



KENYA RAILWAYS

PROVISION OF CUSTOM CLEARING AND FORWARDING SERVICES

FRAMEWORK CONTRACTS

TENDER NO. KRC/PLM/068/2018-2019

CLOSING DATE: TUESDAY July, 23 2019
CLOSING TIME: 10:00AM

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

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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 qualified firm to undertake Provision of Custom Clearing and Forwarding Services for a period of Three (3) Years.

SECTION I - INVITATION FOR TENDER (IFT)

Tender No. KRC/PLM/068/2018-2019

Tender Name: Provision of Custom Clearing and Forwarding Services.

1. The Kenya Railways invite eligible candidates to submit tenders for **Provision of Custom Clearing and Forwarding Services** for a period of three (3) years on Framework basis.
2. The Tender is open to persons with the legal capacity to enter into a contract for the procurement, not insolvent, in receivership, bankrupt or in legal proceedings related to the foregoing.
3. Interested eligible candidates may obtain further information and inspect tender documents at Supply Chain Management Department on the 1st Floor of the Kenya Railways Corporation Headquarters during normal working hours.
4. A complete set of tender documents may be obtained by interested candidates upon payment of a non-refundable fee of **Kshs1,000/-** in cash or Bankers Cheque payable to Kenya Railways Corporation.
5. Bidders who download the document from KRC Website, ppip@ppra.co.ke, MUST register their interest immediately by sending an email to procure@krc.co.ke stating their names, email, postal and telephone address
6. 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 tender
7. Tenderers shall be required to submit a Tender Security amounting to Kenya Shillings 80,000.00 in form of a Bank Guarantee from a Registered Commercial Bank in Kenya Valid for at Least 120 days from the Date of Tender Opening.
8. 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 at 10:00 am**
9. 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

10. Tenderer must serialize all the documents provided with the tender document, the format should be in numeric order (1, 2, 3, 4, 5.....to the last page)

GM- Supply Chain Management
FOR: MANAGING DIRECTOR

SECTION II – INSTRUCTIONS TO TENDERERS

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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 tender document shall be purchased as a cost of KES 1000/=
- 2.2.3 The procuring entity shall allow the tenderer to review the tender document free of charge before purchase.

2.2.4 Contents of tender documents

- 2.2.1. The tender document comprises of the documents listed below and addenda issued in accordance with clause 6 of these instructions to tenders
- i) Invitation to Tender
 - ii) Instructions to tenderers
 - iii) General Conditions of Contract
 - iv) Special Conditions of Contract
 - v) Schedule of Requirements

vi) Standard Forms

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.

2.3 Clarification of Documents

2.3.1. 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”

2.3.2. 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 Amendment of documents

2.4.1. 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.

2.4.2. 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.

2.5 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

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 applicable duties and taxes payable:

2.9.3 The 'Commission quoted by the tenderer shall remain fixed during the term of the contract unless otherwise agreed by the parties. A tender submitted with an adjustable price Tender will be treated as non-responsive and will be rejected, 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 10% 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. Prices quoted in other currencies other than the Kenya Shilling shall be converted using the selling exchange rate prevailing on the date of tender closing provided by the Central Bank of Kenya.

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 2% of bid price.

2.12.2 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

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

a) Banker's cheque.

b) A bank guarantee.

2.12.4 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

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

2.12.6 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.

2.12.7 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 2.26

or

(ii) to furnish performance security in accordance with paragraph 2.27

(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 90 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 non responsive.

2.13.2 In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 2.12 shall also be suitably extended. A tenderer 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 Four copies of the tender, clearly / marking each "ORIGINAL TENDER" and "COPY NO.....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 Friday, 8th March 2019 at 10.00hrs

2.15.2 Tender documents are to be delivered at **Kenya Railways Headquarters, Block C, First Floor – Western Wing Ground Floor**

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 10.00hrs**

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, at 10.00AM Friday March 8th 2019, 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.

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 bidder provides a detailed operational plan for all services specified in the Schedule of Requirements. The operational plan must indicate the deliverable time for each specified service. Bidsthat will not indicate 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 price 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 highest 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

2.24.3 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.

2.24.4 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.

2.24.5 The KRC reserves the right at the time of the contract, or even after, to increase or decrease the scope of service without any change in terms and conditions.

