period of.....days (Tenderer please indicate validity of your tender)* from the date fixed for tender opening as per the Tender Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

5. This Tender, together with your written acceptance thereof and your notification of award, shall not constitute a contract, between us. The contract shall be formed between us when both parties duly sign the written contract.
  
6. We understand that you are not bound to accept any Tender you may receive.

Yours sincerely,

\_\_\_\_\_  
Name of Tenderer

\_\_\_\_\_  
Signature of duly authorised person signing the Tender

\_\_\_\_\_  
Name and Designation of duly authorised person signing the Tender

\_\_\_\_\_  
Stamp or Seal of Tenderer

**\*NOTES:**

1. KNEB requires a validity period of at least *One hundred and twenty (120) days*.
2. This form must be duly signed, stamped and/or sealed.

**SECTION X - CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM**

All Tenderers are requested to give the particulars 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 1 – General
Business Name.....
Location of business premises.....
Plot No. ....Street/ Road .....
Postal Address ..... Postal Code .....
Tel No.....
Facsimile.....
Mobile and/ or CDMA No.....
E-mail:.....
Nature of your business .....
Registration Certificate No.....
Maximum value of business which you can handle at any time KSh.....
Name of your Bankers .....Branch... ..
*Names of Tenderer’s contact person(s) .....
Designation of the Tenderer’s contact person(s) .....
Address, Tel, Fax and E-mail of the Tenderer’s contact person(s) .....

.....  
.....

**Part 2 (a) Sole Proprietor**

Your name in full .....  
Nationality .....Country of origin .....  
\*Citizenship details.....

**Part 2 (b) Partnership**

Give details of partners as follows: -

Names	Nationality	*Citizenship Details	Shares
1.....			
2.....			
3.....			
4.....			
5.....			

**Part 2 (c) Registered Company**

Private or Public .....  
State the nominal and issued capital of  
company-Nominal  
KSh.....  
Issued KSh.....

Give details of all directors as follows

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

Name of duly authorized person to sign for and on behalf of the Tenderer

.....

Designation of the duly authorized person.....

Signature of the duly authorized person.....

***\*NOTES TO THE TENDERERS ON THE QUESTIONNAIRE***

1. *The address and contact person of the Tenderer provided above shall at all times be used for purposes of this tender.*
2. *If a Kenyan citizen, please indicate under “Citizenship Details” whether by birth, naturalization or registration.*
3. *The details on this Form are essential and compulsory for all Tenderers. The **CR12 must be attached. Failure to provide all the information requested shall lead to the Tenderer’s disqualification.***
4. *For foreign Tenderers please give the details of nominal and issued share capital in the currency of the country of origin of the Tenderer.*



**SECTION XII - DECLARATION FORM**

Date \_\_\_\_\_

**To:**

The Kenya Nuclear Electricity Board  
Kawi Complex, Off Redcross Road  
P. O. Box 26374-00100  
Nairobi Kenya

Ladies and Gentlemen,

The Tenderer i.e. (full name and complete physical and postal address)

declare the following: \_\_\_\_\_

\_\_\_\_\_ -

- a) That I/ We have not been debarred from participating in public procurement by anybody, institution or person.
- b) That I/ We have not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement anywhere.
- c) That I/We or any director of the firm or company is not a person within the meaning of paragraph 3.2 of ITT (Eligible Tenderers) of the Instruction to Tenderers.
- d) That I/ We are not insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
- e) That I/We do hereby confirm that all the information given in this tender is accurate, factual and true to the best of our knowledge.

Yours sincerely,

\_\_\_\_\_

Name of Tenderer

\_\_\_\_\_

Signature of duly authorised person signing the Tender

\_\_\_\_\_

Name and Designation of duly authorised person signing the Tender

\_\_\_\_\_

Stamp or Seal of Tenderer

**SECTION XIII– DRAFT LETTER OF NOTIFICATION OF INTENT OF AWARD**

To:  
*(Name and full address of the Successful Tenderer).....*

Dear Sirs/ Madams,

RE: NOTIFICATION OF INTENT OF AWARD OF TENDER NO. ....

Pursuant to the provision under section 87 of the public procurement and asset disposal Act 2015 we refer to your tender dated ..... we are pleased to inform you that following

evaluation, we intend to award you a contract for the above mentioned subject to provision herein.

This notification of intent does not constitute a contract. The formal Contract Agreement and notification of award, shall be entered into pursuant to the provisions of the Public Procurement and Asset Disposal Act, 2015 *(or as may be amended from time to time, or replaced)*.

You are required to accept or reject this offer within a period of 14 days.

We take this opportunity to remind you to again note and strictly comply with the provisions as stated in the tender document.

Kenya Nuclear Electricity Board is committed to best practices in quality management systems and supply chain management, attached please read carefully our Suppliers' Charter. We look forward to a cordial and mutually beneficial business relationship.

