



**THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA(ICPAK)**

**TENDER DOCUMENT**

**FOR**

**SUPPLY AND DELIVERY OF AIR CONDITIONERS  
FOR THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA(ICPAK)**

**TENDER NO. ICPAK/005/2021**

## INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK)

### TENDER NOTICE

The Institute of Certified Public Accountants of Kenya (ICPAK) is a statutory body of accountants established by the Accountants Act of 1978 and repealed under the Accountants Act Number 15 of 2008. The Institute is mandated to develop and regulate the Accountancy Profession in Kenya. It is also a member of the International Federation of Accountants (IFAC), the global umbrella body for the accountancy profession.

The Institute of Certified Public Accountants of Kenya hereinafter referred to as ICPAK, intends to engage the services of competent eligible service providers for supply and delivery of the Air Conditioners to be used during the 38<sup>th</sup> Annual Seminar as depicted in the table below;

SNO.	TENDER NO.	DESCRIPTION	TENDER SUBMISSION DATE	TENDER CATEGORY	TENDER DROPPING VENUE
1.	ICPAK/005/2021	Supply and Delivery of Air conditioners	Friday, 27 <sup>th</sup> August 2021 at 11:00AM	NATIONAL OPEN TENDER	CPA Centre Building, Tender Box located at 11 <sup>th</sup> floor at the Lift Lobby

Completed bid documents must be submitted in a plain sealed outer envelope enclosing two separately sealed envelopes (**Financial and Technical**) all clearly marked and indicated with the tender number as per instructions in the tender document and addressed to:

**Chief Executive Officer**  
**Institute of Certified Public Accountants of Kenya (ICPAK)**  
**P.O Box 59963-00200**  
**Nairobi**

The Tender documents, containing detailed Terms of Reference (TOR) and specifications can be downloaded from the ICPAK's website [www.icpak.com](http://www.icpak.com) for free. The submitted bids will be opened publicly at the ICPAK's Conference room on 11<sup>th</sup> floor the same day immediately after closing in the presence of the tenderers or their representatives who choose to attend. Late bids will be returned unopened.

**Chief Executive Officer**  
**Institute of Certified Public Accountants of Kenya (ICPAK)**

**THE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA(ICPAK)**

**CPA CENTRE BUILDING**

**P O BOX 59963-002**

**CPA CENTRE-THIKA ROAD**

**Tender Closing/Opening Date: 27<sup>th</sup> August 2021**

**Tender Closing/Opening Time: 11:00AM**

**AUGUST 2021**

**TENDER DOCUMENTS FOR PROCUREMENT OF ICPAK ANNUAL SEMINAR AIR CONDITIONERS**

**(1) NAME AND CONTACT ADDRESS OF PROCURING ENTITY**

**Name:** Institute of Certified Public Accountants of Kenya

**Address:** PO Box 59963-00200

**Email address:** [procurement@icpak.com](mailto:procurement@icpak.com)

**2) Invitation to Tender (ITT) No: ICPAK/006/2021**

**INVITATION TO TENDER**

<b>PROCURING ENTITY</b>	INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA
<b>CONTRACT NAME AND DESCRIPTION:</b>	<b>SUPPLY &amp; DELIVERY OF THE AIRCONDITIONERS</b> <b>VENUE:</b> MOMBASA SAROVA WHITESANDS & PRIDEINN FLAMINGO RESORT <b>DATE:</b> 15 <sup>TH</sup> -19 <sup>TH</sup> AUGUST 2021

1. Institute of Certified Public Accountants of Kenya invites sealed tenders for the Provision of: ICPAK Annual Seminar **Air Conditioners-48000 BTU**
2. Tendering will be conducted under open competitive tendering method and is open to all qualified and interested Tenderers.
3. Qualified and interested tenderers may obtain further information and inspect the Tender Documents during office hours at the address given below.

**Name of PE:** Institute of Certified Public Accountants of Kenya

**Location :** CPA Centre

**Address :** Po Box 59963-00200

during normal working hours on Monday to Friday between **0800hrs to 1700hrs** (East Africa Time).

A complete set of tender documents may be downloaded from the Institute's website

[www.icpak.com](http://www.icpak.com) will be free of charge.

4. Tender documents obtained from ICPAK website, [www.icpak.com](http://www.icpak.com) free of charge.
5. Tenderers who download the tender document must forward their particulars immediately to [procurement@icpak.com](mailto:procurement@icpak.com) to facilitate any further clarification or addendum/addenda.

6. All Tenders must be accompanied by an **Original tender security** (Bid bond) of Kenya Shillings(Ksh) **60,000**; in form of a Bank guarantee **from a bank licensed and operating in Kenya**, valid for thirty (30) days beyond the validity of the tender (180 days) shall be submitted by prospective bidders. This shall be in the format provided in the tender document. ***Tender Security from an Insurance Company shall NOT be acceptable.***
7. The Tenderer shall **chronologically serialize all pages of the tender** documents submitted.
8. Completed tenders must be delivered to the address below on or before **Friday ,27<sup>th</sup> August 2021 (East Africa Time)**. Electronic Tenders **WILL NOT** be permitted.

**The Chief Executive Officer**

**Institute of Certified Public Accountants of Kenya**

**P.O. Box 59963-00200**

**Tel: 020-2304226, 2304227**

**NAIROBI-KENYA**

and deposited in the **Tender Box** provided at: **ICPAK 11<sup>th</sup> Floor at the Lift Lobby**

9. Tenders that do not fit in the tender box shall be deposited at the Reception Desk at 9<sup>th</sup> floor and recorded using the register located at the reception area at the address located in clause 9 above.
10. Tenders will be opened immediately after the deadline date and time specified above or any deadline date and time specified later. Tenders will be publicly opened in the presence of the Tenderers' designated representatives who choose to attend at the address below.
11. Late tenders will be rejected.
12. The addresses referred to above are:
  - A. **Address for obtaining further information and for purchasing tender documents**

Name of Entity: ICPAK

Location: CPA Centre, Thika Road.

Address: Po Box 59963-00200

Email Address :procurement@icpak.com

**B. Address for Submission of Tenders.**

Chief Executive Officer

Institute of Certified Public Accountants of Kenya (ICPAK)

Location: Nairobi-Thika Road, CPA Centre

P O Box 59963-00200, Nairobi, Kenya

**C. Address for Opening of Tenders.**

Institute of Certified Public Accountants of Kenya (ICPAK)

CPA Centre, 11<sup>th</sup> Floor-Conference room

Address: PO Box 59963-00200

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**PART 1 - TENDERING PROCEDURES**

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## SECTION I - INSTRUCTIONS TO TENDERERS

### A. General

#### 1. Scope of Tender

- 1.1 This tendering document is for Supply and Delivery of **Air Conditioners-48000 BTU** - , as specified in Section V, Procuring Entity's Schedule of Requirements. The name of the Procuring Entity, name and identification and number of this tender are specified in the **TDS**.

#### 2. Definitions

2.1 Throughout this tendering document:

- a) The term “in writing” means communicated in written form (e.g. by mail, e-mail, including if specified **in the TDS**, distributed or received through the electronic-procurement system used by the Procuring Entity) with proof of receipt;
- b) If the contexts requires, “singular” means “plural” and vice versa; and
- c) “Day” means calendar day, unless otherwise specified as “Business Day”. A Business Day is any day that is an official working day of the Procuring Entity. It excludes the Procuring Entity's official public holidays.

#### 3. Fraud and Corruption

- 3.1 ICPAK requires compliance with the provisions of the Public Procurement and Asset Disposal Act, 2015, Section 62 “Declaration not to engage in corruption” and the Institute’s Policy. The tender submitted by a person shall include a declaration that the person shall not engage in any corrupt or fraudulent practice and a declaration that the person or his or her sub-contractors are not debarred from participating in public procurement proceedings.
- 3.2 ICPAK requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and criminal and/or civils actions may be imposed. To this effect, Tenders shall be required to complete and sign the “Certificate of Independent Tender Determination” annexed to the Form of Tender.
- 3.3 Unfair Competitive Advantage -Fairness and transparency in the tender process require that the firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. To that end, the ICPAK shall indicate in the **TDS** and make available to all the firms together with this tender document all information that would in that respect give such firm any unfair competitive advantage over competing firms.
- 3.4 Tenderers shall permit and shall cause their agents (where declared or not), subcontractors, sub-consultants, service providers, suppliers, and their personnel, to permit ICPAK to inspect all accounts, records and other documents relating to any initial selection process, pre-qualification process, tender submission, proposal submission and contract performance (in the case of award), and to have them audited by auditors appointed by the Institute.

#### 4. Eligible Tenderers

- 4.1 A Tenderer may be a firm that is a private entity, a state-owned enterprise or institution subject to ITT 3.7 or any

combination of such entities in the form of a joint venture (JV) under an existing agreement with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the tendering process and, in the event the JV is awarded the Contract, during contract execution. Members of a joint venture may not also make an individual tender, be a subcontractor in a separate tender or be part of another joint venture for the purposes of the same Tender. The maximum number of JV members shall be specified in the **TDS**.