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

Appendix to Instructions to Tenderers

The following information regarding the particulars of the tender shall complement supplement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provision of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers

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: Open To all Eligible Forms Registered in Kenya
2.2	Cost of Tendering
2.2.2	Price for the Hard Copy of the Tender document will be charged Kshs.1000.00. soft copies. Downloaded copies will be issued free of charge from KR website at www.krc.co.ke , ppip@ppra.co.ke or the treasury website www.supplier.treasury.go.ke
2.12	Tender Security
2.12.2	The tender security of Kshs.80,000.00 (valid for 120 days from the date of tender opening) shall be provided in form of Bank guarantee 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 General Manager – Supply Chain Management Kenya Railways Headquarters, Haile Selassie Avenue Block C, First Floor. Nairobi
2.15.3	Do not open before: July 23, 2019 at 10.00hrs
2.18	Opening of Tender
2.18.1	Tenders will be opened on in the presence of bidders who chose to attend on July 23, 2019 at 10.00hrs at Kenya Railways Headquarters Block C Sattima Conference Hall 1 st Floor.
2.19.1	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	(New Clause)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.
2.22	Evaluation and Comparison of Tender
2.22.1	See page 18 of 60
2.27	Notification of Award
2.27.2	For greater certainty, a notification of the intention to inter in to contract does not constitute a contact nor reduce the validity period for a tender security.
2.31	New Clause (Conflicts Between the Tender Document and the PPAD ACT 2015)
	Conflicts between the Tender terms and Public Procurement Assets and Disposal Act 2015. In such cases The Public Procurement Assets and Disposal Act, 2015 will stand.

Appendix B – Tender Evaluation Criteria

(a) Preliminary Evaluation (Mandatory)

NO	PRELIMINARY MANDATORY EVALUATION	REQUIREMENTS
1	Certified Copy of Certificate of Incorporation/Registration	Mandatory
2	Copy of Valid KRA Tax Compliance certificate	Mandatory
3	Attach System Generated Copy of CR12 for Incorporated Companies	Mandatory
4	Audited Accounts for any of the Last Three (3) Years (2015, 2016, 2017, 2018) issued by a recognised Certified Public Accountant registered in Kenya (ICPAK)	Mandatory
5	A Bid Bond of Kshs.80,000 valid for 120 days from the date of tender opening in form of a Bank Guarantee from a Commercial Bank Registered in Kenya	Mandatory
6	Bidder must fill, sign and stamp the confidential business questionnaire form indicating the names and ownership of all Directors as appropriate	Mandatory
7	Bidders must fill, sign and stamp the Litigation history (Form 8) if they have litigation or not..	Mandatory
8	Bidder Must Fill, Sign and Stamp the Form of Tender	Mandatory
9	Bidders must fill, sign & stamp the integrity declaration form (Form 9)	Mandatory
10	Valid and current Copy of KRA Custom Agent Licence	Mandatory
11	Current Membership Certificate of Kenya International Freight and Warehousing Association (KIFWA)	Mandatory
12	Bidder should have their documents paginated (serialized) to ensure compliance with section 74(1) (i) of the Public Procurement Assets and Disposal Act 2015 (in format 1,2,3,4....Last page)	Mandatory
<p>Pursuant to section 79 of the Public Procurement Assets and Disposal Act, 2015 any tender not meeting the mandatory and other eligibility criteria will not proceed to the Technical Evaluation Stage.</p>		

b. TECHNICAL EVALUATION		
1	<p>Specific experience of the firm (FILL FORM X)</p> <p>Provide Evidence that the Firm has offered similar services (Clearing and Forwarding of Dry Cargo – Provide evidence of shipment on which clearing agents paid duties of up-to the value of Kshs.10,000,000.00 on behalf of the client) to Five (5) No. Corporate clients in the public and private sector in the last five (5) years.</p> <p>Similar Services refers to services equivalent to requirement in Scope of services in the TOR.</p> <ul style="list-style-type: none"> a. Bidder Must provide Details of each Contract in Reference Form X Provided in the RFP Document – 1 Marks each b. As evidence provide copy of Contract Documents for assignments listed in form X - 2 Marks each c. Provide an Original Reference Letters for each of the assignment listed in form X addressed to Managing Director – Kenya Railways - 2 Marks each d. Evidence of clearance of consignments for above clients for sea freight within 5 days from ship arrival date and airfreight within 3 days from the date of arrival of consignment (Bidder Must attach AWB/B/L, Arrival Advise, release order and custom entry) – 2 Marks each 	35 Marks
2.	<p>Work Plan and Methodology</p> <p>The Firm should provide a logical, well-structured work plan consistent with the time frames and terms of reference of this RFP to demonstrate:</p> <ul style="list-style-type: none"> a. Demonstrate the Understanding/conformity to the TOR provided in the tender document – bidder to submit a clear and detailed write up on understanding of the assignment and the expected deliverables; <ul style="list-style-type: none"> – Conformity to the TORs including - 2 Marks – Proof of warehousing facilities for the agents – 2 Marks – Handling of KRA Audit Queries, evidence of use and training on KRA 2005 Simba System – 2 Marks – Work Plan with Clear Timelines for achieving the requirements under this tender – 4 Marks b. Work plan <p>Bidder Should provide a clear timelines for activity that are to be undertaken that are specific timeline must correspond to KR proposed time for completion of the assignment. (Provide Work Programme in Gantt Chart) – 5 Marks</p> <p>Provide a Proposed Service Level Agreement (SLA) Clearly indicating the expected KPIs and performance review process and expected time for each service – 5 Marks</p> 	35 Marks

