



KENYA RAILWAYS

TENDER DOCUMENT

FOR

PROVISION OF ERP MAINTENANCE AND SUPPORT SERVICE FOR KENYA RAILWAYS ENTERPRISE RESOURCE PLANNING (ERP) SYSTEM

TENDER NO. KRC/PLM/024/2018-2019

**CLOSING DATE: TUESDAY JULY 23, 2019
TIME: 2.00 P.M.**

**The Managing Director
Kenya Railways Corporation
P.O. Box 30121-00100
NAIROBI, KENYA**

INTRODUCTION

Kenya Railways (KR) is a State Corporation established in 1978 under the Kenya Railways Act (Cap 397) of the Laws of Kenya. The overall mandate of the Corporation then was to provide a coordinated and integrated system of rail and inland waterways transport services and inland port facilities within Kenya. The Act was amended through The Kenya Railways (Amendment) Act 2005 to make it possible for the Board of Directors to enter into concession agreements or other forms of management for the provision of rail transport services. Following this Amendment, KR conceded railway operations to Rift Valley Railways Ltd (K) from November 1, 2006 for 25 years for freight services and 1 year for passenger services. At the time, Kenya Railways was mandated to promote, facilitate and participate in the National and Metropolitan Railway development through:

- Developing a Standard Gauge Railway network within the country and connected to neighbouring countries
- Developing rail commuter services within and around major towns in Kenya (Nairobi, Mombasa, Nakuru, Eldoret and Kisumu)

The Corporation has since undergone numerous developments, with the 2006 Concession agreement signed with the Rift Valley Railways (Kenya) being terminated in July, 2017. Subsequently, the Corporation has taken back the role of management of the concession and operations of the Commuter Rail, in addition to that of management of non-conceded assets.

Another development is the Corporation's recent completion of the implementation of the first phase of the country's mega-flagship project, the Standard Gauge Railway (SGR), with operations of the Madaraka Express on course. Further to this, the Corporation recently revised its Strategic Plan, now guided by the SP of 2017-2022, with our new Vision "*To be a provider of world class rail services*" and our new Mission "*To develop an integrated rail network and provide efficient and safe rail services*". With this, KR serves as a blueprint that will catapult the sector towards world-class railway infrastructure, operations and services, making KR a pace setter and reference point on railway matters in the region.

In pursuit of our new strategic vision, the purpose of KR is:

- To develop new railways projects and rehabilitate existing infrastructure and facilities through proper planning and effective project implementation.

- To ensure that efficiency is a hallmark of our operations. We ensure that available resources are deployed in providing freight and passenger services to our customers. Railway undertakings are carried out in a safe and sustainable manner for the sake of our environmental conservation, financial wellbeing of the Corporation and our customers for the overall economic prosperity of our country in the long term.

The above can only be realized by applying the core values of business currently employed at the state Corporation. These are:

- **Integrity:** We are guided by probity and highest business ethics in carrying out our business.
- **Accountability:** we are committed to being accountable and responsible to our customers and stakeholders.
- **Reliability:** We strive to be reliable, dependable and consistent in delivering world class rail services. We will deliver services within the specified time and standard to the satisfaction of our customers.
- **Safety:** We promise to pay special attention to detail in the safety and security requirements of our customers, workers and the community. We guarantee that fidelity to safety and security will underpin all our activities and operations.
- **Collaboration:** We will work jointly with stakeholders to ensure efficient service delivery and provide effective solutions to customers. We are committed to team work in pursuit of our common vision for the railways industry.

The Corporation wishes to engage a service provider for Provision of ERP Maintenance and support service for Kenya Railways Enterprise Resource Planning (ERP) System.

SECTION I - INVITATION FOR TENDERS

Tender Reference No. KRC/PLM/024/2018-2019

Tender Name: PROVISION OF ERP MAINTENANCE AND SUPPORT SERVICE FOR KENYA RAILWAYS ENTERPRISE RESOURCE PLANNING (ERP) SYSTEM

1. The Kenya Railways invites sealed tenders for the Provision of ERP Maintenance and Support Service for Enterprise Resource Planning (ERP) System.
2. Interested eligible candidates may obtain further information and inspect tender documents at The Procurement Manager, 1st Floor, Kenya Railways Headquarters during normal working hours.
3. A complete set of tender documents may be obtained by interested candidates upon payment of a non-refundable fee of **Kshs 1,000/-** in cash or Bankers Cheque payable to Kenya Railways.
4. Bidders who download the document from KRC Website MUST register their interest immediately by sending an email to procure@krc.co.ke, www.tenders.go.ke or supplier.treasury.go.ke stating their names, email, postal and telephone address. Downloaded documents shall be free.
5. Prices quoted should be net inclusive of all taxes, must be in Kenya shillings and shall remain valid for 120 days from the closing date of this tender.
6. Completed tender documents are to be enclosed in plain sealed envelopes marked with Tender name and reference number and be deposited in the Tender Box at the Reception, Kenya Railways Headquarters, Block C Ground Floor so as to be received on or before **Tuesday July 23, 2019**.
7. Tenders will be opened immediately thereafter in the presence of the candidates or their representatives who choose to attend at the **Conference Room on the 1st Floor, Kenya Railways Headquarters, Workshop Road, Nairobi**.
8. Tenderer **SHALL** fill and sign the Tender Declaration Form.
9. Tenderer must serialize all the documents provided with the tender document (in the format 1, 2, 3, 4to the last page).

Procurement Manager
FOR: MANAGING DIRECTOR

SECTION II – INSTRUCTIONS TO TENDERERS

| TABLE OF CONTENTS | Page |
|--|-------------|
| 2.1 Eligible Tenderers | 6 |
| 2.2 Cost of tendering | 6 |
| 2.3 Contents of tender documents | 7 |
| 2.4 Clarification of Tender documents | 7 |
| 2.5 Amendment of tender documents | 8 |
| 2.6 Language of tenders | 8 |
| 2.7 Documents comprising the tender | 8 |
| 2.8 Form of tender | 9 |
| 2.9 Tender prices | 9 |
| 2.10 Tender currencies | 9 |
| 2.11 Tenderers eligibility and qualifications | 9 |
| 2.12 Tender security | 10 |
| 2.13 Validity of tenders | 11 |
| 2.14 Format and signing of tenders | 11 |
| 2.15 Sealing and marking of tenders | 12 |
| 2.16 Deadline for submission of tenders | 12 |
| 2.17 Modification and withdrawal of tenders | 12 |
| 2.18 Opening of tenders | 13 |
| 2.19 Clarification of tenders | 14 |
| 2.20 Preliminary Examination | 14 |
| 2.21 Conversion to other currencies | 15 |
| 2.22 Evaluation and comparison of tenders | 15 |
| 2.23 Contacting the procuring entity | 16 |
| 2.24 Post-qualification | 17 |
| 2.25 Award criteria | 17 |
| 2.26 Procuring entities right to vary quantities | 17 |
| 2.27 Procuring entities right to accept or reject any or all tenders | 17 |
| 2.28 Notification of award | 18 |
| 2.29 Signing of Contract | 18 |
| 2.30 Performance security | 19 |