- 4.2 Employees of ICPAK, their spouse, child, parent, brother, sister, child, parent or sister of a spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract.
- 4.3 A Tenderer shall not have a conflict of interest. Any Tenderer found to have a conflict of interest shall be disqualified. A Tenderer may be considered to have a conflict of interest for the purpose of this Tendering process, if the Tenderer:
- a) Directly or in directly controls, is controlled by or is under common control with another Tenderer; or
  - b) Receives or has received any direct or indirect subsidy from another Tenderer; or
  - c) Has the same legal representative as another Tenderer; or
  - d) Has a relationship with another Tenderer, directly or through common third parties, that puts it in a position to influence the Tender of another Tenderer, or influence the decisions of the Procuring Entity regarding this Tendering process; or
  - e) Or any of its affiliates participated as a consultant in the preparation of the Procuring Entity's Requirements (including Schedules of requirements, Performance Specifications, etc.) for the air conditioners services that are the subject of this Tender; or
  - f) or any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity for the Contract implementation; or
  - g) would be providing goods, works, or services resulting from or directly related to the air conditioners services specified in the TDS ITT 1.1 that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm; or
  - h) has a close business or family relationship with a professional staff of the Procuring Entity who: (i) are directly or indirectly involved in the preparation of the tendering document or specifications of the contract, and/or the Tender evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the procurement process and execution of the Contract.
- 4.4 A firm that is a Tenderer shall not participate in more than one Tender, except for permitted alternative Tenders. Such participation shall result in the disqualification of all Tenders in which the firm is involved.
- 4.5 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT 4.9. A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated, or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed sub-contractors or sub-consultants for any part of the Contract including related Services.
- 4.6 A Tenderer that has been debarred from participating in public procurement shall be ineligible to tender or be awarded a contract.

- 4.7 Tenderers that are state-owned enterprises or institutions in Kenya may be eligible to compete and be awarded a Contract(s) if they can establish that they are registered as air conditioners businesses.
- 4.8 A tenderer under suspension from tendering as the result of the operation of a Tender-Securing Declaration or Proposal-Securing Declaration shall not be eligible to tender.
- 4.9 Firms and individuals may be ineligible if (a) as a matter of law or official regulations, Kenya prohibits commercial relations with that country, or (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person, or entity in that country.
- 4.10 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Act. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for tender, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract.
- 4.11 A Kenyan tenderer shall provide evidence of having fulfilled his/her tax obligations by producing a current tax compliance certificate or tax exemption certificate issued by the Kenya Revenue Authority.

## **5. Qualification of the Tenderer**

- 5.1 In the event that pre-qualification of Tenderers has been undertaken as stated in ITT 18.4, the provisions on qualifications of the Section III, Evaluation and Qualification Criteria shall not apply.

## **B. Contents of Tendering Document**

## **6. Sections of Tendering Document**

- 6.1 The tendering document consists of Parts 1, 2, and 3, which include all the sections indicated below and should be read in conjunction with any Addenda issued in accordance with ITT 9.

### **PART 1: Tendering Procedures**

- i) Section I - Instructions to Tenderers (ITT)
- ii) Section II - Tender Data Sheet (TDS)
- iii) Section III - Evaluation and Qualification Criteria
- iv) Section IV – Tendering Forms

### **PART 2: Procuring Entity's Requirements**

- v) Section V–Schedule of Requirements

## **PART 3: Contract**

- vi) Section VI-General Conditions of Contract (GCC)
- vii) Section VII-Special Conditions of Contract (SCC)

6.2 The Invitation to Tender (ITT) or the notice to pre-qualify Tenderers, as the case may be, issued by the Procuring Entity is not part of this tendering document.

6.3 Unless obtained directly from ICPAK, the Institute is not responsible for the completeness of the document, responses to requests for clarification, the Minutes of the pre-Tender meeting (if any), or Addenda to the tendering document in accordance with ITT 9. In case of any contradiction, documents obtained directly from the Procuring Entity shall prevail.

6.4 The Tenderer is expected to examine all instructions, forms, terms of reference, and specifications in the tendering document and to furnish with its Tender all information or documentation as is required by the tendering document.

### **7. Clarification of Tender Document, Site Visit, Pre-Tender Meeting**

7.1 A Tenderer requiring any clarification of the Tender Document shall contact ICPAK in writing through its address specified in the TDS or raise its enquiries during the pre-Tender meeting if provided for in accordance with ITT 7.2. ICPAK will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the TDS prior to the deadline for submission of tenders. ICPAK shall forward copies of its response to all tenderers who have acquired the Tender documents in accordance with ITT 7.4, including a description of the inquiry but without identifying its source. If so specified in the TDS, the Institute shall also promptly publish its response at the web page identified in the TDS. Should the clarification result in changes to the essential elements of the Tender Documents, ICPAK shall amend the Tender Documents following the procedure under ITT 8 and ITT 22.2.

7.2 ICPAK as its own responsibility and risk, is encouraged to visit and examine and inspect the site(s) and items of the required contracts and obtain all information that may be necessary for preparing a tender. The costs of visiting the Sites shall be at the Institute's own expense. ICPAK shall specify in the TDS if a pre-arranged Site visit and or a pre-tender meeting will be held, when and where. The Tenderer's designated representative is invited to attend a pre-arranged site visit and a pre-tender meeting. The purpose of the site visit and the pre-tender meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

7.3 The Tenderer is requested to submit any questions in writing, to reach ICPAK not later than the period specified in the TDS before the meeting.

7.4 Minutes of a pre-arranged site visit and those of the pre-tender meeting, if applicable, including the text of the questions asked by Tenderers and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents. Minutes shall not identify the source of the questions asked.

7.5 ICPAK shall also promptly publish anonymized (no names) Minutes of the pre-arranged site visit and those

of the pre-tender meeting at the web page identified in the TDS. Any modification to the Tender Documents that may become necessary as a result of the pre-arranged site visit and those of the pre-tender meeting shall be made by the Institute exclusively through the issue of an Addendum pursuant to ITT 8 and not through the minutes of the pre-Tender meeting. Non-attendance at the pre-arranged site visit and the pre-tender meeting will not be a cause for disqualification of a Tenderer.

## **8 Clarification of Tendering Document**

8.1 A Tenderer requiring any clarification of the tendering document shall contact ICPAK in writing at the Institute's Entity's address specified **in the TDS**. ICPAK will respond in writing to any request for clarification, provided that such request is received prior to the deadline for submission of Tenders within a period specified **in the TDS**. ICPAK shall forward copies of its response to all Tenderers who have acquired the tendering document in accordance with ITT 6.3, including description of the inquiry but without identifying its source. If so specified **in the TDS**, the Institute shall also promptly publish its response at the web page identified **in the TDS**. Should the clarification result in changes to the essential elements of the tendering document, ICPAK shall amend the tendering document following the procedure under ITT 9 and ITT 23.2.

## **9 Amendment of Tendering Document**

9.1 At any time prior to the deadline for submission of Tenders, the Institute may amend the Tendering document by issuing addenda.

9.2 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tendering document from the Institute in accordance with ITT 6.3. The Institute shall also promptly publish the addendum on the Institute's web page in accordance with ITT 8.1.

9.3 To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, ICPAK shall extend, as necessary, the deadline for submission of Tenders, in accordance with ITT 23.2 below.

## C. Preparation of Tenders

### 10. Cost of Tendering

10.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and ICPAK shall not be responsible or liable for those costs, regardless of the conduct or outcome of the Tendering process.

### 11. Language of Tender

11.1 The Tender as well as all correspondence and documents relating to the Tender exchanged by the Tenderer and the Procuring Entity shall be written in the English language. Supporting documents and printed literature that are part of the Tender maybe in another language provided they are accompanied by an accurate translation of the relevant passages in to the English language, in which case, for purposes of interpretation of the Tender, such translation shall govern.

### 12. Documents Comprising the Tender

12.1 The Tender shall comprise the following:

- a) **Form of Tender** prepared in accordance with ITT 13;
- b) **Schedules:** priced Activity Schedule completed in accordance with ITT 13 and ITT 15;
- c) **Tender Security or Tender-Securing Declaration** in accordance with ITT 20.1;
- d) **Alternative Tender:** if permissible in accordance with ITT 14;
- e) **Authorization:** written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 21.3;
- f) **Qualifications:** documentary evidence in accordance with ITT 18 establishing the Tenderer's qualifications to perform the Contract if its Tender is accepted;
- g) **Tenderer's Eligibility:** documentary evidence in accordance with ITT 18 establishing the Tenderer's eligibility to Tender;
- h) **Conformity:** documentary evidence in accordance with ITT 17, that the Services con form to the tendering document;
- i) Any other document required **in the TDS.**

12.2 The Tenderer shall furnish in the Tender Information Form on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to the tender.

### 13. Form of Tender and Schedule of Requirements

13.1 The Form of Tender and priced Schedule of Requirements shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITT 21.3. All blank spaces shall be filled in with the information requested. The Tenderer shall chronologically serialize pages of all tender documents submitted.