	<p>c. Technical Approach and Methodology of undertaking the assignment – Adequacy of the proposed approach and Methodology in meeting the requirements under this assignment - 5 Marks</p>	
	<p>d. Bidder to propose at Five Value added services to be provided to KR during the assignment – 10 Marks</p>	
3	<p>Personnel (FILL FORM Z) Bidder should provide evidence of technical training and Experience of Bidders staff;</p> <p>a. The Consultant should provide CVs of all the Key technical staff who will be engaged in the assignment in format provided in the tender document (FILL FORM Z)</p> <p>b. As evidence of relevant training bidders should attach certified copies of academic and professional certificates of the Key Technical Staff in relevant areas of expertise as set out in appendix B on page18 above.</p> <p>i) One (1) Team Leader (10 Marks)</p> <ul style="list-style-type: none"> • Submit CV in the format provided in the tender document – 2 Marks • Certified Copy of Academic Certificate (Degree in Relevant Field) – 2 Marks • Certified Copy of Professional Qualification (Clearing and Forwarding / Custom Clearance Certification) – 2Marks • Minimum 10 Years Relevant Experience 3 years of which the team leader must have under taken 3 similar projects as team Leader – 4 Marks <p>ii) Two Key Staff (Finance / Accounting) (5 Marks Each)</p> <ul style="list-style-type: none"> • Submit CV in the format provided in the tender document – 1 Marks • Certified Copy of Academic Certificate (Degree or Diploma in a relevant field) – 1 Marks • Certified Copy of Professional Qualification in Accounts / Finance – 1Marks • Minimum 3 Years Relevant Experience in 3 similar projects – 2 Marks <p>c. Bidders to provide and undertaking to replace the proposed staff with staff of similar qualification – (5 marks)</p> <p>d. Provide an organization structure (Organogram) clearly outlining where the proposed key staff fit within the organization – (5marks)</p>	30 Marks
	TOTAL TECHNICAL EVALUATION MARKS	100 Marks
	<p>All Bidders Meeting the Technical Score of 70% will be Pre-Qualified for engagement through Framework Agreement for a period of Three (3) years.</p> <p>The Bidders will be further be subjected to financial Evaluation where</p>	

	<p>the Most responsive bidder shall be awarded this Contract on a Framework Basis (services to be provided on an (“ as and when required”).</p>	
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	<p>C. Financial Evaluation</p>	
	<p>Cost for services are to be detailed in schedule of requirements / terms of reference</p> <p>Financial Evaluation will be based on Least Cost Basis i.e. the award shall be made to the lowest evaluated tender</p>	

FORM X

1. FIRM'S REFERENCES

Relevant Services Carried Out in the Last Five Years That Best Illustrate Qualifications

Using the format below, provide information on each assignment for which your Firm either individually, as a corporate entity or in association, was legally contracted.

Assignment Name: Country	
Location within Country: Firm/Entity(profiles):	Professional Staff provided by Your
Name of Client: assignment.	Clients contact person for the
Address: Assignment:	No of Staff-Months; Duration of
Start Date (Month/Year): Value of Services (Kshs)	
Completion Date Approx. (Month/Year):	
Name of Associated Consultants. If any: No of Months of Professional Staff provided by Associated Consultants:	
Name of Senior Staff (Project Director/Coordinator, Team Leader) Involved and Functions Performed:	
Narrative Description of project/ Nature and Role of the firm in carrying out the project :	
Description of Actual Services Provided by Your Staff:	

Firm's Name: _____

Name and title of signatory; _____

FORM Y

2. COMMENTS AND SUGGESTIONS OF CONSULTANTS ON THE TERMS OF REFERENCE AND ON DATA, SERVICES AND FACILITIES TO BE PROVIDED BY THE CLIENT.

On the Terms of Reference:

- 1.
- 2.
- 3.
- 4.
- 5.

On the data, services and facilities to be provided by the Client:

- 1.
- 2.
- 3.
- 4.
- 5.

FORM W

3. DESCRIPTION OF THE METHODOLOGY AND WORK PLAN FOR PERFORMING THE ASSIGNMENT

A) Methodology

B) Workplan

5. TEAM COMPOSITION AND TASK ASSIGNMENTS

1. Technical/Managerial Staff

Name	Position	Task

2. Support Staff

Name	Position	Task

FORM Z

FORMAT OF CURRICULUM VITAE (CV) FOR PROPOSED PROFESSIONAL STAFF

Proposed Position: _____

Name of Firm: _____

Name of Staff: _____

Profession: _____

Date of Birth: _____

Years with Firm: _____ **Nationality:** _____

Membership in Professional Societies:

Detailed Tasks Assigned: _____

Key Qualifications:

[Give an outline of staff member's experience and training most pertinent to tasks on assignment. Describe degree of responsibility held by staff member on relevant previous assignments and give dates and locations].