SECTION II INSTRUCTIONS TO TENDERERS

2.1 Eligible tenderers

- 2.1.1. This Invitation to tender is open to all tenderers eligible as described in the instructions to tenderers. Successful tenderers shall provide the services for the stipulated duration from the date of commencement (hereinafter referred to as the term) specified in the tender documents.
- 2.1.2. The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender unless where specially allowed under section 131 of the Act.
- 2.1.3. Tenderers shall provide the qualification information statement that the tenderer (including all members, of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the services under this Invitation for tenders.
- 2.1.4. Tenderers involved in corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

2.2 Cost of tendering

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

2.2.2 The price to be charged for the tender document shall not exceed Kshs.1,000/=

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

2.3 Contents of tender documents

2.3.1. The tender document comprises of the documents listed below and addenda issued in accordance with clause 6 of these instructions to tenders

- i) Instructions to tenderers
- ii) General Conditions of Contract
- iii) Special Conditions of Contract
- iv) Schedule of Requirements
- v) Details of service
- vi) Form of tender
- vii) Price schedules
- viii) Contract form
- ix) Confidential business questionnaire form
- x) Tender Security Declaration Form

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

2.4 Clarification of Documents

2.4.1. A prospective candidate making inquiries of the tender document may notify the Procuring entity in writing or by post, fax or email at the entity's address indicated in the Invitation for tenders. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives no later than seven (7) days prior to the deadline for

the submission of tenders, prescribed by the procuring entity. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers who have received the tender documents”

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

2.4.3. Preference where allowed in the evaluation of tender shall not exceed 15%.

2.5 Amendment of documents

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

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

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

2.6 Language of tender

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

2.7 Documents Comprising the Tender

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

(a) A Tender Form and a Price Schedule completed in accordance with paragraph 9, 10 and 11 below.

(b) Documentary evidence established in accordance with Clause 2.11 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;

(c) Tender security furnished is in accordance with Clause 2.12

(d) Confidential business questionnaire

2.8 Form of Tender

2.8.1 The tenderers shall complete the Form of Tender and the appropriate Price Schedule furnished in the tender documents, indicating the services to be performed.

2.9 Tender Prices

2.9.1 The tenderer shall indicate on the Price schedule the unit prices where applicable and total tender prices of the services it proposes to provide under the contract.

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

2.9.3 Prices quoted by the tenderer shall remain fixed during the term of the contract unless otherwise agreed by the parties. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.22.

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

2.9.5 Where contract price variation is allowed, the variation shall not exceed 25% of the original contract price.

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

2.10 Tender Currencies

2.10.1 Prices shall be quoted in Kenya Shillings unless otherwise specified in the appendix to Instructions to Tenderers.

2.11 Tenderers Eligibility and Qualifications.

2.11.1 Pursuant to Clause 2.1 the tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.

2.11.2 The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall establish to the Procuring entity's satisfaction that the tenderer has the financial and technical capability necessary to perform the contract.

2.12 Tender Security

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

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

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

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

- a) Cash
- b) A Bank Guarantee
- c) Such Insurance Company Guarantee as may be approved by the Authority
- d) A letter of credit; or
- e) Guarantee by a deposit taking Microfinance Institution, Sacco Society, the Youth Enterprises Development Fund or the Women Enterprises Fund.

2.12.5 Any tender not secured in accordance with paragraph 2.12.1 and 2.12.3 will be rejected by the Procuring entity as non responsive, pursuant to paragraph 2.20

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

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

2.12.8 The tender security may be forfeited:

(a) If a tenderer **withdraws** its tender **during** the period of tender validity specified by the procuring entity on the Tender Form; or

(b) In the case of a successful tenderer, *if* the tenderer fails:

- (i) to sign the contract in accordance with paragraph 30
or
- (ii) to furnish performance security in accordance with paragraph 31.

(c) If the tenderer rejects, correction of an error in the tender.

2.13 Validity of Tenders

2.13.1 Tenders shall remain valid for 60 days or as specified in the invitation to tender after date of tender opening prescribed by the Procuring entity, pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the Procuring entity as nonresponsive.

2.13.2 In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 2.12 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

2.14 Format and Signing of Tender

2.14.1 The tenderer shall prepare two copies of the tender, clearly / marking each "ORIGINAL TENDER" and "COPY OF TENDER," as appropriate. In the event of any discrepancy between them, the original shall govern.

2.14.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. All pages of the tender, except for unamended printed literature, shall be initialed by the person or persons signing the tender.

2.14.3 The tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

2.15 **Sealing and Marking of Tenders**

2.15.1 The tenderer shall seal the original and each copy of the tender in separate envelopes, duly marking the envelopes as “ORIGINAL” and “COPY.” The envelopes shall then be sealed in an outer envelope. The inner and outer envelopes shall:

(a) be addressed to the Procuring entity at the address given in the invitation to tender

(b) bear tender number and name in the invitation to tender and the words: “DO NOT OPEN BEFORE **Tuesday July 23, 2019 at 2.00 p.m.**”

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

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

2.16 **Deadline for Submission of Tenders**

2.16.1 Tenders must be received by the Procuring entity at the address specified under paragraph 2.15.2 no later than **Tuesday July 23, 2019 at 2.00 p.m.**

2.16.2 The procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 6, in which case all rights and obligations of the procuring entity and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

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

2.17 **Modification and withdrawal of tenders**

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

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

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

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

2.17.5 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

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

2.18 **Opening of Tenders**

- 2.18.1 The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, on **Tuesday July 23, 2019 at 2.00 p.m.**, and in the location specified in the invitation to tender. The tenderers' representatives who are present shall sign a register evidencing their attendance.
- 2.18.3 The tenderers' names, tender modifications or withdrawals, tender prices, discounts, and the presence or absence of requisite tender security and such other details as the Procuring Entity, at its discretion, may consider appropriate, will be announced at the opening.
- 2.18.4 The procuring entity will prepare minutes of the tender opening which will be submitted to the tenderers that signed the tender opening register and will have made the request.