#### **14. Alternative Tenders**

14.1 Unless otherwise indicated **in the TDS**, alternative Tenders shall not be considered. If alternatives are permitted, only the technical alternatives, if any, of the best Evaluated Tenderer shall be considered by the ICPAK.

#### **15. Tender Prices and Discounts**

15.1 The prices and discounts (including any price reduction) quoted by the Tenderer in the Form of Tender and in the Schedule of Requirements shall conform to the requirements specified below.

15.2 The Contract shall be for the air conditioners Services of the items described in the Schedule of Requirements submitted by the Tenderer.

15.3 The Tenderer shall quote any discounts in the Form of Tender in accordance with ITT 13.1.

15.4 All duties, taxes, and other levies payable by the air conditioners under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of Tenders, shall be included in the total Tender price submitted by the Tenderer.

15.5 If provided for in the TDS, prices quoted by the Tenderer shall be subject to adjustment during the performance of the Contract in accordance with and the provisions of Clause 6.6 of the General Conditions of Contract and/or Special Conditions of Contract. The Tenderer shall submit with the Tender all the information required under the Special Conditions of Contract and of the General Conditions of Contract.

## **16. Currencies of Tender and Payment**

16.1 The currency of the Tender and the currency of payments shall be Kenya Shillings, unless specified otherwise in the TDS.

## **17. Documents Establishing Conformity of Services**

17.1 To establish the conformity of the **Air Conditioners** to the tendering document, the Tenderer shall furnish as part of its Tender the documentary evidence that Services provided conform to the Procurement Entity's requirements specified in Section VII, Schedule of Requirements.

17.2 Standards for provision of the **Air Conditioners-48000 BTU** are intended to be descriptive only and not restrictive. The Tenderer may offer other standards of quality provided that it demonstrates to the Institute's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Section V, Schedule of Requirements.

17.3 Tenderers shall be asked to provide, as part of the data for qualification, such information, including **details of ownership**, as shall be required to determine whether, according to the classification established by ICPAK, a Service provider or group of service providers qualifies for a margin of preference. Further the information will enable ICPAK identify any actual or potential conflict of interest in relation to the procurement and / or contract management processes, or a possibility of collusion between tenderers, and there by help to prevent any corrupt influence in relation to the procurement process or contract management.

**17.4** The purpose of the information described in ITT 6.2 above overrides any claims to confidentiality which a tenderer may have. There can be no circumstances in which it would be justified for a tenderer to keep information relating to its ownership and control confidential where it is tendering to undertake public sector work and receive public sector funds. **Thus, confidentiality will not be accepted by the Institute as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership and control.**

17.5 The Tenderer shall provide further documentary proof, information or authorizations that ICPAK may request in relation to ownership and control which information on any changes to the information which was provided by the tenderer under ITT 6.3. The obligations to require this information shall continue for

the duration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.

17.6 All information provided by the tenderer pursuant to these requirements must be complete, current and accurate as at the date of provision to the Institute. In submitting the information required pursuant to these requirements, the Tenderer shall warrant that the information submitted is complete, current and accurate as at the date of submission to ICPAK.

17.7 If a tenderer fails to submit the information required by these requirements, its tender will be rejected. Similarly, if ICPAK is unable after taking reasonable steps, to verify to a reasonable degree the information submitted by a tenderer pursuant to these requirements, then the tender will be rejected.

17.8 If information submitted by a tenderer pursuant to these requirements, or obtained by ICPAK (whether through its own enquiries, through notification by the public or otherwise), shows any conflict of interest which could materially and improperly benefit the tenderer in relation to the procurement or contract management process, then:

- i) If the procurement process is still ongoing, the tenderer will be disqualified from the procurement process,
- ii) if the contract has been awarded to that tenderer, the contract award will be set aside,
- iii) the tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other persons have committed any criminal offence.

17.9 If a tenderer submits information pursuant to these requirements that is incomplete, inaccurate or out-of-date, or attempts to obstruct the verification process, then the consequences ITT 6.7 will ensue unless the tenderer can show to the reasonable satisfaction of the Procuring Entity that any such act was not material or was due to genuine error or which was not attributable to the intentional act, negligence or recklessness of the tenderer.

## **18. Documents Establishing the Eligibility and Qualifications of the Tenderer**

18.1 To establish Tenderer's their eligibility in accordance with ITT 4, Tenderers shall complete the Form of Tender, and all Tendering Forms included in Section IV.

18.2 The documentary evidence of the Tenderer's qualifications to perform the Contract if its Tender is accepted shall establish to ICPAK's satisfaction that the Tenderer meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.

18.3 In the event that pre-qualification of Tenderers has been undertaken as stated **in the TDS**, only Tenders from pre-qualified Tenderers shall be considered for award of Contract. These qualified Tenderers should submit with their Tenders any information updating their original pre-qualification applications or, alternatively, confirm in their Tenders that the originally submitted pre-qualification information remains essentially correct as of the date of Tender submission.

18.4 If pre-qualification has not taken place before Tendering, the qualification criteria for the Tenderers are specified- in Section III, Evaluation and Qualification Criteria.

## **19. Period of Validity of Tenders**

19.1 Tenders shall remain valid for the Tender Validity period specified **in the TDS**. The Tender Validity period starts from the date fixed for the Tender submission deadline date (as prescribed by the Procuring Entity in accordance with ITT 23.1). A tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.

19.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Institute may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 20, it shall also be extended for corresponding period. A Tenderer may refuse the request without forfeiting its Tender Security. A Tenderer granting the request shall not be required or permitted to modify its Tender, except as provided in ITT 19.3.

## **20. Tender Security**

20.1 The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender security, as specified **in the TDS**, in original form and, in the case of a Tender Security, in the amount and currency specified **in the TDS**.

20.2 A Tender Securing Declaration shall use the form included in Section IV, Tendering Forms.

20.3 If a Tender Security is specified pursuant to ITT 20.1, from a reputable source, and an eligible country and shall be in any of the following forms at the Tenderer's option:

- i) a bank guarantee.
- ii) a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya,

20.4 If a Tender Security is specified pursuant to ITT 20.1, any Tender not accompanied by a substantially responsive Tender Security shall be rejected by the Procuring Entity as non-responsive.

20.5 If a Tender Security is specified pursuant to ITT 20.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's signing the contract and furnishing the Performance Security pursuant to ITT 46. ICPAK shall also promptly return the tender security to the tenderers where the procurement proceedings are terminated, all tenders were determined non responsive or a bidder declines to extend tender validity period.

20.6 The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required Performance Security.

20.7 The Tender Security may be forfeited or the Tender-Securing Declaration executed:

- a) If a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer in the Form of Tender, or any extension thereto provided by the Tenderer; or
- b) If the successful Tenderer fails to:
  - i) Sign the Contract in accordance with ITT 45; or
  - ii) Furnish a performance security in accordance with ITT 46.

20.8A tenderer shall not issue a tender security to guarantee itself.

## **21. Format and Signing of Tender**

21.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 12, bound with the volume containing the Form of Tender, and clearly marked "Original." In addition, the Tenderer shall submit copies of the Tender, in the number specified in the TDS, and clearly marked as "Copies." In the event of discrepancy between them, the original shall prevail.

21.2 Tenderers shall mark as "CONFIDENTIAL" information in their Tenders which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.

21.3 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the TDS and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person signing the Tender.

21.4 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

**D. Submission and Opening of Tenders**

**22. Sealing and Marking of Tenders**

22.1 The Tenderer shall deliver the Tender in a single, sealed envelope. Within the single envelope the Tenderer shall place the following separate, sealed envelopes:

- a) In an envelope marked "ORIGINAL", all documents comprising the Tender, as described in ITT 12; and
- b) in an envelope marked "COPIES", all required copies of the Tender
- c) Separate financials and technical bids in two separate envelopes

22.2 The inner envelopes shall:

- a) Bear the name and address of the Tenderer;
- b) Be addressed to the Procuring Entity in accordance with ITT 23.1;
- c) Bear the specific identification of this Tendering process specified in accordance with TDS 1.1; and
- d) bear a warning not to open before the time and date for Tender opening.

22.3 The outer-envelopes shall:

- a) Be addressed to the Procuring Entity in accordance with ITT 23.1;
- b) bear the specific identification of this Tendering process specified in accordance with TDS 1.1; and
- (c) bear a warning not to open before the time and date for Tender opening.

22.4 If all envelopes are not sealed and marked as required, the Procuring Entity will assume no responsibility for the misplacement or premature opening of the Tender. Tenders that were misplaced or opened prematurely will not be accepted.

## **23 Deadline for Submission of Tenders**

23.1 Tenders must be received by ICPAK at the address and no later than the date and time specified **in the TDS**. When so specified **in the TDS**, Tenderers have NO option of submitting their tenders electronically.