Education:

[Summarize college/university and other specialized education of staff member, giving names of schools, dates attended and degree[s] obtained.]

Employment Record:

[Starting with present position, list in reverse order every employment held. List all positions held by staff member since graduation, giving dates, names of employing organizations, titles of positions held, and locations of assignments.]

Certification:

I, the undersigned, certify that these data correctly describe me, my qualifications, and my experience.

_____ **Date:** _____

[Signature of staff member] _____ ***Date;*** _____

[Signature of authorized representative of the firm]

SECTION III GENERAL CONDITIONS OF CONTRACT

TABLE OF CONTENTS

- 3.1 Definitions
- 3.2 Application
- 3.3 Standards
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SECTION III GENERAL CONDITIONS OF CONTRACT (GCC)

3.1 Definitions

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
- i) "TOR" means terms of reference
- j) "KRC" means Kenya Railways Corporation
- k) "ERP" means Enterprise Resource Planning

3.2 Application

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 recommended best practice.

3.5 Patent Right's

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

Within twenty eight (28) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the performance security of 5% of the Contract price as specified in the 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) Bankers Cheque
- b) A bank guarantee.

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

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

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.

3.10 Termination for Default

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.

- d) 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

The procuring entity may at the anytime 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

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.

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

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

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.

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

3.18 Notices

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

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

SECTION IV SPECIAL CONDITIONS OF CONTRACT (SCC)

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.

SPECIAL CONDITIONS OF CONTRACT

1. DEFINITIONS

In this Contract, except where context otherwise requires, the following terms shall be interpreted as indicated;

“Procuring Entity”: Kenya Ports Authority

“Schedule of Rates” means the price Schedule of Rates forming part of the tender (where applicable).

“The Completion Date” means the date of the completion of the services as certified by the Employer’s Representative.

“The Contractor” refers to the person or corporate body whose tender to carry out the Services has been accepted by the Employer.

“The Contractors Tender” is the completed tendering document submitted by the Contractor to the Employer.

“Services” means Provision of Clearing and Forwarding Services”.

“Days” are calendar days: **“Months”** are calendar months.

“Equipment” is the Contractors machinery and vehicles brought temporarily to the Site for the execution of the Services.

“Site” means the place or places where the Services are to be carried out.

“Kenya Ports Authority’s Representative” is the person appointed by the Employer and notified to the Contractor for the purpose of the supervision of the Services.

“Specification” means the Specification of the Services included in the Contract.

“Agreement” means this Agreement made between Kenya Ports Authority and the Contractor including the First and second schedules and the other document forming the Agreement:

“Effective Date” means the date that the services shall commence as stipulate in the Agreement.

“Party” means either Kenya Ports Authority or the Contractor.

“Both parties” means Kenya Ports Authority and the Contractor

“Rates” mean the costs and charges of the services the Contractor shall provide to Kenya Ports Authority; as provided for in the Second Schedule of this Agreement;

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

15. **Force Majeure**

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

“Clearing and Forwarding Services Contract” means the Clearing and Forwarding Services that will be provided to Kenya Ports Authority by the Clearing & Forwarding firm pursuant to this Agreement and includes any additional or incidental services that may be requested by the Kenya Ports Authority from time to time

“Duties” means providing, performing ,actioning, executing and or obliging to a moral legal duty to provide services by the Contractor to Kenya Ports Authority as provided for in the First and Second Schedule of the Agreement: or any other assignment directed on request by signing of a Temporary Works Order.

2. CONTRACT DOCUMENTS

2.1 The following documents shall constitute the Contract documents and shall be

Interpreted in the following order of priority:

- (1) Agreement,
- (2) Contractors Tender
- (3) Letter of Award and Acceptance,
- (4) Special and General Conditions of Contract,
- (5) Technical Specifications,
- (6) Schedule of Rates
- (7) Copy of Performance Bond

3. EMPLOYER’S REPRESENTATIVE’S DECISIONS

3.1 Expect where otherwise specifically stated, the Employer’s Representative will
will decide contractual matters between the Employer and the Contractor in the role
representing the Employer.

4. INSTRUCTIONS

4.1 The following Special Conditions of Contract shall supplement the General
Conditions of Contract. Whenever there is a conflict, the provisions herein shall

Prevail over those in the General Conditions of Contract.

4.2 The Contractor shall carry out all instructions of the Employer’s Representative
Which are in accordance with the Contract.

5 MANAGEMENT MEETINGS

5.1 A mandatory Contract top management meeting shall be held quarterly and shall be attended by the Employer’s Representative and the Contractor.