2.19 Clarification of tenders

- 2.19.1 To assist in the examination, evaluation and comparison of tenders the procuring entity may at its discretion, ask the tenderer for a clarification of its tender. The request for clarification and the response shall be in writing, and no change in the prices or substance shall be sought, offered, or permitted.
- 2.19.2 Any effort by the tenderer to influence the procuring entity in the procuring entity's tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderers tender.
- 2.19.3 Comparison or contract award decisions may result in the rejection of the tenderers' tender.

2.20 Preliminary Examination and Responsiveness

- 2.20.1 The Procuring entity will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required securities have been

furnished whether the documents have been properly signed, and whether the tenders are generally in order.

2.20.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security may be forfeited. If there is a discrepancy between words and figures, the amount in words will prevail.

2.20.3 The Procuring entity may waive any minor informality or nonconformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any tenderer.

2.20.4 Prior to the detailed evaluation, pursuant to paragraph 23, the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one which conforms to all the terms and conditions of the tender documents without material deviations. The Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

2.20.5 If a tender is not substantially responsive, it will be rejected by the Procuring entity and may not subsequently be made responsive by the tenderer by correction of the nonconformity.

2.21 **Conversion to a single currency**

2.21.1 Where other currencies are used, the procuring entity will convert those currencies to Kenya shillings using the selling exchange rate on the date of tender closing provided by the central bank of Kenya.

2.22 **Evaluation and comparison of tenders.**

2.22.1 The procuring entity will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.20

2.22.2 The comparison shall be 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.

2.22.3 The Procuring entity's evaluation of a tender will take into account, in addition to the tender price, the following factors, in the manner and to the extent indicated in paragraph 2.22.4 and in the technical specifications:

(a) operational plan proposed in the tender;

(b) deviations in payment schedule from that specified in the Special Conditions of Contract;

2.22.4 Pursuant to paragraph 22.3 the following evaluation methods will be applied:

(a) **Operational Plan.**

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

(b) **Deviation in payment schedule.**

Tenderers shall state their tender price for the payment on a schedule outlined in the special conditions of contract. Tenders will be evaluated on the basis of this base price. Tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in tender price they wish to offer for such alternative payment schedule. The Procuring entity may consider the alternative payment schedule offered by the selected tenderer.

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

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

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

2.23. Contacting the procuring entity

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

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

2.24 Award of Contract

(a) Post qualification

2.24.1 In the absence of pre-qualification, the Procuring entity will determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.

2.24.2 The determination will take into account the tenderer's financial and technical capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications

submitted by the tenderer, pursuant to paragraph 2.1.2, as well as such other information as the Procuring entity deems necessary and appropriate.

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

(b) Award Criteria

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

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

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

2.25 Notification of award

- 2.25.1 Prior to the expiration of the period of tender validity, the Procuring entity will notify the successful tenderer in writing that its tender has been accepted.
- 2.25.2 The notification of award will signify the formation of the Contract subject to the signing of the contract between the tenderer and the procuring entity pursuant to clause 2.29. Simultaneously the other tenderers shall be notified that their tenders have not been successful.
- 2.25.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 31, the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.12.

2.26 Signing of Contract

- 2.26.1 At the same time as the Procuring entity notifies the successful tenderer that its tender has been accepted, the Procuring entity will simultaneously inform the other tenderers that their tenders have not been successful.
- 2.26.2 Within fourteen (14) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Procuring entity.
- 2.26.3 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

2.27 Performance Security

- 2.27.1 Within thirty (30) days of the receipt of notification of award from the Procuring entity, the successful tenderer shall furnish the performance security in accordance with the Conditions of Contract, in the Performance Security Form provided in the tender documents, or in another form acceptable to the Procuring entity.

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

2.28 Corrupt or Fraudulent Practices

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

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

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

APPENDIX TO INSTRUCTIONS TO THE TENDERERS

The following information for procurement of services shall complement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provisions of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers

APPENDIX A: INSTRUCTION TO TENDERERS

| Instructions to tenderers(ITT) | Particulars of appendix to instructions to tenderers |
|--------------------------------|--|
| 2.1 | Eligible Tenderers |
| 2.1.1 | Eligible Tenders: |
| 2.2 | Cost of Tendering |
| 2.2.2 | Price for the Hard Copy of the Tender document will be charged Kshs.1000.00 . Downloaded and Soft Copies of the Tender document from KR website at www.krc.co.ke will be free of charge. |
| 2.12 | Tender Security |
| 2.12.2 | A Bid Bond for Kshs. Kshs.60,000.00 valid for 120 days from date of opening of the tender from a Commercial Bank Registered in Kenya. |
| 2.13 | Validity of Tender Document |
| | Tender Validity will be 120 days from date of opening of tenders |
| 2.14 | Format and Signing of Tenders |
| 2.14.1 | Bidders Must Submit One (1) original and Three (3) Copies |
| 2.15 | Sealing and Marking of Tenders |
| 2.15.2 | The Tender submission address is: The Managing Director, Kenya Railways Headquarters, Haile Selassie Avenue Block C, First Floor. Nairobi |
| 2.15.3 | Do not open before: Tuesday July 23, 2019 at 2.00 p.m. ”. |
| 2.18 | Opening of Tender |
| 2.18.1 | Tenders will be opened in the presence of bidders who choose to attend on Tuesday July 23, 2019 at 2.00 p.m. ” at Kenya Railways Headquarters Block C Sattima Conference Hall 1 st Floor. |
| 2.19 | Clarification of Tenders:- |
| 2.19.1 | Clarifications may be requested not later than SEVEN (7) days before the submission date. E-mail: procure@krc.co.ke |
| 2.20 | Preliminary Examination and Responsiveness |
| 2.20.2 | The sum as submitted and read out during the tender |

| | |
|-------------|--|
| | opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in anyway by any person or entity. |
| 2.27 | Notification of Award |
| 2.27.2 | For greater certainty, a notification of the intention to enter in to contract does not constitute a contact nor reduce the validity period for a tender security. |

APPENDIX B - EVALUATION CRITERIA

EVALUATION CRITERIA

A. PRELIMINARY EVALUATION/MANDATORY EVALUATION

NOTES ON EVALUATION CRITERIA

Evaluation and Comparison of Tenders: The following evaluation criteria shall be applied notwithstanding any other requirement in the tender documents.