23.2 ICPAK may at its discretion, extend the deadline for the submission of Tenders by amending the tendering document in accordance with ITT 9, in which case all rights and obligations of ICPAK and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

## **24. Late Tenders**

24.1 ICPAK shall not consider any Tender that arrives after the deadline for submission of Tenders, in accordance with ITT 23. Any Tender received by the Institute after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

## **25 Withdrawal, Substitution and Modification of Tenders**

25.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization (the power of attorney) in accordance with ITT 21.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:

- a) Prepared and submitted in accordance with ITT 21 and ITT 22 (except that with draw all notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," or "MODIFICATION;" and
- b) received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT 23.

25.2 Tenders requested to be withdrawn in accordance with ITT 25.1 shall be returned unopened to the Tenderers.

25.3 No Tender may be withdrawn, substituted, or modified 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 Form of Tender or any extension thereof.

## **26. Tender Opening**

26.1 Except as in the cases specified in ITT 23 and ITT 25.2, ICPAK shall at the Tender opening, publicly open and read out all Tenders received by the deadline at the date, time and place specified in the **TDS** in the presence of Tenderers' designated representatives and anyone who choose to attend.

26.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding Tender shall not be opened, but returned to the Tenderer. If the withdrawal envelope does not contain a copy of the "power of attorney" confirming the signature as a person duly authorized to sign on behalf of the Tenderer, the corresponding Tender will be opened. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Tender opening.

26.3 Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening.

26.4 Next, envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening.

26.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the total Tender Prices, per lot (contract) if applicable, including any discounts and alternative Tenders; the presence or absence of a Tender Security or Tender-Securing Declaration, if required; and any other details as the Procuring Entity may consider appropriate.

26.6 Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further. The Form of Tender and the priced Activity Schedule are to be initialed by representatives of the Institute attending Tender opening in the manner specified in the TDS.

26.7 The Institute shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT 24.1).

26.8 ICPAK shall prepare a record of the Tender opening that shall include, as a minimum:

- a) The name of the Tenderer and whether there is a withdrawal, substitution, or modification;
- b) the Tender Price, per lot (contract) if applicable, including any discounts; and
- c) any alternative Tenders;

- d) the presence or absence of a Tender Security or Tender-Securing Declaration, if one was required.
- e) Number of pages of each tender document submitted.

26.9 The Tenderers' representatives who are present shall be requested to sign the record. The omission of a Tenderer's signature on the record shall not invalidate the contents and effect of the record. A copy of the tender opening register shall be issued to a tenderer upon request.

## **E. Evaluation and Comparison of Tenders**

### **27. Confidentiality**

27.1 Information relating to the evaluation of Tenders and recommendation of contract award, shall not be disclosed to Tenderers or any other persons not officially concerned with the Tendering process until information on the Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 41.

27.2 Any effort by a Tenderer to influence the Institute in the evaluation or contract award decisions may result in the rejection of its Tender.

27.3 Notwithstanding ITT 27.2, from the time of Tender opening to the time of Contract Award, if any Tenderer wishes to contact the Institute on any matter related to the Tendering process, it should do so in writing.

### **28 Clarification of Tenders**

28.1 To assist in the examination, evaluation, and comparison of Tenders, and qualification of the Tenderers, the Institute may at its discretion ask any Tenderer for clarification of its Tender including breakdowns of the prices in the Activity Schedule, and other information that the Institute may require. Any clarification submitted by a Tenderer in respect to its Tender and that is not in response to a request by the Institute shall not be considered. The Institute's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the Tenders, in accordance with ITT 32.

28.2 If a Tenderer does not provide clarifications of its Tender by the date and time set in the Procuring Entity's request for clarification, its Tender may be rejected.

### **29 Deviations, Reservations, and Omissions**

29.1 During the evaluation of Tenders, the following definitions apply:

- a) "Deviation" is a departure from the requirements specified in the tendering document;
- b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the tendering document; and
- c) "Omission" is the failure to submit part or all of the information or documentation required in the tendering document.

### **30. Determination of Responsiveness**

30.1 The Institute's determination of a Tender's responsiveness is to be based on the contents of the Tender itself, as defined in ITT 12.

30.2 A substantially responsive Tender is one that meets the requirements of the tendering document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:

a) If accepted, would:

i) Affect in any substantial way the scope, quality, or performance of the **Air Conditioners** specified in the Contract; or

ii) Limit in any substantial way, inconsistent with the tendering document, the Procuring Entity's rights or the Tenderer's obligations under the Contract; or

b) if rectified, would unfairly affect the competitive position of other Tenderers presenting substantially responsive Tenders.

30.3 ICPAK shall examine the technical aspects of the Tender submitted in accordance with ITT17 and ITT 18, in particular, to confirm that all requirements of Section VII, Schedule of Requirements have been met without any material deviation or reservation, or omission.

### **31. Non-conformities, Errors and Omissions**

31.1 If a Tender is not substantially responsive to the requirements of tendering document, it shall be rejected by the Institute and may not subsequently be made responsive by correction of the material deviation, reservation, or omission. Non-conformities, Errors and Omissions

31.2 Provided that a Tender is substantially responsive, the Institute may waive any non-conformities in the Tender.

31.3 Provided that a Tender is substantially responsive, the Institute may request that the Tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify non-conformities or omissions in the Tender related to documentation requirements. Requesting information or documentation on such non-conformities shall not be related to any aspect of the price of the Tender. Failure of the Tenderer to comply with the request may result in the rejection of its Tender.

### **32. Arithmetical Errors**

32.1 The tender 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 any way by any person or entity.

32.2 Provided that the Tender is substantially responsive, the Institute shall handle errors on the following basis:

- a) Any error detected if considered a major deviation that affects the substance of the tender, shall lead to disqualification of the tender as non-responsive.
- b) Any errors in the submitted tender arising from a calculation of unit price, quantity, subtotal and total bid price shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of the tender as non-responsive. and
- c) If there is a discrepancy between words and figures, the amount in words shall prevail

32.3 Tenderers shall be notified of any error detected in their bid during the notification of award

### **33. Comparison of Tenders and Conversion to Single Currency**

33.1 The Institute shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 31.2 to determine the Tender that has the lowest evaluated cost. The comparison shall be on the basis of total cost prices for each offered service.

33.2 For evaluation and comparison purposes, the currency of the Tender shall be converted in a single currency as specified in the TDS. The source of exchange rate and the date of such exchange rate shall also be specified in the TDS.

### **34. Margin of Preference and Reservations**

34.1 A margin of preference on local **Air Conditioners** Providers may be allowed only when the contract is open to international competitive tendering where foreign contractors are expected to participate in the tendering process and where the contract exceeds the value/threshold specified in the Regulations.

34.2 A margin of preference shall not be allowed unless it is specified so in the TDS.

34.3 Contracts procured on basis of international competitive tendering shall not be subject to reservations exclusive to specific groups as provided in ITT 33.4.

34.4 Where it is intended to reserve a contract to a specific group of businesses (these groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case maybe), and who are appropriately registered as such by a competent authority, a procuring entity shall ensure that the invitation to tender specifically indicates that only businesses or firms belonging to the specified group are eligible to tender. No tender shall be reserved to more than one group. If not so stated in the Invitation to Tender and in the Tender documents, the invitation to tender will be open to all interested tenderers.

### **35. Evaluation of Tenders**

35.1 The Institute shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted. By applying the

criteria and methodologies, ICPAK shall determine the Lowest Evaluated Tender. This is the Tender of the Tenderer that meets the qualification criteria and whose Tender has been determined to be:

- a) Substantially responsive to the tendering document; and
- b) The lowest evaluated cost.

35.2 In evaluating the Tenders, the Institute will determine for each Tender the Evaluated Tender Price by adjusting the Tender price as follows:

- a) Prices offered by the Tenderer, corrected appropriately in accordance with ITT 32;
- b) Price adjustment due to discounts offered in accordance with ITT 15.4;
- c) converting the amount resulting from applying (a) and (b) above, if allowed, to a single currency in accordance with ITT 33.2;
- d) the additional evaluation factors are specified in Section III, Evaluation and Qualification Criteria.

35.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken in to account in Tender evaluation.

35.4 Where the tender involves multiple items, the tenderer will be allowed to tender for one or more items. Each item will be evaluated in accordance with ITT 35.2. The methodology to determine the lowest evaluated tenderer or tenderers will be based on each item and not a combination of items.

## **36. Comparison of Tenders**

36.1 ICPAK shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 35.2 to determine the Tender that has the lowest evaluated cost.

## **37. Abnormally Low Tenders and Abnormally high tenders**

### **Abnormally Low Tenders**

37.1 An Abnormally Low Tender is one where the Tender price, in combination with other constituent elements of the Tender, appears unreasonably low to the extent that the Tender price raises material concerns as to the capability of the Tenderer to perform the Contract for the offered Tender price or that genuine competition between Tenderers is compromised.

37.2 In the event of identification of a potentially Abnormally Low Tender by the evaluation committee, the Institute shall seek written clarifications from the Tenderer, including detailed price analysis of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the tendering document.

37.3 After evaluation of the price analysis, if ICPAK determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, the Procuring Entity shall reject the Tender.