Yours faithfully,

***KENYA NUCLEAR ELECTRICITY BOARD***

**CHIEF EXECUTIVE OFFICER**

**SECTION XIV – DRAFT LETTER OF NOTIFICATION OF REGRET**

**To:** (Name and full address of the Unsuccessful Tenderer).....

Date:

Dear Sirs/ Madams,

**RE: NOTIFICATION OF REGRET IN RESPECT OF TENDER NO. ....**

Pursuant to the provision under section 87(3) of the public procurement and asset disposal Act 2015 to notify you that following evaluation, your Tender is unsuccessful. It is therefore not accepted. The brief reasons are as follows:-

1. ....
2. ....
3. .... etc

The successful bidder was \_\_\_\_\_.

However, this notification does not reduce the validity period of your Tender Security. In this regard, we request you to relook at the provisions regarding the Tender Security, Signing of Contract and Performance Security as stated in the Instructions to Tenderers.

You may collect the tender security from our offices only after expiry of twenty five (25) days from the date hereof

It is expected that by that time KNEB and the successful bidder will have entered into a contract pursuant to the Public Procurement and Asset Disposal Act, 2015 (or as may be amended from time to time or replaced). When collecting the Security, you will be required to produce the original or certified copy of this letter.

We thank you for the interest shown in participating in this tender and wish you well in all your future endeavours.

Yours faithfully,

**KENYA NUCLEAR ELECTRICITY BOARD**

**CHIEF EXECUTIVE OFFICER**

**SECTION XV - CONTRACT AGREEMENT FORM**

**THIS AGREEMENT** made this.....day of.....20.... **BETWEEN THE Kenya nuclear electricity Board** situated at Kawi Complex, Off Redcross Road Nairobi in the Republic of Kenya and of Post Office Box Number 26374-00100 Nairobi in the Republic aforesaid (*hereinafter referred to as the "KNEB"*) of the one part,

**AND**

..... (*Supplier's full name and principal place of business*) a duly registered entity according to the laws of..... (*state country*) and of Post Office Box Number/Physical Address .....(*full address physical and postal of Supplier*) in the Republic aforesaid, (*hereinafter referred to as the "Supplier"*) of the other part;

**WHEREAS** KNEB invited tenders for certain services and/ or goods, that is to say for Provision of

..... under Tender Number.....

**AND WHEREAS** KNEB has accepted the Tender by the Supplier for the services and/ or goods in the sum of ..... *include any payable taxes, duties and insurance where applicable e.g. Value Added Tax*) (*hereinafter called "the Contract Price"*).

**NOW THIS AGREEMENT WITNESSETH AS FOLLOWS: -**

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract and the Tender Document.
2. Unless the context or express provision otherwise requires: -
  - a) reference to "this Agreement" includes its recitals, any schedules and documents mentioned hereunder and any reference to this Agreement or to any other document includes a reference to the other document as varied supplemented and or replaced in any manner from time to time.
  - b) any reference to any Act shall include any statutory extension, amendment, modification, re-amendment or replacement of such Act and any rule, regulation or order made thereunder.
  - c) words importing the masculine gender only, include the feminine gender

- or (as the case may be) the neutral gender.
- d) words importing the singular number only include the plural number and vice-versa and where there are two or more persons included in the expression the “*Supplier*” the covenants, agreements obligations expressed to be made or performed by the Supplier shall be deemed to be made or performed by such persons jointly and severally.
  - e) where there are two or more persons included in the expression the “*Supplier*” any act default or omission by the Supplier shall be deemed to be an act default or omission by any one or more of such persons.
3. In consideration of the payment to be made by KNEB to the Supplier as hereinbefore mentioned, the Supplier hereby covenants with KNEB to perform and provide the services and/ or goods and remedy any defects thereon in conformity in all respects with the provisions of the Contract.
4. KNEB hereby covenants to pay the Supplier in consideration of the proper performance and provision of the services and/ or goods and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.
5. The following documents shall constitute the Contract between KNEB and the Supplier and each shall be read and construed as an integral part of the Contract: -
- a) this Contract Agreement
  - b) the Special Conditions of Contract as per the Tender Document
  - c) the General Conditions of Contract as per the Tender Document
  - d) the Price Schedules submitted by the Supplier and agreed upon with KNEB.
  - e) the Schedule of Requirements/TOR
  - f) KNEB’s Notification of intent to Award dated..... and Acceptance Letter dated.....
  - g) the Tender Form signed by the Supplier
  - h) the Declaration Form signed by the Supplier/ successful Tenderer
  - i) the delivery period of.....
  - j) Technical proposal/ methodology
6. In the event of any ambiguity or conflict between the contract documents listed above, the order of precedence shall be the order in which the contract documents are listed in 5 above except where otherwise mutually agreed in writing.