Its business shall be to evaluate periodic performance of the work. The Employer's Representative shall record the business of management meetings and provide copies of the record to those attending and the employer.

5.2 An informal meeting between the supervisor of the contract and Kenya Ports

Authority representative shall be held when deemed necessary. Any results from this

meeting can be discussed in the quarterly mandatory top management meetings.

5.3 Communication between parties shall be effective only when in writing.

6 DURATION OF CONTRACT (GCC)

6.1 This Agreement shall be unless extended by both parties terminate a the end of

Two (2) years expiry from the commencement date.

7 PERFORMANCE APPRAISAL

7.1 The employer's representative(s) and the contractor shall on delivery of services

conduct a comprehensive assessment/appraisal and record the findings in an agreed

format as derived from the delivery schedule. Such records shall form part of

subsequent deliberations during bi-annual meeting as per clause 5.1. and actions

taken as stipulated in clause 8 & 9

8 NON PERFORMANCE PENALTY

8.1 In the event that the Contractor does not administer the contract in whole or in part,

Kenya Ports Authority shall procure upon such terms and in such manner as it deems

Appropriate, and without reference to the contractor, services similar to those

Undelivered, and the contractor shall be liable to Kenya Ports Authority for the actual

Costs incurred for such procured services. This costs shall be offset from the invoices

Provided by the contractor.

9. TERMINATION

9.1 Kenya Ports Authority may without prejudice to any other remedy accruing to

It terminate this Agreement in writing in whole or in part if:-

(a) By Breach of Contract

(i) The Contractor frequently fails to provide services for acceptable standards

Set by Kenya Ports Authority in the performance of this Agreement and

(ii) The Contractor fails to perform any other obligation under this Agreement.

(b) By Agreement

9.2 Either party may terminate the Agreement by giving to the other party Three (3)

Months notice in writing or payment of Three (3) months the set fees and charges in

lieu of such notice:

9.3 On termination of this Agreement, howsoever terminated, the Contractor shall be

Permitted to remove all its equipment which may have been placed by the

Contractor upon the employer's premises.

10 CONFIDENTIALITY

10.1 The Contractor, its representatives, servants and agents shall not at any time during

or after termination of this Agreement divulge or allow to be divulged to any person or

third party any information relating to the business or affairs of Kenya Ports

Authority.

11. ASSIGNMENT

11.1 The Contractor shall not assign or sub-contract any of its rights or duties under

Agreement

12 SUB-CONTRACT

12.1 The contract shall not be sub-contracted under this agreement.

13 PAYMENT TERMS (GCC8)

Kenya Port Authority's payment terms are within 30 days upon receipt of certified

Invoices confirming that the services have been delivered in accordance with the

contract.

14 PROVISION AND STANDARD OF SERVICE

(a) The Contractor shall provide services of acceptable standards set by

Kenya Ports Authority in the performance of this agreement and

Unacceptable performance shall be grounds for summary termination of

The Agreement without any notice at the sole discretion of Kenya Ports

Authority;
 (b) Delays by the Contractor in the performance of its obligations hereunder shall give rise to sanctions and imposition of liquidated damages by Kenya Ports Authority

(c) If at any time during the performance of this Agreement the Contractor encounters conditions affecting timely provision of services, the C & F Company shall immediately and without any delay notify Kenya Ports Authority in writing of the condition, its cause and duration and possible Solution thereto and as soon as practicable Kenya Ports Authority shall Evaluate the condition and may, at its sole discretion, waive the C & F Company's obligations without the risk of sanctions impositions of liquidated damages and or the summary termination of this Agreement without any notice.

(d) The contractor shall provide a **wok plan** which shall be in line with the employer's delivery schedule and shall form part of tender evaluation:

- i. Equipment and Machines to be used to achieve intended purpose in all areas including vehicles, motor cycles, communication equipment, etc
- ii. Emergency or contingency measures for any eventuality.
- iii. Track and trace System used.
- iv. Dispatch/ collection route and mode.

15 STAFF IDENTIFICATION

15.5 The contractor shall provide uniforms and name tags which shall be worn all the time and protective gear as shall be appropriate.

16. PERFORMANCE SECURITY

16.1 The Contractor shall within fifteen (15) days from the date of executing this Agreement furnish Kenya Ports Authority with a performance security whose

Value shall be Kshs. 200,000.00 in the format provided in the tender Document.

17. INDUCEMENT/PAYMENT OF COMMISSION AND CORRUPT GIFT

The Contractor shall not:

Offer or give or agree to give to any person in the service of the Employer any gifts or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other contract with the Employer or for showing or forbearing to show favour or disfavor to any person in relation to this or any other contract with the Employer.

Any breach of this condition by the Contractor or by anyone employed by him or

Acting on his behalf (whether with or without the knowledge of the Contractor)

Shall be an offence under the Laws of Kenya.