### **Abnormally High Tenders**

37.4 An abnormally high tender price is one where the tender price, in combination with other constituent

elements of the Tender, appears unreasonably too high to the extent that ICPAK is concerned that it may not be getting value for money or it may be paying too high price for the contract compared with market prices or that genuine competition between Tenderers is compromised.

37.5 In case of an abnormally high price, ICPAK shall make a survey of the market prices, check if the estimated cost of the contract is correct and review the Tender Documents to check if the specifications, scope of work and conditions of contract are contributory to the abnormally high tenders. The Institute may also seek written clarification from the tenderer on the reason for the high tender price. ICPAK shall proceed as follows:

- i) If the tender price is abnormally high based on wrong estimated cost of the contract, ICPAK may accept or not accept the tender depending on the Institute's budget considerations.
- ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, ICPAK shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work and conditions of contract, as the case may be.

37.6 If ICPAK determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (*often due to collusion, corruption or other manipulations*), ICPAK shall reject all Tenders and shall institute or cause relevant Government Agencies to institute an investigation on the cause of the compromise, before retendering.

### **38. Qualification of the Tenderer**

38.1 ICPAK shall determine to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender is eligible and meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

38.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT 18. The determination shall not take in to consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates, subcontractors or any other firm(s) different from the Tenderer that submitted the Tender.

38.3 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event the Procuring Entity shall proceed to the Tenderer who offers a substantially responsive Tender with the next lowest evaluated cost to make a similar determination of that Tenderer's qualifications to perform satisfactorily.

### **39. Procuring Entity's Right to Accept Any Tender, and to Reject Any or All Tenders**

39.1 ICPAK 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 there by incurring any liability to Tenderers. In case of annulment, all Tenderers shall be notified with reasons and all Tenders submitted and specifically, Tender securities, shall be promptly returned to the Tenderers.

## **F. Award of Contract**

### **40. Award Criteria**

40.1 ICPAK shall award the Contract to the successful tenderer whose tender has been determined to be the Lowest Evaluated Tender.

### **41. Notice of Intention to enter in to a Contract**

41.1 Upon award of the contract and prior to the expiry of the Tender Validity Period ICPAK shall issue a Notification of Intention to Enter in to a Contract/Notification of award to all tenderers which shall contain, at a minimum, the following information:

- a) The name and address of the Tenderer submitting the successful tender;
- b) The Contract price of the successful tender;
- c) a statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was unsuccessful, unless the price information in(c) above already reveals the reason;
- d) the expiry date of the Standstill Period; and
- e) instructions on how to request a debriefing and/or submit a complaint during the standstill period;

### **42. Standstill Period**

42.1 The Contract shall not be signed earlier than the expiry of a Standstill Period of 14days to allow any dissatisfied tender to launch a complaint. Where only one Tender is submitted, the Standstill Period shall not apply.

42.2 Where a Standstill Period applies, it shall commence when ICPAK has transmitted to each Tenderer the Notification of Intention to Enter into a Contract with the successful Tenderer.

### **43. Debriefing by the Procuring Entity**

43.1 On receipt of the Institute's Notification of Intention to Enter into a Contract referred to in ITT 43, an unsuccessful tenderer may make a written request to ICPAK for a debriefing on specific issues or concerns regarding their tender. ICPAK shall provide the debriefing within five days of receipt of the request.

43.2 Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending such a debriefing meeting.

### **44. Negotiations**

44.1 The negotiations shall be held at the place indicated in the TDS with the Tenderer's representative(s) who must have written power of attorney to negotiate and sign a Contract on behalf of the Tenderer. The Procuring Entity will constitute a team to negotiate a contract and the terms of the Air Conditioners services to be provided.

44.2 The negotiations shall start with discussions of the scope of the terms and conditions of the Policy, its conformity to the Institute's requirements, the conditions and circumstances under which the **Air Conditioners** services will be provided, and the items that would need to be attended to before the contract is signed. These discussions shall not substantially alter the original scope of the Institute's requirements. The items that would need to be attended to by both parties before the contract is signed.

44.3 ICPAK shall prepare minutes of negotiations that are signed by the Institute and the Tenderers' authorized representative.

#### **45. Letter of Award**

45.1 Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 42.1, upon addressing a complaint that has been filed within the Standstill Period, ICPAK shall transmit the Letter of Award to the successful Tenderer. The letter of award shall request the successful tenderer to furnish the Performance Security within 21 days of the date of the letter.

#### **46. Signing of Contract**

46.1 Upon the expiry of the fourteen days of the Notification of Intention to enter into contract and upon the parties meeting their respective statutory requirements, the Institute shall send the successful Tenderer the Contract Agreement.

46.2 Within fourteen (14) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to the Procuring Entity.

46.3 The written contract shall be entered into within the period specified in the notification of award and before expiry of the tender validity period.

#### **47. Performance Security**

47.1 Within twenty-one (21) days of the receipt of the Letter of Award from the Procuring Entity, the successful Tenderer shall furnish the Performance Security and, any other documents required in the TDS, in accordance with the General Conditions of Contract, subject to ITT 38.2 (b), using the Performance Security and other Forms included in Section X, Contract Forms, or another form acceptable to the Procuring Entity. A foreign institution providing a bank guarantee shall have a correspondent financial institution located in Kenya, unless the Procuring Entity has agreed in writing that a correspondent bank is not required.

47.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security and other documents required in the TDS or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security. In that event the Procuring Entity may award the Contract to the Tenderer offering the next Best Evaluated Tender.

47.3 Performance security shall not be required for contracts estimated to cost less than the amount specified in the Regulations.

**48. Procurement Related Complaint**

49.1 The procedures for making Procurement-related Complaints are as specified in the **TDS**.

## SECTION II - TENDER DATA SHEET (TDS)

The following specific data for the air conditioners services to be procured shall complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT). Whenever there is a conflict, the provisions here in shall prevail over those in ITT.

ITT Reference	
<b>A. General</b>	
ITT 1.1	The Tender reference number (ITT) is: <b>ICPAK/005/2021</b> The Procuring Entity is: Institute of Certified Public Accountants of Kenya(ICPAK) The name of the ITT is: Provision <b>Air Conditioners Services</b>
ITT 2.2	Intended commencement date: November 2021
ITT 3.1	Bidders shall be required to fill and sign FORM SD2 (self-declaration that the person/tenderer will not engage in any corrupt or fraudulent practice)
<b>B. Contents of Tendering Document</b>	
ITT 4.1	Joint Ventures are NOT allowed.
ITT 7.1	A prospective tenderer requiring any clarification of the tender document may notify Name of PE: ICPAK in writing through email address: procurement@icpak.com Clarification of tenders requested by the tenderer must be received by <b>27<sup>th</sup> August 2021</b> not later than 7 days prior to the deadline for submission of tenders.
ITT 7.2	Not Applicable
ITT 7.3	Not Applicable
ITT 7.5	Not Applicable
<b>C. Preparation of Tenders</b>	
ITT 14	Alternative tenders shall NOT be considered
ITT 15.5	Prices quoted in the tender shall <b>NOT</b> be subject to adjustment during performance of the contract save for an increase/decrease in quantities or values insured
ITT 16.1	Currency for the tender and payment shall be in Kenya Shillings
ITT 18.3	Not Applicable
ITT 19.1	Tenders shall remain valid for a period of 180 days from the date of tender opening. Tenders valid for a shorter duration shall be rejected
ITT 20.1	Tenderers shall submit an <b>original tender security</b> (Bid bond) amounting to Kenya Shillings 150,000 in form of a bank guarantee <b>from a bank licensed and operating in Kenya</b> valid for thirty (30) days beyond the validity date of the tender

	This shall be in the format provided in the tender document.
ITT 21.1	Tenderers shall submit <i>ONE (1) ORIGINAL</i> and <i>ONE (1) COPY</i> of the tender document
ITT 21.3	The written confirmation of authorization to sign on behalf of the Tenderer <b>MUST</b> be submitted in the form of a Power of Attorney.
<b>D. Submission and Opening of Tenders</b>	
ITT 23	Tenders must be received on or before: <b>27<sup>th</sup> August 2021 at 11:00AM..... (East Africa Time)</b> Electronic submissions are <b>ALLOWED/NOT</b> allowed
ITT 23.1	For tender submission purposes only, the address to be used shall as follows; <b>Chief Executive Officer</b> <b>Institute of Certified Public Accountants of Kenya</b> <b>PO Box 59963-00200</b> <b>Nairobi</b> <b>Kenya</b>
ITT 26.1	Date of tender opening shall be on 3 <sup>rd</sup> August 2021 immediately after opening and shall take place at the address below; <b>Institute of Certified Public Accountants of Kenya (ICPAK)</b> <b>CPA Centre, 11<sup>th</sup> Floor-Conference room</b> <b>Address: CPA Centre building</b>
ITT 26.6	The Form of Tender and priced schedule of requirements shall be initialed by ONE (1) Representative of the Tenderer who is authorized to sign the document.
<b>E. Evaluation and Comparison of Tenders</b>	
ITT 33.2	Prices shall be quoted in Kenya Shillings(Ksh.)
ITT 34.2	Margin of preference shall not apply
<b>F. Award of Contract</b>	
ITT 44.1	Negotiations will be done with best evaluated bidder if the quote is above the budget.
ITT 47.1	<b>Performance security</b> shall be <b>10%</b> of the Contract Price in the Form of a Bank Guarantee drawn by a bank licensed and operating in Kenya.
ITT 49.1	If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to: <b>Chief Executive Officer</b> <b>Institute of Certified Public Accountants of Kenya (ICPAK)</b> <b><a href="mailto:procurement@icpak.com">E-mail address:procurement@icpak.com</a></b> <b>Location: ICPAK Headquarter Offices, Ruaraka</b> <b>Address: CPA Centre Building 9<sup>th</sup> Floor</b>

## SECTION III – EVALUATION AND QUALIFICATION CRITERIA

### 1. General Provision

Wherever a Tenderer is required to state a monetary amount, Tenderers should indicate the Kenya Shilling equivalent using the rate of exchange determined as follows:

- a) For business turn over or financial data required for each year – Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year is to be converted) was originally established.
- b) Value of single contract-Exchange rate prevailing on the date of the contract signature.
- c) Exchange rates shall be taken from the publicly available source identified in the ITT. Any error in determining the exchange rates in the Tender may be corrected by the Procuring Entity.