SELECTION PROCESS

Below is a description of the evaluation steps that will be adopted.

STEP 1: PRELIMINARY / MANDATORY EVALUATION

This will be an elimination stage where each Tenderer’s submission will be checked for completeness and compliance to all the mandatory and other eligibility criteria stated in the tender requirements as in the various paragraphs of the tender document, in accordance with Section 79 of Public Procurement and Asset Disposal Act, 2015.

STEP 2: EVALUATION

i. TECHNICAL EVALUATION

This will be done by comparing details of the works to be offered against the minimum requirements/technical specifications and confirming the same from the technical Literature/Specifications submitted. Bidders Must score a minimum of 70% of the Technical Score to proceed to Financial Evaluation

ii. FINANCIAL EVALUATION

Financial Evaluation Criteria will be on **Least Cost Method**.

| | | |
|----------|--|------------------|
| A | PRELIMINARY EVALUATION/ MANDATORY REQUIREMENT | Mandatory |
| 1. | Copy of Certificate of Incorporation/Registration | Mandatory |
| 2. | Copy of Valid Current KRA Compliance Certificate | Mandatory |
| 3. | Attach System generated Certified Copy of CR12 Certificate (For Incorporated firms only) | Mandatory |

| | | |
|----|--|------------------|
| 4. | Filled, Signed and Stamped Litigation History Form (Form 8) | Mandatory |
| 5. | Filled, Signed and Stamped Integrity Declaration Form (Form 9) | Mandatory |
| 6. | Attach Dealership/ Authorization for the equipment being proposed. (Form 12) | Mandatory |
| 7. | A Bid Bond of Kshs. 60,000.00 valid for 120 days from date of tender opening in form of a Bank Guarantee from a Commercial Bank Registered in Kenya. | Mandatory |
| 8. | Certified Audited Accounts for any of the last three (3) consecutive years. (2014, 2015, 2016, 2017) | Mandatory |
| 9. | Filled, Signed and stamped Site visit Form | Mandatory |
| 10 | Filled, Signed and Stamped (Confidential Business Questionnaire) indicating names of all partners. (Form 3) | Mandatory |
| 11 | Bidder MUST submit 1 original copy & 3 copies of tender Document. | Mandatory |
| 12 | Paginate/serialize the tender document as required by Law (in the format 1, 2, 3, 4.....to the last page). | Mandatory |
| | <i>Pursuant to Section 80 of Public Procurement and Assets Disposal Act, 2015 any tender not meeting the mandatory and other eligibility criteria will not proceed to Technical Evaluation Stage.</i> | |

B. TECHNICAL EVALUATION

| B. | TECHNICAL EVALUATIONS – 100 | SCORE |
|----|---|-------|
| 1. | Bidders must provide the following (30 marks) | |
| | <ul style="list-style-type: none"> • On call support : <ul style="list-style-type: none"> ○ Describe how the support will be carried out | 10 |

| | | |
|----|--|----|
| | <p>indicating the working time and charges (5 Marks)</p> <ul style="list-style-type: none"> ○ Attach at least Two evidence of similar signed contract/ SLA with any government agency (2.5 Marks each) | |
| | <ul style="list-style-type: none"> ● Onsite support: <ul style="list-style-type: none"> ○ How the support will be carried out indicating the working time and charges (5 Marks) ○ Attach at least Two evidence of similar signed contract/ SLA with any government agency (2.5 Marks each). | 10 |
| | <ul style="list-style-type: none"> ● Remote Support(RDP) <ul style="list-style-type: none"> ○ How the support will be carried out indicating the working time and charges (5Marks) ○ Attach at least Two evidence of similar signed contract/ SLA with any government agency (2.5 Marks each). | 10 |
| 2. | Helpdesk /customer support system as described paragraph 4 above (10 Marks) | 10 |
| 3. | <p>Provide 3 Firms that the bidder has implemented or done support on Microsoft Dynamics Nav 2009 R2 and above. Attach evidence of successful completion</p> <ul style="list-style-type: none"> ○ Three original recommendation letters addressed to the MD Kenya Railways (2 Mark each). ○ Three Implementation plans sign offs and /or Commissioning sign offs (1 Marks each) ○ Three go live documents (1 Mark each) ○ Three Training sign offs (1 Marks each) | 15 |
| 4. | <p>Show the understanding of</p> <ul style="list-style-type: none"> ○ Concession or Fleet Leasing Management software that also does maintenance of the assets, investments done by the managing company in the leased or ‘concessioned’ assets (5 Marks) ○ Students Management indicating all aspects of managing students i.e. application, admission, hostel, management, timetabling, Exams, Alumni management etc. (5 Marks) ○ Provide evidence of implementation and support of the above systems(student management and concession/fleet management) in government organization (5 Marks) ○ Attach copies of TOR as evidence of implementation or | 30 |

| | | |
|--|---|----|
| | contracts indicating implementation of the above(5 Marks) | |
| 5. | Provide relevant five [3] key staffs with the following qualifications (Max 15) a) CVs in requested format (2 marks each) b) Degree in ICT (2 mark each) c) Professional qualification in any of the following: 1) Microsoft Dynamics Nav (Navision) (1 mark each) 2) Microsoft SQL Server (1 mark each) | 15 |
| To proceed to Financial Evaluation Bidder must attain 70% of the Technical Score. | | |
| C. FINANCIAL EVALUATION | | |
| 1 | Least Cost Method | |

PRICE FOR THE SERVICE

The bidder MUST fill in the table below to indicate the cost of the services

| | |
|----------------|-------------|
| Support | KShs |
|----------------|-------------|

| | |
|--|--|
| 1. Support and Maintenance Service (Retainer Fee/Amount) per Annum | |
| | |
| 2. Developments/Enhancements rate per hour upto a maximum of 300 hrs. | |
| | |
| 3. Specialised Group User Training Rate Per Hour per Class upto a maximum of 80 hours. | |

NOTE:

- All prices should be inclusive of Taxes.
- In case of discrepancy between unit price and total, the unit price shall prevail.