18. PROBATION PERIOD

The Contractor shall provide the services to Kenya Ports Authority on a

Probationary basis during the first Three (3) months of this agreement

And thereafter, subject to proper performance and evaluation thereof,

the Agreement may be confirmed or terminated in writing at the discretion

of Kenya Ports Authority as stipulated in clause 6,7,8 and 9.

19. NOTICE ADDRESS

Any notice to be served on either of the parties by the other shall be sent by

Prepaid recorded delivery or registered post to the address of the relevant party

Or by facsimile transmission or by and shall be deemed to have been received by

the addressee within Three (3) days of posting or 24 hours if sent by facsimile

transmission or by electronic mail.

20. TENDER PRICES

The contract price will be fixed during the term of contract and not subject

to variation on any account. Variations shall be as governed by the Public

Procurement and Disposal Act, 2005 and its attendant Regulations of 2006

21. INDEMNITY

The Contractor shall indemnify and keep indemnified Kenya Ports Authority, its servants and agents against loss of or damage to property or

Bodily injury sustained by it or them by reason of any act, omission or

neglect of the Contractor, its servants or agents whilst performing their

duties under this Agreement and against the dishonesty of its C & F Officers

whilst performing their duties hereunder and this shall include any loss,

damage, injury or any consequential or indirect loss sustained by Kenya

Ports Authority, its servants or agents or third parties lawfully on the

Premises by reason of any act or omission of the Contractor its servants or

Agents.

22. CLAIMS

Notice of all claims by Kenya Ports Authority in respect of any loss damage

Or consequential or indirect loss shall be given in writing to the Company

giving details of such loss, damage or injury of consequential or indirect

loss within Fourteen (14) days after the discovery of such damage loss or

injury.

23. INSURANCE

23.1 The Contractor shall insure its C & F Officers engaged in the performance of

this Agreement against injury sustained by them in the course of carrying out

their duties in pursuance hereof and unless such injury shall be due to the act

negligence or default of Kenya Ports Authority. Its servants or agents. The

Contractor will indemnify Kenya Ports Authority against all actions, claims and

demands in respect of such injury.

23.2 The Contractor shall indemnify Kenya Ports Authority of loss incurred due to

negligence or default by its servants and agents.

23.3 The Contractor shall be required by Kenya Ports Authority to avail the policy of

Insurance in respect thereof and proof of payment of current premium.

25. LIQUIDATED DAMAGES

If the contractor fails any or all of the services within the period(s) specified in the contract, Kenya Ports Authority shall, without

prejudice

prices

up to a

this Kenya

to its other remedies under the contract, deduct from the contract

liquidated damages some equivalent to 0.5% of the price of the unperformed services, per day until actual delivery of services,

maximum deduction of 10% of the unperformed services. After

Ports Authority may consider termination of contract.

SECTION V – SCHEDULE OF REQUIREMENTS /TERMS OF REFERENCE

TERMS OF REFERENCE FOR PROVISION OF CUSTOM CLEARANCE AND FORWARDING SERVICES

1.0 INTRODUCTION

KR is seeking a clearing agent who will be responsible for all Customs documentation of import cargo handled by KR through the Port of Mombasa Kenya. The agent must be able to declare and clear the cargo within the free period to avoid storage charges and handle Transit cargo within a Customs controlled area (e.g. transit shed/yard) if possible where there is a rail siding.

The Services to be provided by the Agent shall include but are not limited to the following;

- a) Lodging / Declaration of Custom Entry Documents
- b) Import Declaration Form (IDF)
- c)

2.0 TERMS OF REFERENCE

Custom Clearance

The scope is as indicated below;

1. Execute or already have in place a customs Bond of not less than **500 million Kenyan shillings**.
2. The bidder shall at all time exercise reasonable care and professionalism in executing duties and shall act in good faith on behalf of Kenya Railways while providing the Clearing and Forwarding Services.
3. Clearing of Consignment without incurring storage charges and demurrage or penalties by Custom – preparation of pick orders (MPRO), NOI lodging and applying for IDF
4. Monitoring shipment and submit daily report showing clearance position and any other information until the cargo is cleared and delivered.
5. Advise Kenya Railways on existing customs/KPA regulations and changes affecting clearance and handling of Cargo
6. Advise Kenya Railways on payable duties and taxes on form C.17 to enable KR organize payment directly to KRA

7. Pay **All Other Disbursements** on behalf of Kenya Railways.
Disbursement fees will be for mutually agreed payments by the clearing agents including but not limited to KPA charges, import invoice charges and container deposit, shipping line storage charges.
8. Timely refund of Container Deposits
9. Transportation of consignment from Mombasa to Nairobi
10. Loading and Off loading of Consignments
11. Preparation of all KRA documentations
12. Securing shipping charges & Port charges
13. Provision of security escorts or local insurance before receipt of goods by Kenya Railways
14. Frequency of availability: All the time 24 Hours
15. Processing of Refunds claim from KRA
16. Liaison with KRA.
17. Be ready to deploy or already have in place a team of experienced Customs Declaration Staff with not less than 3 years' experience and holding the EAFFCA certificates. The dedicated Staff will be stationed at Mombasa Port, Nairobi, Malaba and Mukono.