### Evaluation and contract award Criteria

ICPAK shall use the criteria and methodologies listed in this Section to evaluate tenders and arrive at the Lowest Evaluated Tender. The tender that (i) meets the qualification criteria, (ii) has been determined to be substantially responsive to the Tender Documents, and (iii) is determined to have the Lowest Evaluated Tender price shall be selected for award of contract.

### 2. Preliminary examination for Determination of Responsiveness

ICPAK will start by examining all tenders to ensure they meet in eligibility criteria and other requirements in the ITT, and that the tender is complete in all aspects in meeting the requirements of *“Part2-ICPAK Provision of Air Condition services requirements”*, including checking for tenders with unacceptable errors, abnormally low tenders, abnormally high tenders and tenders that are incomplete. Tenders that do not pass the Preliminary Examination will be considered irresponsive and will not be considered further.

## 1. LIABILITY CONTRACT

- a. The Contractor shall be responsible to the Client in the circumstances of any intentional wrongful act committed by the Contractor's Employees(s).
- b. The Contractor shall be liable for any loss suffered by the Client caused by negligence of the Contractor or the Contractor's employees whilst in action within the course of their employment.

## 2. INDEMNITY

The Contractor shall indemnify and keep indemnified The Client, its servants and agents against loss of or damage of property or bodily injury sustained by its servants or agents or any of them by reason of any act omission or neglect of Contractor its servants or agents whilst performing their duties under this Agreement **and** against the dishonesty of its officers whilst performing their duties hereunder **and this** shall include any loss, damage, injury or any consequential or indirect loss sustained by the Client, its servants or agents or third party.

## 3. LOGISTICS

The Contractor shall make arrangements and be responsible for their own cost for the following: -

- General Transport requirements for all its personnel to and from Mombasa
- Accommodation for all personnel and operations

## 4. INSURANCE

The Contractor shall insure its Officers and equipment 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 neglect or default of the client, its servant or agents. The Contractor will indemnify the Client against all actions claims and demands in respect of such injury.

## 5. COVID 19 CONTAINMENT MEASURES

The air conditioners service provider and the employees of the contractor must adhere to MOH Covid 19 containment measures

### A. PRELIMINARY EVALUATION CRITERIA

	REQUIRED ITEM	YES/NO
1	Company registration certificate/ certificate of Incorporation	Yes/No
2	Valid Tax Compliance Certificate	Yes/No
3	Tender security-Kshs.150,000	Yes/No
4	Copy of current Business Permit	Yes/No
5	Provide proof of ownership for the AC's. -Specify the location of the storage area to ease verification - Attach written sales agreement/ shipping document or invoice from supplier/ manufacturer. (Due diligence shall be conducted to verify authenticity of the documents)	Yes/No

6	CR 12 Certificate	Yes/No
7.	Current WIBA Insurance Cover for company employees	Yes/No
8.	Current Public Liability Insurance Cover (a minimum of Ksh.1 million per any one event)	Yes/No
9	The bid document must be paginated and a table of content included	Yes/No
10	Filled and stamped Confidential Business Questionnaire	Yes/No

**Note: Missing to provide any of the above items will lead to disqualification**

#### **B. TECHNICAL EVALUATION CRITERIA**

The bidder must have supplied such goods and services to 5 events of a similar nature (conference) with a minimum of **2,000 delegates (LPO, LSO and Contract, reference letters)** within the last 10 years with a minimum of total value of Ksh.500,000 per every supporting document for A.C's (6 marks for every document attached) **30 Marks**

Proof to have supplied the specified goods and services to events within the **Coastal Region** (5 events@4 marks) – **20 marks**

Attach Certified Audited accounts for the last 4 years (2020,2019,2018,2017), All pages must be initialed and signed by both a practicing Auditor registered by ICPAK and one of the Directors. Auditor's practicing membership number from ICPAK must be indicated and a valid practicing license shall be provided **(5 marks)**

Computation shall be made for the following ratios and marks awarded to each of the ratios:

#### **RATIOS SCORE**

Working Capital-3 marks

Debt to Equity Ratio-3 marks

Quick Ration-3 marks

Operating Cash Flow Ratio-3marks

**3 marks each year 12 marks**

Proposed Methodology and Approach to the Assignment with a proposed project implementation team structure-**3 mark**

**Note: The bidder MUST attain 60/70 marks to qualify for the next evaluation stage.**

<p><b>Price Evaluation</b></p> $\frac{\{A \times 100 \times 30\}}{B} \%$ <p>Where:  A= Lowest price  B= Price quoted by each bidder lowest to the highest  30= the value attached to the price evaluation  Failure to submit copies of the above documents will lead to your Bid being declared nonresponsive.  Please note that you may be required to produce original certificate for ease of verification.</p>	30	
Totals	100	

### C.FINANCIAL EVALUATION

For those Bidders who pass the technical evaluation stage, a financial comparison of the Bidders shall be undertaken for purposes of identifying the Bidder with the lowest evaluated price comparison among the qualified tenderers in accordance with the evaluation criteria is done at this stage using the above formulae

#### Post qualification

ICPAK may conduct post qualification (**due diligence**) to 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.

#### Award Criteria

##### a)Award of Contract

Subject to submission of the Performance Security, ICPAK will award the contract to the successful tenderer whose tender has been determined to be substantially responsive and has been determined to be the tenderer **with the lowest evaluated price**, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

##### b) Competitive Negotiation

ICPAK may conduct competitive negotiations where;

- there is a tie in the lowest evaluated price by two or more tenderers;
- the lowest evaluated price is in excess of available budget; or

- where change of scope is envisaged

a) **Litigation History**

There shall be no consistent history of court/arbitral award decisions against the Tenderer, in the last **Five (5) years**. All parties to the contract shall furnish the information in the appropriate form about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the years specified. A consistent history of awards against the Tenderer or any member of a JV may result in rejection of the tender.

## SECTION IV- TENDERING FORMS

### 1. Form of Tender

#### *INSTRUCTIONS TO TENDERERS*

- i) The Tenderer must prepare this Form of Tender on **stationery with its letterhead clearly showing the Tenderer's complete name and business address.***
- ii) All italicized text is to help Tenderer in preparing this form.*
- iii) Tenderer must complete and sign **CERTIFICATE OF INDEPENDENT TENDER DETERMINATION** and the **SELF DECLARATION OF THE TENDERER** and **TENDERER'S ELIGIBILITY-CONFIDENTIAL BUSINESS QUESTIONNAIRE** all attached to this Form of Tender.*
- iv) The Form of Tender shall include the following Forms duly completed and signed by the Tenderer.*
  - a) **Tenderer's Eligibility-Confidential Business Questionnaire***
  - b) **Certificate of Independent Tender Determination***
  - c) **Self-Declaration of the Tenderer***

**Date of this Tender submission:** \_\_\_\_\_ [*insert date (as day, month and year) of Tender submission*] **ITT No.:** \_\_\_\_\_ [*insert number of ITT process*]

**To:** \_\_\_\_\_ [*insert complete name of Procuring Entity*]

- a) **No reservations:** We have examined and have no reservations to the tendering document, including Addenda issued in accordance with ITT 9;
- b) **Eligibility:** We meet the eligibility requirements and have no conflict of interest in accordance with ITT 4;
- c) **Tender-Securing Declaration:** We have not been suspended nor declared ineligible by the Procuring Entity based on execution of a Tender-Securing Declaration or Proposal-Securing Declaration in Kenya in accordance with ITT 21;
- d) **Conformity:** We offer to provide the Air conditioners Services in conformity with the tendering document of the following: [*insert the list of items tendered for and a brief description of the air conditioners Services*];

**SCHEDULE OF TENDERED ITEMS AND PRICES**

Bidders should use the below format when quoting for the financial proposal

DESCRIPTION	QTY	Cost/Unit	Remarks
48000 BTU Air conditioners sufficient to cool dome tent for 5 days	40		