SECTION III GENERAL CONDITIONS OF CONTRACT

TABLE OF CONTENTS

3.1 Definitions

- 3.2 Application
- 3.3 Standards
- 3.4 Use of contract documents and information
- 3.5 Patent Rights
- 3.6 Performance security
- 3.7 Inspections and tests
- 3.8 Payment
- 3.9 Prices
- 3.10 Assignment
- 3.11 Termination for default
- 3.12 Termination for insolvency
- 3.13 Termination for convenience
- 3.14 Resolution of disputes
- 3.15 Governing language
- 3.16 Force majeure
- 3.17 Applicable law
- 3.18 Notices

SECTION III GENERAL CONDITIONS OF CONTRACT

3.1 Definitions

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

- a) "The contract" means the agreement entered into between the Procuring entity and the tenderer as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- b) "The Contract Price" means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations.
- c) "The services" means services to be provided by the contractor including materials and incidentals which the tenderer is required to provide to the Procuring entity under the Contract.
- d) "The Procuring entity" means the organization sourcing for the services under this Contract.
- e) "The contractor means the individual or firm providing the services under this Contract.
- f) "GCC" means general conditions of contract contained in this section
- g) "SCC" means the special conditions of contract
- h) "Day" means calendar day

3.2 Application

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

3.3 Standards

3.3.1 The services provided under this Contract shall conform to the 7 standards mentioned in the Schedule of requirements.

3.4. Use of Contract Documents and Information

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

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

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

3.5 Patent Right's

3.5.1 The tenderer shall indemnify the Procuring entity against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the services under the contract or any part thereof.

3.6 Performance Security

3.6.1 Within twenty eight (28) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the performance security where applicable in the amount specified in Special Conditions of Contract.

- 3.6.2 The proceeds of the performance security shall be payable to the Procuring entity as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.
- 3.6.3 The performance security shall be denominated in the currency of the Contract or in a freely convertible currency acceptable to the Procuring entity and shall be in the form of:
- a) Cash.
 - b) A Bank Guarantee.
 - c) Such Insurance Company Guarantee as may be approved by the Authority
 - d) A letter of credit; or
 - e) Guarantee by a deposit taking Microfinance Institution, Sacco Society, the Youth Enterprises Development Fund or the Women Enterprises Fund.
- 3.6.4 The performance security will be discharged by the procuring entity and returned to the candidate not later than thirty (30) days following the date of completion of the tenderer's performance of obligations under the contract, including any warranty obligations under the contract.

3.7 Inspections and Tests

- 3.7.1 The Procuring entity or its representative shall have the right to inspect and/or to test the services to confirm their conformity to the Contract specifications. The Procuring entity shall notify the tenderer in writing, in a timely manner, of the identity of any representatives retained for these purposes.
- 3.7.2 The inspections and tests may be conducted on the premises of the tenderer or its subcontractor(s). If conducted on the premises of the tenderer or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring entity.

3.7.3 Should any inspected or tested services fail to conform to the Specifications, the Procuring entity may reject the services, and the tenderer shall either replace the rejected services or make alterations necessary to meet specification requirements free of cost to the Procuring entity.

3.7.4 Nothing in paragraph 3.7 shall in any way release the tenderer from any warranty or other obligations under this Contract.

3.8 Payment

3.8.1 The method and conditions of payment to be made to the tenderer under this Contract shall be specified in SCC

3.9 Prices

3.9.1 Prices charged by the contractor for services performed under the Contract shall not, with the exception of any Price adjustments authorized in SCC, vary from the prices by the tenderer in its tender or in the procuring entity's request for tender validity extension as the case may be. No variation in or modification to the terms of the contract shall be made except by written amendment signed by the parties.

3.10 Assignment

3.10.1 The tenderer shall not assign, in whole or in part, its obligations to perform under this contract, except with the procuring entity's prior written consent.

3.11 Termination for Default

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

- a) if the tenderer fails to provide any or all of the services within the period(s) specified in the Contract, or within any extension thereof granted by the Procuring entity.

- b) if the tenderer fails to perform any other obligation(s) under the Contract.
- c) if the tenderer, in the judgment of the Procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

3.11.2 In the event the Procuring entity terminates the Contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, services similar to those undelivered, and the tenderer shall be liable to the Procuring entity for any excess costs for such similar services.

3.12 Termination of insolvency

3.12.1 The procuring entity may at the any time terminate the contract by giving written notice to the contractor if the contractor becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the contractor, provided that such termination will not produce or affect any right of action or remedy, which has accrued or will accrue thereafter to the procuring entity.

3.13 Termination for convenience

3.13.1 The procuring entity by written notice sent to the contractor may terminate the contract in whole or in part, at any time for its convenience. The notice of termination shall specify that the termination is for the procuring entity convenience, the extent to which performance of the contractor of the contract is terminated and the date on which such termination becomes effective.

3.13.2 For the remaining part of the contract after termination the procuring entity may elect to cancel the services and pay to the contractor on agreed amount for partially completed services.

3.14 Resolution of disputes

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

3.13.2 If after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute either party may require that the dispute be referred for resolution to the formal mechanisms specified in the SCC.

3.15 Governing Language

3.15.1 The contract shall be written in the English language. All correspondence and other documents pertaining to the contract, which are exchanged by the parties, shall be written in the same language.

3.16 Force Majeure

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

3.17 Applicable Law.

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

3.18 Notices

3.18.1 Any notices given by one party to the other pursuant to this contract shall be sent to the other party by post or by fax or E-mail and confirmed in writing to the other party's address specified in the SCC

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

SECTION IV SPECIAL CONDITIONS OF CONTRACT

- 4.1 Special conditions of contract shall supplement the general conditions of contract, wherever there is a conflict between the GCC and the SCC, the provisions of the SCC herein shall prevail over those in the GCC.
- 4.2 Special conditions of contract with reference to the general conditions of contract.

| General conditions of contract reference | Special conditions of contract |
|--|--|
| 3.6 | Specify performance security if applicable: 10% of the tender price in form of a Bank Guarantee. |
| 3.8 | Specify method Payments. Payments shall be made at the end of every Month within 30 days upon receipt of Invoice(s). |
| 3.9 | Specify price adjustments allowed. None |
| 3.14 | Specify resolution of disputes. Disputes to be settled as per the Arbitration Laws of Kenya |
| 3.16 | Specify applicable law. Laws of Kenya |
| 3.17 | Indicate addresses of both parties. Client: The Managing Director Kenya Railways P.O Box 30121 - 00100. Nairobi, Kenya |
| Other's as necessary | Complete as necessary |
| SCC 4.4.1 | The Start Date shall be as agreed with the ICT Manager This is a service contract which shall run for 1 year. |
| SCC Clause 4.4.4 | Part payment will be done after every service subject to inspection and Verification of the work done. |

SECTION V – SCHEDULE OF REQUIREMENTS

TERMS OF REFERENCE FOR MAINTENANCE & SUPPORT OF ERP

1. Introduction

Kenya Railways runs a Microsoft Dynamics Nav ERP system for all its financial operations. KR is looking for a reputable maintenance firm that will maintain the ERP for the next one year.