Clearing Agent

The agent will provide the following services;

1. Clear Cargo from Jomo Kenyatta International Airport (JKIA), Inland Container Depot (ICD) in Nairobi or from Kilindini Port in Mombasa. They will also facilitate any re-exportation of equipments for repairs.
2. Transport Cargo to the nearest Kenya Railways Warehouse or as otherwise instructed by the employed
3. Export Equipment for repairs

4. Pay on behalf of employer, such an amount to customs and other third parties at the port of entry on approval from the employer to pay such charges
5. Monitor and coordinate the Cargo from shipment origin to the time of clearance and update the employer on a daily basis via e-mail or fax and telephone

SECTION VI - PRICE SCHEDULE FOR THE SERVICE

A. AGENCY FEES FOR SEA FREIGHT SHIPMENTS

Item	Description of Services	Rate	Minimum Quantity
1	Processing of IDF	Per Entry	
	Processing of entries per entry		
2	Handling Charges for 40ft Container (loading and offloading)	Kshs	
	Handling Charges for 20ft Container (loading and offloading)	Kshs	
	Handling Charges for conventional cargo per kg	Kshs	
	Custom Documentation per BL	Kshs	
	Third party Charges	At Cost	
3	Agency fee loose cargo per Kg (KRA documentation charges, securing of shipping charges & port charges, security escorts or local insurance and verification fees.		
	a. loose cargo per Kg	Kshs	
	b. Minimum	Kshs	
	c. Agency fee containerized cargo (KRA documentation charges, securing of shipping charges & port charges, security escorts or local insurance and verification fees.		
	40ft	% of CIF	
	20 ft	% of CIF	
	Custom Documentation Per BL	Kshs	
	Third Party Costs	At Cost	
4	Transport charges		
	Mombasa -Nairobi		
	a. 40ft	Kshs	
	b. 20 ft	Kshs	

	Other Destinations	On Request	
5	Agency fee for clearance of consignment CIF by Sea (KRA documentation charges, security escorts or local insurance and verification fees.		
6	Agency fee for clearance of consignment CIF by Air (KRA documentation charges, security escorts or local insurance and verification fees		
7	Disbursement fees for mutually agreed payments by clearing agents(e.g. KPA charges, import invoices charges and container deposit, shipping line storage		

NOTE

1. 15% of the Agency Fee shall be retained and upon successful return of the Container Deposit by the clearing agent

Signature of tenderer _____

Note: The Charges above should be inclusive of all taxes

SECTION VI- STANDARD FORMS

Notes to Tenderers

1. The tenderer shall complete and submit with its tender the form of tender and price schedules pursuant to instructions to tenderers clause 9 and in accordance with the requirements included in the special conditions of contract.
2. When requested by the appendix to the instructions to tenderers, the tenderer should provide the tender security, either in the form included herein or in another form acceptable to the procuring entity pursuant to instructions to tenderers clause 12.3
3. The contract form, the price schedules and the schedule of requirements shall be deemed to form part of the contract and should be modified accordingly at the time of contract award to incorporate corrections or modifications agreed by the tenderer and the procuring entity in accordance with the instructions to tenderers or general conditions of contract.
4. The performance security and notification forms should not be completed by the tenderers and KRC at the time of tender preparation. Only the successful tenderer will be required to provide performance/entity and bank guarantee for advance payment forms in accordance with the forms indicated herein or in another form acceptable to the procuring entity and pursuant to the – conditions of contract.

STANDARD FORMS

Notes on the standard Forms

1. Form of Tender:

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

2. Price Schedule

The price schedule must be completed indicating currency, unit price, total price and any applicable duty, tax or any other cost.

3. Contract Form:

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

4. Notification of Intention to Enter into Contract:

Bidders will be notified of the tender outcome after the evaluation process has taken place.

5. Confidential Business Questionnaire Form:

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

6. Tender Security Form:

When required by the tender document the tenderer shall provide the tender security either in the form included hereinafter or in another format acceptable to the procuring entity.

7. Bank Guarantee for Advance Payment: bank guarantee for advance payment forms should not be completed by the tenderers at the time of tender preparation.

8. Performance security Form:

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

9. Litigation History:

Bidders are required to declare any ongoing and previous litigations that the firm is or has under gone through.

10 Integrity Declaration Must be filled and submitted during the tender submission.

11 Form RB1 Must be filled during the tender submission.

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 No.

(Insert numbers) the receipt of which is hereby duly acknowledged, we the undersigned, offer to provide Services under this tender in conformity with the said Tender document for the sum of.....