**Notes to the Air Conditioners Companies**

a) **Discounts:** The discounts offered and the methodology for their application are:

The discounts offered are: *[Bidder to indicate any discounts offered in their price schedule]*

b) The exact method of calculations to determine the net price after application of discounts is shown below:

*[Bidder to indicate the net amount less discount in the Form of Tender and Price Schedule];*

c) **Tender Validity Period:** Our Tender shall be valid for the period specified in TDS 19.1(as amended if applicable) from the date fixed for the Tender submission deadline (specified in TDS 23.1(as amended if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

d) **Performance Security:** If our Tender is accepted, we commit to obtain a Performance Security in accordance with the tendering document;

e) **One Tender Per Tenderer:** We are not submitting any other Tender (s) as an individual Tenderer, and we are not participating in any other Tender (s) as a Joint Venture member or as a subcontractor, and meet the requirements of ITT 4.3, other than alternative Tenders submitted in accordance with ITT 14;

f) **Suspension and Debarment:** We, along with any of our subcontractors, suppliers, consultants, manufacturers, or air conditioners firm for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the PPRA. Further, we are not in eligible under Kenya's official regulations or pursuant to a decision of the United Nations Security Council;

g) **State-owned enterprise or institution:** *[select the appropriate option and delete the other] [We are not a state- owned enterprise or institution]/ [We are a state-owned enterprise or institution but meet the requirements of ITT 4.6];*

h) **Commissions, gratuities and fees:** We have paid, or will pay the following commissions, gratuities, or fees with respect to the Tendering process or execution of the Contract: *[insert complete name of each Recipient,its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity,]*

Name of Recipient	Address	Reason	Amount

(If none has been paid or is to be paid, indicate “none.”)

[Delete if not appropriate or amend to suit] We confirm that we understand the provisions relating to Standstill Period as described in this tendering document and the Procurement Regulations.

- (m) **Binding Contract:** We understand that this Tender, together with your written acceptance thereof included in your Form of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- (n) **Not Bound to Accept:** We understand that you are not bound to accept the lowest evaluated cost Tender, the Best Evaluated Tender or any other Tender that you may receive;
- (o) **Fraud and Corruption:** We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption.
- (p) **Collusive practices:** We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the “Certificate of Independent tender Determination” attached below.

(q) We, the Tenderer, have completed fully and signed the following Forms as part of our Tender:

- i) Tenderer's Eligibility; Confidential Business Questionnaire – to establish we are not in any conflict to interest.
- ii) Certificate of Independent Tender Determination – to declare that we completed the tender without colluding with other tenderers.
- iii) Self-Declaration of the Tenderer–to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.

Further, we confirm that we have read and understood the full content and scope of fraud and corruption as informed in “Appendix 1-Fraud and Corruption” attached to the Form of Tender.

Name of the Tenderer: \*[insert complete name of person signing the Tender]

Name of the person duly authorized to sign the Tender on behalf of the Tenderer: \*\*:.....[insert complete name of person duly authorized to sign the Tender]

Title of the person signing the Tender: ..... [insert complete title of the person signing the Tender]

Signature of the person named above: .....[insertsignatureofpersonwhosenameandcapacityareshownabove]

Date signed: .....[insertdateofsigning]dayof[insertmonth], [insert year].

## A. TENDERER'S ELIGIBILITY-CONFIDENTIAL BUSINESS QUESTIONNAIRE

### Instruction to Tenderer

Tenderer is instructed to complete the particulars required in this Form, *one form for each entity if Tender is a JV*.  
Tenderer is further reminded that it is an offence to give false information on this Form.

#### a) Tenderer's details

	ITEM	DESCRIPTION
1	Name of the Procuring Entity	
2	Reference Number of the Tender	
3	Date and Time of Tender Opening	
4	Name of the Tenderer	
5	Full Address and Contact Details of the Tenderer.	1. Country 2. City 3. Location 4. Building 5. Floor 6. Postal Address 7. Name and email of contact person.
6	Current Trade License Registration Number and Expiring date	
7	Name, country and full address ( <i>postal and physical addresses, email, and telephone number</i> ) of Registering Body/Agency	
8	Description of Nature of Business	
9	Maximum value of business which the Tenderer handles.	
10	If a Kenyan tenderer, he/she has provided a current tax clearance certificate or tax exemption certificate issued by the the Kenya Revenue Authority.	
11	State if Tenders Company is listed in stock exchange, give name and full address ( <i>postal and physical addresses, email, and telephone number</i> ) of state which stock exchange	

**General and Specific Details**

(b) **Sole Proprietor**, provide the following details.

Name in full \_\_\_\_\_ Age \_\_\_\_\_

Nationality \_\_\_\_\_ Country of Origin \_\_\_\_\_

Citizenship \_\_\_\_\_

c) **Partnership**, provide the following details.

	<b>Names of Partners</b>	<b>Nationality</b>	<b>Citizenship</b>	<b>% Shares owned</b>
1				
2				
3				

d) **Registered Company**, provide the following details.

i) Private or public Company.....

ii) State the nominal and issued capital of the Company.....

Nominal Kenya Shillings (Equivalent).....

Issued Kenya Shillings (Equivalent).....

iii) Give details of Directors as follows.

	<b>Names of Director</b>	<b>Nationality</b>	<b>Citizenship</b>	<b>% Shares owned</b>
1				
2				
3				

e) **DISCLOSURE OF INTEREST-Interest of the Firm in the Procuring Entity.**

i) Are there any person/persons in..... (*Name of Procuring Entity*) who has/ have an interest or relationship in this firm? Yes/No.....

If yes, provide details as follows.

	<b>Names of Person</b>	<b>Designation in the Procuring Entity</b>	<b>Interest or Relationship with Tenderer</b>

1			
2			
3			

**Disclosure  
YES OR NO**

	<b>Type of Conflict</b>		<b>If YES provide details of the relationship with Tenderer</b>
1	Tenderer is directly or indirectly controls, is controlled by or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Tender has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process.		
5	Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender.		
6	Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract specified in this Tender Document.		
7	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract.		
8	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision of the such Contract.		

9	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.		
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**f) Certification**

On behalf of the Tenderer, I certify that the information given above is complete, current and accurate as at the date of submission.

Full Name \_\_\_\_\_  
\_\_\_\_\_

Title or Designation \_\_\_\_\_  
\_\_\_\_\_

*(Signature)*

*(Date)*

**B. CERTIFICATE OF INDEPENDENT TENDER DETERMINATION**

I, the undersigned, in submitting the accompanying Letter of Tender to the \_\_\_\_\_  
\_\_\_\_\_ [Name of Procuring Entity] for:  
\_\_\_\_\_ [Name and number of tender] in response to the  
request for tenders made by: \_\_\_\_\_ [Name of Tenderer] do hereby make the following  
statements that I certify to be true and complete in every respect:

I certify, on behalf of \_\_\_\_\_ [Name of Tenderer] that:

1. I have read and I understand the contents of this Certificate;
2. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;
4. For the purposes of this Certificate and the Tender, I understand that the word “competitor” shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:
  - a) Has been requested to submit a Tender in response to this request for tenders;
  - b) could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;
5. The Tenderer discloses that [check one of the following, as applicable]:
  - a) The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
  - b) The Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document (s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements;
6. In particular, without limiting the generality of paragraphs (5)(a) or (5)(b) above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
  - a) prices;
  - b) methods, factors or formulas used to calculate prices;
  - c) the intention or decision to submit, or not to submit, a tender; or
  - d) the submission of a tender which does not meet the specifications of the request for Tenders; except as specifically disclosed pursuant to paragraph (5)(b) above;
7. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this request

for tenders relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph (5)(b) above;

- 8. The terms of the Tender have not been, and will not be, knowingly disclosed by the Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official tender opening, or of the awarding of the Contract, whichever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph (5)(b) above.

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_ /

*Name, title and signature of authorized agent of Tenderer and Date]*

SELF-DECLARATION FORMS

FORM SD1

SELF DECLARATION THAT THE PERSON/TENDERER IS NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015

I, ....., of Post Office Box ..... being a resident of ..... in the Republic of ..... do hereby make a statement as follows:-

1. THAT I am the Company Secretary/ Chief Executive/ Managing Director /Principal Officer/Director of ..... (*insert name of the Company*) who is a Bidder in respect of **Tender No.** ..... for..... (*insert tender title/description*) for ..... (*insert name of the Procuring entity*) and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.
3. THAT what is deponed to herein above is true to the best of my knowledge, information and belief.

.....  
(Title)

.....  
(Signature)

.....  
(Date)

Bidder Official Stamp

FORM SD2

SELF DECLARATION THAT THE TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE.