7. The Commencement Date shall be the working day immediately following the fulfillment of all the following: -
  - a) Execution of this Contract Agreement by KNEB and the Supplier.
  - b) Issuance of the Performance Bond by the Supplier and confirmation of its authenticity by KNEB.
  - c) Issuance of the Official Order by KNEB to the Supplier.
8. The period of contract validity shall begin from the Commencement date and end sixty (60) days after the last date of the agreed performance schedule.  
Provided that the expiry period of the Warranty shall be as prescribed and further provided that the Warranty shall survive the expiry of the contract.
9. It shall be the responsibility of the Supplier to ensure that its Performance Security is valid at all times during the period of contract validity and further is in the full amount as contracted.
10. Any amendment, change, addition, deletion or variation howsoever to this Contract shall only be valid and effective where expressed in writing and signed by both parties.
11. No failure or delay to exercise any power, right or remedy by KNEB shall operate as a waiver of that right, power or remedy and no single or partial exercise of any other right, power or remedy.
12. Notwithstanding proper completion of performance or parts thereof, all the provisions of this Contract shall continue in full force and effect to the extent that any of them remain to be implemented or performed unless otherwise expressly agreed upon by both parties.
13. Any notice required to be given in writing to any Party herein shall be deemed to have been sufficiently served, if where delivered personally, one day after such delivery; notices by electronic mail and facsimile shall be deemed to be served one day after the date of such transmission and delivery respectively, notices sent by post shall be deemed served seven  
(7) days after posting by registered post (*and proof of posting shall be proof of service*), notices sent by courier shall be

deemed served two (2) days after such receipt by the courier service for Local Suppliers and five (5) days for Foreign Suppliers.

14. For the purposes of Notices, the address of KNEB shall be Chief Executive Officer , Kawi Complex, Off Redcross Road Nairobi in the Republic of Kenya and of Post Office Box Number 26374-00100 Nairobi

The address for the Supplier shall be the Supplier's address as stated by it in the Confidential Business Questionnaire provided in the Tender Document.

**IN WITNESS** whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Kenya the day and year first above written.

**SIGNED** for and on behalf  
of **KNEB**

\_\_\_\_\_  
CHIEF EXECUTIVE OFFICER

**SEALED** with the **COMMON SEAL**  
of the **SUPPLIER**  
in the presence of:-

\_\_\_\_\_  
DIRECTOR

\_\_\_\_\_  
*Affix Supplier's Seal / Stamp here*

\_\_\_\_\_  
DIRECTOR'S FULL NAMES

and in the presence of:-

\_\_\_\_\_  
DIRECTOR/ COMPANY SECRETARY

\_\_\_\_\_  
DIRECTOR/ COMPANY SECRETARY'S FULL  
NAMES

**SECTION XVI - PERFORMANCE SECURITY FORM (BANK GUARANTEE)**

***(To Be Submitted On Bank's Letterhead)***

***Date:***

***To:***

The Kenya Nuclear Electricity Board  
Kawi Complex, Off Redcross Road  
P. O. Box 26374-00100  
Nairobi Kenya

***WHEREAS***.....(hereinafter called "the Supplier") has undertaken, in pursuance of your Tender Number.....(*reference number of the Tender*) and its Tender

dated .....(*insert Supplier's date of Tender taken from the Tender Form*) to supply .....(*description of the goods*) (hereinafter called "the Contract");

***AND WHEREAS*** it has been stipulated by you in the said Contract that the Supplier shall furnish you with a bank guarantee by an acceptable bank for the sum specified therein as security for compliance of the Supplier's performance obligations in accordance with the Contract;

***AND WHEREAS*** we have agreed to give the Supplier a guarantee;

***THEREFORE WE HEREBY AFFIRM*** that we are Guarantors and responsible to you, on behalf of the Supplier, up to a total sum of..... (*amount of the guarantee in words and figures*)

and we undertake to pay you, upon your first written demand declaring the Supplier to be in default under the Contract and without cavil or argument, any sum or sums within the limits of .....  
(*amount of guarantee*) as aforesaid, without you needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the .....day of.....20....

EITHER

***SEALED*** with the )



**COMMON SEAL** )  
of the said **BANK** )  
)

this .....day ) \_\_\_\_\_  
of ) **BANK SEAL**  
)  
.....20.... )  
in the presence of :- )  
\_\_\_\_\_ and )  
in the presence of:- )  
\_\_\_\_\_ OR )  
)

**SIGNED** by the **DULY AUTHORISED**  
**REPRESENTATIVE(S)/ ATTORNEY(S)** of  
the **BANK**

\_\_\_\_\_  
Name(s) and Designation of duly authorised representative(s)/ attorney(s) of the Bank

\_\_\_\_\_  
Signature(s) of the duly authorised person(s)

**NOTES TO SUPPLIERS AND BANKS**

- Please note that no material additions, deletions or alterations regarding the contents of this Form shall be made to the Performance Security Bond (the Bond) to be furnished by the successful Tenderer/ Supplier. If any are made, the Bond may not be accepted and shall be rejected by KNEB. For the avoidance of doubt, such rejection will be treated as non-submission of the Bond where such Bond is required in the tender and Contract.*

2. *KNEB shall seek authentication of the Performance Security from the issuing bank. It is the responsibility of the Supplier to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KNEB. The period for response shall not exceed five (5) days from the date of KNEB's query. Should there be no conclusive response by the Bank within this period, such Supplier's Performance Security may be deemed as invalid and the Contract nullified.*
  
3. *The issuing Bank should address its response or communication regarding the bond to KNEB at the following e-mail address – [ngitonga@nuclear.co.ke](mailto:ngitonga@nuclear.co.ke)*