2. Module Features of Navision ERP in the current installation.

- Finance :- This is the main core module for Kenya Railways: It integrates the following sub modules:
 - Payables and Receivables ;
 - Banking and cash management,
 - Purchases, and Sales
 - Fixed Asset etc.

- HRM and payroll:- KR Has this module which is an advanced version: It has several sub-modules
 - Employee manager, Training, Leave Management, Disciplinary Management, Jobs, Welfare and Company info.
 - The HRM modules has a sub loan module that manages Salary Advances and Sacco Loans.
 - Payroll

- Concession: - The module manages all the aspects of The Concession Act which details the relation between Kenya Railways and the Metre Gauge Operator (formerly Rift Valley Railways). It's based on complex calculation formulas agreed and verified by World Bank, KR and External Auditors.

- Real Estate:-This module handles the workflow for tenant's application, tenants/customers Creation, and Creation of KRC rental units.

- Common Activities: - Kenya Railways has some internal processes that use a different workflow.
 - Claims and advances which has: Board Allowance requisition, Travel Allowances requisition, Surrender and Claims Allowances, Other (Ordinary) Advances, Salary Advances.
 - Procurement Requisitions this has: Procurement Requisition, Stores requisition. Tender Management
 - Human resource activities: Performance Management (Appraisals), Training Needs Analysis, Training Application and Approval, Payment Change Advice and Leaves Tracking.

- Student management. This module is used for management of Railway Training Institute Student affairs. It has the following sub-modules:
 - Alumni
 - Students Application / admissions
 - Student Registration
 - Student Clearance
 - Class Attendance
 - Exam Management
 - Hostel Management.

- Project Management Module. - The module is used to manage and tract the progress of Kenya Railways Many projects. It is then used for generation of Certificates for payments.

NOTE: Kenya Railways ERP (Navision) has been developed on an addon running 39,000,000 number series. The bidder license should be able to work with that series and/or the bidders must find a way to work around limitation of that addon.

3. Site Visit

Kenya Railways ERP system is highly customized and runs some unique modules not implemented elsewhere. In this regard bidders are requested to visit the site at Kenya Railways headquarters to get first hand familiarization with the system.

4. Helpdesk /customer support system

The bidders are also expected to have a web accessible helpdesk system. The helpdesk system should have the following features:

- Online logging of issues.
- Should be able to track raised issues progress and provide an email status update on the same.
- Should be able to generate reports for payments to be done.
- It should allow the person raising issues to indicate severity levels.

Required Services

The services under the contract shall be categorised as follows:-

i. Support and Maintenance

The Support and Maintenance service shall include all the services pertaining to ERP as may be detailed in the SLA. The service shall be provided on site or remotely/offsite through Team Viewer RDP tool. The services covered under support and maintenance shall include but not limited to:

- Recovery of data in case of data corruption or hardware failure and restoration of the System to operational state.
- Training of individual users during implementation of new modules
- Upgrade of the system both SQL Database to the current versions on Current BREP
- Configuration of licenses to fit the developed modules
- Setup and reconfiguration of the ERP system to address user needs.
- Maintenance of SQL server and Navision application e.g. Optimization Configuration of SQL Server and Navision
- Fixing of ERP System bugs/error of malfunctions.
- Assisting (provision of consultancy) to KR staff in utilisation of the full potential of the system e.g. generation of any necessary reports, full utilisation of software module features to undertake specialised tasks such as posting to journals, transaction reversals etc.
- Days and Time of service- The services will be required 5 days a week (Monday to Friday) between 8.00am-5.00PM. In case of an emergency or urgency the services may be required outside the indicated days and time.

All the above services shall be covered under the contract retainer payment.

ii. Developments and Enhancements

Any new Developments and or Enhancements will be agreed upon by the user department and the charges for the service will be based on the *On call support Per hour*. Enhancement / developments will not be commenced until an agreement is negotiated and agreed upon.

iii. Specialised Group User Training

Any required Specialised group user training will be charged outside the retainer amount and will be charged per hour per class.

Note:

- For Security reasons No identifiable shall be carried by the winning bidder out of Kenya Railways Premises. All configurations must be done in Kenya Railways computers and server.
- The winning bidder will be expected to sign a Service Level Agreement (SLA) with KR. Payment for the service will be on a quarterly basis and the bidder has to demonstrate performance and commitment to the SLA. The winning bidder is therefore expected to submit quarterly reports to KR on the maintenance and support service status.

SECTION VI- STANDARD FORMS

1. Form of Tender
2. Contract Form
3. Confidential Questionnaire Form
4. Tender Security Form
5. Performance Security Form
6. Bank Guarantee Form
7. Notification of Intention to Award
8. Litigation History Form
9. Integrity Declaration
10. Anti-Corruption Declaration
11. Viewing Certificate
12. Dealership/Manufacturer's Authorization Form
13. Form RB1

FORM 1

FORM OF TENDER

Date_____

Tender No._____

To..... [Name and address of procuring entity]

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda Nos..... *[insert numbers]*, of which is hereby duly acknowledged, we, the undersigned, offer to provide..... *[description of services]* in conformity with the said tender documents for the sum of..... *[total tender amount in words and figures]* or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.
2. We undertake, if our Tender is accepted, to provide the services in accordance with the services schedule specified in the Schedule of Requirements.
3. If our Tender is accepted, we will obtain the tender guarantee in a sum equivalent to percent of the Contract Price for the due performance of the Contract, in the form prescribed by (Procuring entity).
4. We agree to abide by this Tender for a period of*[number]* days from the date fixed for tender opening of the Instructions to tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
5. Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.