[Total Tender amount in words and figures].....

.....
.....

or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

2. We undertake, if our Tender is accepted, to provide the Insurance Cover Services in accordance with the conditions of the tender.
3. We agree to abide by this Tender for a period of [number] days from the date fixed for Tender opening of the Instructions to Tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
4. This Tender, together with your written acceptance thereof and your notification of award, shall constitute a Contract between us subject to the signing of the contract by both parties.
5. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this _____ day of _____ 2018

[Signature]

[In the capacity of]

Duly authorized to sign tender for and on behalf of ____

FORM 2

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

THIS AGREEMENT made the ___ day of ____ 20___ 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 Terms of Reference;
 - (c) the Terms of Reference;
 - (d) the General Conditions of Contract;
 - (e) the Special Conditions of Contract; and
 - (f) the Procuring entity's Notification of intention to enter into contract.
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 leasing of the Contract
4. The Procuring entity hereby covenants to pay the tenderer in consideration of the leasing of the materials and spares and the remedying of defects therein, the Contract Price or such other sum as may become payable under the leasing 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

NOTIFICATION OF INTENTION TO ENTER INTO CONTRACT (AWARD)

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 notification.
4. You will be required to give a 1% performance bond in form of a Bank Guarantee from bank registered in Kenya, prior to Contract signing.
5. Please note that this Notification does not constitute a contract.

(FULL PARTICULARS) _____

SIGNED FOR ACCOUNTING OFFICER

FORM 4

CONFIDENTIAL BUSINESS QUESTIONNAIRE

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

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

Part 1 General:

Business Name

Location of Business Premises

Plot No. Street/Road

Postal Address Tel./No.....

Fax Email

Nature of business

Registration Certificate No.

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

Name of your bankers Branch

Part 2(a) – Sole Proprietor:

Your name in full Age

Nationality Country of origin

Citizenship details.....

Part 2(b) – Partnership

Give details of partners as follows

No	Name	Nationality	Citizenship Details	Shares
1				
2				
3				
4				
5				

Part 2(c) – Registered Company:

Private or public

State the nominal and issued capital of the company:–

Nominal Kshs:

Issued Kshs:

Give details of all directors as follows

No	Name	Nationality	Citizenship Details	Shares
1				
2				
3				
4				
5				

Date..... Signature of Tenderer

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

FORM 5

TENDER SECURITY FORM

Whereas[name of the tenderer]

(Hereinafter called “the tenderer”) has submitted its tender dated.....[date of submission of tender] for the provision of[Name and/or description of the services]

(Hereinafter called “the Tenderer”).....

KNOW ALL PEOPLE by these presents that WE.....Of..... having registered office at [Name of procuring entity](Hereinafter called “the Bank”)are bound unto.....[Name of procuring entity](Hereinafter called “the procuring entity”) in the sum offor which payment well and truly to be made to the said Procuring entity, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this _____ day of 20_____.

The Conditions of this obligation are:
1. If the tenderer withdraws its Tender during the period of tender validity specified by the tenderer on the Tender Form; or
2. If the tenderer, having been notified of the acceptance of its Tender by the Procuring entity during the period of tender validity:

- (a) fails or refuses to execute the Contract Form, if required; or
- (b) fails or refuses to furnish the performance security, in accordance with the instructions to tenderers;

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

[signature of the bank]

(Amend accordingly if provided by Insurance Company)

FORM 6

BANK GUARANTEE 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 there under 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

PERFORMANCE SECURITY FORM

To:
[Name of 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 of 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 a sum specified therein as security for compliance with the Tenderer's performance obligations in accordance with the Contract

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

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the tenderer, up to a total of
[amount of the guarantee in words and figures], and we undertake to pay you, upon your first written demand declaring the tenderer to be in default under the Contract and without cavil or argument, any sum of money within the limits of *[Amount of guarantee]* as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the _____ day of _____ 20

Signature and seal of the Guarantors

[Name of bank of financial institution]

[Address]

[Date]

FORM 8

FORM 8: LITIGATION HISTORY

Bidder must fill in the form whether they have litigation or not

Name of Contract/ Supplier.....

Contractors/Suppliers should 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)

Authorized Persons Signature and Rubber Stamp of tenderer

Notarized Signature and Rubber Stamp

**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.
3. a) Payment to agents and other third parties shall be limited to appropriate compensation for legitimate services.
 - a) 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.
 - b) 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. 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.
 - c) 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.
4. Tenders which do not conform to these requirements shall not be considered.
5. 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).

6. 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.
7. 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 9: ANTI-CORRUPTION DECLARATION COMITMENT/ PLEDGE

(Sections 62 of Public Procurement and Assets Disposal, 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.

Authorized Signature.....

Name and Title of Signatory.....

Stamp.....

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