Dated this _____ day of _____ 20

Name *[In the capacity of]* *[signature]*

Duly authorized to sign tender for and on behalf of _____

FORM 2

CONTRACT FORM (TO BE SIGNED BY THE WINNING TENDERER AND KR)

THIS AGREEMENT made theday of20 between..... [Name of procurement entity] of[country of Procurement entity] (hereinafter called “the Procuring entity”) of the one part and[name of tenderer] of[city and country of tenderer] (hereinafter called “the tenderer”) of the other part.

WHEREAS the procuring entity invited tenders for certain materials and spares. Viz..... [brief description of materials and spares] and has accepted a tender by the tenderer for the supply of those materials and spares in the sum of[contract price in words and figures]

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz.:
 - (a) the Tender Form and the Price Schedule submitted by the tenderer;
 - (b) the Schedule of Requirements;
 - (c) the Technical Specifications;
 - (d) the General Conditions of Contract;
 - (e) the Special Conditions of Contract; and
 - (f) the Procuring entity’s Notification of Award.
3. In consideration of the payments to be made by the Procuring entity to the tenderer as hereinafter mentioned, the tenderer hereby covenants with the Procuring entity to provide the materials and spares and to

remedy defects therein in conformity in all respects with the provisions of the Contract

4. The Procuring entity hereby covenants to pay the tenderer in consideration of the provision of the materials and spares and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the contract at the times and in the manner prescribed by the contract.

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

Signed, sealed, delivered by _____ the _____ (for the Procuring entity)

Signed, sealed, delivered by _____ the _____ (for the tenderer)

in the presence of _____.

FORM 3

CONFIDENTIAL BUSINESS QUESTIONNAIRE

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

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

| |
|--|
| <p>Part 1 General</p> <p>Business Name</p> <p>Location of Business Premises</p> <p>Plot No,.....Street/Road</p> <p>Postal addressTel No.Fax Email</p> <p>Nature of Business</p> <p>Registration Certificate No.</p> <p>Maximum value of business which you can handle at any one time – Kshs</p> <p>Name of your bankers</p> <p>Branch</p> |
|--|

| <p>Part 2 (a) – Sole Proprietor</p> <p>Your name in full.....Age.....</p> <p>Nationality.....Country of Origin.....</p> <p>Citizenship details.....</p> | | | | | | | | | | | | | | | | |
|---|-------------|---------------------|---------------------|--------|---------|-------|-------|-------|---------|-------|-------|-------|---------|-------|-------|-------|
| <p>Part 2 (b) – Partnership</p> <p>Given details of partners as follows</p> <table border="1"> <thead> <tr> <th>Name</th> <th>Nationality</th> <th>Citizenship details</th> <th>Shares</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table> | Name | Nationality | Citizenship details | Shares | 1. | | | | 2. | | | | 3. | | | |
| Name | Nationality | Citizenship details | Shares | | | | | | | | | | | | | |
| 1. | | | | | | | | | | | | | | | | |
| 2. | | | | | | | | | | | | | | | | |
| 3. | | | | | | | | | | | | | | | | |
| <p>Part 2 (c) – Registered Company</p> <p>Private or Public</p> <p>State the nominal and issued capital of company</p> <p>Nominal Kshs..... Issued Kshs.....</p> <p>Given details of all directors as follows</p> <table border="1"> <thead> <tr> <th>Name</th> <th>Nationality</th> <th>Citizenship details</th> <th>Shares</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table> | Name | Nationality | Citizenship details | Shares | 1. | | | | 2. | | | | 3. | | | |
| Name | Nationality | Citizenship details | Shares | | | | | | | | | | | | | |
| 1. | | | | | | | | | | | | | | | | |
| 2. | | | | | | | | | | | | | | | | |
| 3. | | | | | | | | | | | | | | | | |

| | |
|--|--------------------------------------|
| | Date.....Signature of Candidate..... |
|--|--------------------------------------|

FORM 4

FORM OF TENDER SECURITY

WHEREAS (Hereinafter called “the Tenderer”) has submitted his tender dated for the construction of..... (Name of Contract).....

KNOW ALL PEOPLE by these presents that WE having our registered office at(hereinafter called “the Bank or a reputable insurance company ”), are bound unto..... (Hereinafter called “the Employer”) in the sum of (.....) for which payment well and truly to be made to the said Employer, the Bank or insurance company binds itself, its successors and assigns by these presents sealed with the Common Seal of the said Bank this..... Day of2018

THE CONDITIONS of this obligation are:

1. If after tender opening the tenderer withdraws his tender during the period of tender validity specified in the instructions to tenderers
Or
2. If the tenderer, having been notified of the acceptance of his tender by the Employer during the period of tender validity:
 - (a) fails or refuses to execute the form of Agreement in accordance with the Instructions to Tenderers, if required; or
 - (b) fails or refuses to furnish the Performance Security, in accordance with the Instructions to Tenderers;

We undertake to pay to the Employer up to the above amount upon receipt of his first written demand, without the Employer having to substantiate his demand, provided that in his demand the Employer will note that the amount claimed by him is due to him, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

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

[date]

[signature of the Bank or insurance company]

[Witness]

[Seal]

FORM 5

PERFORMANCE SECURITY FORM (TO BE PROVIDED AFTER SIGNING OF CONTRACT)

To:[name of the Procuring entity]

WHEREAS.....[name of tenderer] (hereinafter called “the tenderer”) has undertaken, in pursuance of Contract No. _____[reference number of the contract] dated _____20____to supply.....[Description services](Hereinafter called “the contract”)

AND WHEREAS it has been stipulated by you in the said Contract that the tenderer shall furnish you with a bank guarantee by a reputable bank for the sum specified therein as security for compliance with the Tenderer’s performance obligations in accordance with the Contract.
AND WHEREAS we have agreed to give the tenderer a guarantee:

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the tenderer, up to a total of[amount of the guarantee in words and figures],

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

This guarantee is valid until the _____ day of 20_____

Signature and seal of the Guarantors

[name of bank or financial institution]

[address]

[date]

(Amend accordingly if provided by Insurance Company)

FORM 6

BANK GUARANTEE FORM FOR ADVANCE PAYMENT

To.....[name of tender].....

Gentlemen and/or Ladies:

In accordance with the payment provision included in the special conditions of contract, which amends the general conditions of contract to provide for advance payment,.....[name and address of tenderer][hereinafter called "the tenderer"] shall deposit with the Procuring entity a bank guarantee to guarantee its proper and faithful performance under the said clause of the contract in an amount of[amount of guarantee in figures and words].

We, the[bank or financial institution], as instructed by the tenderer, agree unconditionally and irrevocably to guarantee as primary obligator and not as surety merely, the payment to the Procuring entity on its first demand without whatsoever right of objection on our part and without its first claim to the tenderer, in the amount not exceeding[amount of guarantee in figures and words].

We further agree that no change or addition to or other modification of the terms of the Contract to be performed thereunder or of any of the Contract documents which may be made between the Procuring entity and the tenderer, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition, or modification.

This guarantee shall remain valid and in full effect from the date of the advance payment received by the tenderer under the Contract until [date].

Yours truly,

Signature and seal of the Guarantors _____

[name of bank or financial institution]

[address]

_____ [date]

FORM 7

NOTIFICATION OF INTENTION TO ENTER INTO A CONTRACT

Address of Procuring Entity

To: _____

RE: Tender No. _____

Tender Name _____

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

1. Please acknowledge receipt of this letter of notification signifying your acceptance.
2. The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.
3. You may contact the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.
4. Please note that this Notification does not constitute a Contract.
5. You will be required to give a 10% performance bond in form of a Bank Guarantee from a bank registered in Kenya, prior to Contract signing.

(FULL PARTICULARS) _____

SIGNED FOR ACCOUNTING OFFICER

FORM 8

LITIGATION HISTORY FORM

Bidders must provide information on any history of litigation or arbitration resulting from contracts executed in the last five years or currently under execution.

| Year | Award for or against | Name of client, cause of litigation and matter in dispute | Disputed amount (current value, Kshs. equivalent) |
|-------------|-----------------------------|--|--|
| 2018 | | | |
| 2017 | | | |
| 2016 | | | |
| 2015 | | | |
| 2014 | | | |
| 2013 | | | |

Signature & Stamp.....

Date.....

FORM 9

INTEGRITY DECLARATION

UNDERTAKING BY TENDERER ON ANTI – BRIBERY POLICY / CODE OF CONDUCT AND COMPLIANCE PROGRAMME

1. Each Tenderer must submit a statement, as part of the Tender documents, in either of the two given formats which must be signed personally by the Chief Executive Officer or other appropriate Senior Corporate Officer of the Tendering company and, where relevant, of its subsidiary in the Kenya. If a Tender is submitted by a subsidiary, a statement to this effect will also be required of the parent company, signed by its Chief Executive Officer or other appropriate Senior Corporate Officer.
2. Tenderers will also be required to submit similar No-bribery commitments from their subcontractors and consortium partners; the Tenderer may cover the subcontractors and consortium partners in its own statement, provided the Tenderer assumes full responsibility.
 - a) Payment to agents and other third parties shall be limited to appropriate compensation for legitimate services.
 - b) Each Tenderer will make full disclosure in the Tender documentation of the beneficiaries and amounts of all payments made, or intended to be made, to agents or other third parties (including political parties or electoral candidates) relating to the Tender and, if successful, the implementation of the contract.
 - c) The successful Tenderer will also make full disclosure [quarterly or semi-annually] of all payments to agents and other third parties during the execution of the contract.

- d) Within six months of the completion of the performance of the contract, the successful Tenderer will formally certify that no bribes or other illicit commissions have been paid. The final accounting shall include brief details of the goods and services provided that they are sufficient to establish the legitimacy of the payments made.
 - e) Statements required according to subparagraphs (b) and (d) of this paragraph will have to be certified by the company's Chief Executive Officer, or other appropriate senior corporate officer.
3. Tenders which do not conform to these requirements shall not be considered.
4. If the successful Tenderer fails to comply with its No-bribery commitment, significant sanctions will apply. The sanctions may include all or any of the following:
- a) Cancellation of the contract;
 - b) Liability for damages to the public authority and/or the unsuccessful competitors in the Tendering possibly in the form of a lump sum representing a pre-set percentage of the contract value (liquidated).
5. Tenderers shall make available, as part of their Tender, copies of their anti-Bribery Policy/Code of Conduct, if any, and of their-general or project - specific - Compliance Program.
6. The Government of Kenya has made special arrangements for adequate oversight of the procurement process and the execution of the contract, and has invited civil society and other competent Government Departments to participate in the oversight. Those charged with the oversight responsibility will have full access to all documentation submitted by Tenderers for this contract, and to which in turn all Tenderers and other parties involved or affected by the project shall have full access (provided, however, that no proprietary information

concerning a Tenderer may be disclosed to another Tenderer or to the public).

FORM 10

ANTI-CORRUPTION DECLARATION COMMITMENT/ PLEDGE

(Sections 62 of the PPAD Act, 2015)

I/We/Messrs.....

of Street, Building, P O Box.....

.....

Contact/Phone/E mail.....

declare that Public Procurement is based on a free and fair competitive Tendering process which should not be open to abuse.

I/We

declare that I/We will not offer or facilitate, directly or indirectly, any inducement or reward to any public officer, their relations or business associates, in connection with

Tender/Tender No

for or in the subsequent performance of the contract if I/We am/are successful.

AuthorizedSignature.....

Name and Title of Signatory.....

FORM 11



KENYA RAILWAYS CORPORATION

Viewing Certificate

**PROVISION OF ERP MAINTENANCE AND SUPPORT SERVICE FOR
KENYA RAILWAYS ENTERPRISE RESOURCE PLANNING (ERP)
SYSTEM**

TENDER NO. KRC/PLM/024/2018-2019

1. The tenderer shall make a visit and review the ERP system at KR under the guidance of KR ICT staff

I hereby certify that I have undertaken a site visit and is familiar with KR ERP System

1) TENDERERS NAME.....

2) SIGN.....

DATE.....

2) DESIGNATED KRC OFFICER.....

SIGN.....

DATE.....

FORM 12

DEALERSHIP/MANUFACTURER’S AUTHORIZATION FORM

To *[name of the Procuring entity]*

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

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

FORM RB 1

REPUBLIC OF KENYA

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

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

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (*Procuring Entity*)

Request for review of the decision of the..... (*Name of the Procuring Entity*)

ofdated the...day of20.....in the matter of Tender

No.....of20...

REQUEST FOR REVIEW

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

- 1.
 - 2.
- etc.

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

- 1.
- 2.

etc

SIGNED (Applicant)

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

FOR OFFICIAL USE ONLY

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

SIGNED
Board Secretary