I, ..... of P. O. Box ..... being a resident of ..... in the Republic of ..... do hereby make a statement as follows: -

1. THAT I am the Chief Executive/Managing Director/Principal Officer/ Director of.....  
..... (*insert name of the Company*) who is a Bidder in respect of **Tender No.**  
..... for ..... (*Insert tender title/description*) for ..... (*insert name of the Procuring entity*) and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its servants and/or agents /subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and /or employees and /or agents of..... (*Insert name of the Procuring entity*) which is the procuring entity.
3. THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and /or employees and /or agents of..... (*name of the procuring entity*).
4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject tender

.....  
(Title)

.....  
(Signature)

.....  
(Date)

Bidder's Official Stamp

**DECLARATION AND COMMITMENT TO THE CODE OF ETHICS**

I, .....(person) on behalf of *(Name of the Business/ Company/ Firm)* ..... declare that I have read and fully understood the contents of the Public Procurement & Asset Disposal Act, 2015, Regulations and the Code of Ethics for persons participating in Public Procurement and Asset Disposal and my responsibilities under the Code.

I do hereby commit to abide by the provisions of the Code of Ethics for persons participating in Public Procurement and Asset Disposal.

Name of Authorized signatory.....

Sign.....

Position.....

Office address..... Telephone..... E-mail.....

Name of the Firm/Company.....

Date.....

**(Company Seal/ Rubber Stamp where applicable)**

Witness Name

.....

Sign.....

Date.....

## **D. APPENDIX 1-FRAUD AND CORRUPTION**

*(Appendix 1 shall not be modified)*

### **1. Purpose**

The Government of Kenya's Anti-Corruption and Economic Crime laws and their sanction's policies and procedures, Public Procurement and Asset Disposal Act (*no. 33 of 2015*) and its Regulation, and any other Kenya's Acts or Regulations related to Fraud and Corruption, and similar offences, shall apply with respect to Public Procurement Processes and Contracts that are governed by the laws of Kenya.

### **2. Requirements**

The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service providers or Suppliers; any Agents(whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts, and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs1.1above.

Kenya's public procurement and asset disposal act (*no. 33 of 2015*) under Section 66 describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted below highlight Kenya's policy of no tolerance for such practices and behavior:

- i) A person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
- ii) A person referred to under subsection (1) who contravenes the provisions of that sub-section commits an offence;
- iii) Without limiting the generality of the subsection (1) and (2), the person shall be: -
  - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
  - b) if a contract has already been entered into with the person, the contract shall be voidable;
- iv) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
- v) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement—
  - a) Shall not take part in the procurement proceedings;
  - b) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
  - c) shall not be a subcontractor for the tenderer to whom was awarded contract, or a member of the group of tenderers of whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.

- vi) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;
- vii) If a person contravenes subsection (1) with respect to a conflict of interest described in subsection (5)(a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer. Etc.

Incompliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:

- a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
  - i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

- ii) “fraudulent practice” is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
- iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- v) “obstructive practice” is:
  - Deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by ICPAK or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/ or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
  - acts intended to materially impede the exercise of the ICPAK's or the appointed authority's inspection and audit rights provided for under paragraph 2.3e. below.

- b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.

- c) Rejects a proposal for award<sup>1</sup> of a contract if ICPAK determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or debar or recommend to appropriate authority (I e s) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;
- e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring(i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit ICPAK or any other appropriate authority appointed by Government of Kenya to inspect<sup>2</sup> all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the ICPAK or any other appropriate authority appointed by Government of Kenya;

and

- f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a “Self-Declaration Form” as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.
-

**SCHEDULE OF PRICES FORM**

The rates provided shall be inclusive of all taxes. The rates shall not change for the duration of contract

Name of Tenderer .....*[insert complete name of Tenderer]*

Signature of Tenderer..... *[signature of person signing the Tender]*

Date..... *[insert date]*

**TENDERER INFORMATION FORM**

*[The Tenderer shall fill in this Form in accordance with the instructions indicated below. No alterations to its format shall be permitted and no substitutions shall be accepted.]*

Date: ..... *[insert date (as day, month and year) of Tender submission]*

ITT No.: ..... *[insert number of Tendering process]*

Alternative No.: ..... *[insert identification No if this is a Tender for an alternative]*

1. Tenderer's Name <i>[insert Tenderer's legal name]</i>
3. Tenderer's actual or intended country of registration: <i>[insert actual or intended country of registration]</i>
4. Tenderer's year of registration: <i>[insert Tenderer's year of registration]</i>
5. Tenderer's Address in country of registration: <i>[insert Tenderer's legal address in country of registration]</i>
6. Tenderer's Authorized Representative Information  Name: <i>[insert Authorized Representative's name]</i>  Address: <i>[insert Authorized Representative's Address]</i>  Telephone: <i>[insert Authorized Representative's telephone/fax numbers]</i> • • Email Address: <i>[insert Authorized Representative's email address]</i>
7. Attached are copies of original documents of <i>[check the box(es) of the attached original documents]</i>  <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 4.4.  <input type="checkbox"/> A current tax clearance certificate or tax exemption certificate issued by the the Kenya Revenue Authority, if tender is a Kenyan tenderer, in accordance with ITT 4.15.  <input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with ITT 4.6 documents establishing:

2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

**QUALIFICATION INFORMATION**

- 1.1 Constitution or legal status of Tenderer: .....[attach copy]  
Place of registration: ..... [insert]  
Principal place of business: ..... [insert]  
Power of attorney of signatory of Tender: ..... [attach]

1.2 Financial reports for the last two years: balance sheets, profit and loss statements, auditors' reports, etc. List and attach copies.

1.3 Name, address, and telephone, and facsimile numbers of banks that may provide references if contacted by ICPAK.

1.4 Information regarding any litigation, current or within the last five years, in which the Tenderer is or has been involved.

Other party(ies) Cause of dispute Details of litigation award Amount involved

a) \_\_\_\_\_

b) \_\_\_\_\_

1.5 Statement of compliance with the requirements of ITT 4.2.

1.6 Any additional information required\_\_\_\_\_

**NOTIFICATION OF INTENTION TO AWARD**

*[This Notification of Intention to Award shall be sent to each Tenderer that submitted a Tender.] [Send this Notification to the Tenderer's Authorized Representative named in the Tenderer Information Form]*

For the attention of Tenderer's Authorized Representative Name:

..... *[insert Authorized Representative's name]*

Address: .....*[insert Authorized Representative's Address]*

Telephone numbers: .....*[insert Authorized Representative's telephone/fax numbers]*

Email Address: .....*[insert Authorized Representative's email address]*

***[IMPORTANT: insert the date that this Notification is transmitted to Tenderers. The Notification must be sent to all Tenderers simultaneously. This means on the same date and as close to the same time as possible.]***

**DATE OF TRANSMISSION:** This Notification is sent by: *[email/fax]* on *[date]* (local time)

**Procuring Entity:** .....*[insert the name of the Procuring Entity]*

**Contract title:** .....*[insert the name of the contract]*

**ITT No:** .....*[insert ITT reference number from Procurement Plan]*

This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period. During the Standstill Period you may:

- c) Request a debriefing in relation to the evaluation of your Tender, and/or
- d) Submit a Procurement-related Complaint in relation to the decision to award the contract.

**1. How to request a debriefing**

**DEADLINE:** The deadline to request a debriefing expires at midnight on *[insert date]* (local time).

You may request a debriefing in relation to the results of the evaluation of your Tender. If you decide to request a debriefing your written request must be made within three (3) Business Days of receipt of this Notification of Intention to Award.

Provide the contract name, reference number, name of the Tenderer, contact details; and address the request for debriefing as follows:

**Attention:** .....*[insert full name of person, if applicable]*

**Title/position:** .....*[insert title/position]*

**Agency:**.....*[insert name of Procuring Entity]*

**Email address:** .....*[insert email address]*

If your request for a debriefing is received within the 3 Business Days deadline, we will provide the debriefing within five (5) Business Days of receipt of your request. If we are unable to provide the debriefing within this

period, the Standstill Period shall be extended by five (5) Business Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.

The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.

If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Business Days from the date of publication of the Contract Award Notice.

## 2. How to make a complaint

**Period: Procurement-related Complaint challenging the decision to award shall be submitted by [*insert date and time*].**

Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-related Complaint as follows:

**Attention:** .....[*insert full name of person, if applicable*]

**Title/position:**.....[*insert title/position*]

**Agency:**.....[*insert name of Procuring Entity*]

**Email address:**.....[*insert email address*]

At this point in the procurement process, you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.

The Standstill Period may be extended as stated in Section 4 above.  
If you have any questions regarding this Notification please do not hesitate to contact us.

On behalf of the Procuring Entity:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title/position: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

**3. NOTIFICATION OF AWARD-FORM OF ACCEPTANCE**

*[Form head paper of the Procuring Entity]*

.....*[date]*

To:.....*[name and address of the Air Conditioners Provider]*

This is to notify you that your Tender dated.....*[date]* for execution of the.....*[name of the Contract and identification number, as given in the Special Conditions of Contract]* for the Contract Price of the equivalent of.....*[amount in numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers is here by accepted by us (Procuring Entity).

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using, for that purpose, one of the Performance Security Forms included in Section X, Contract Forms, of the tender document.

Please return the attached Contract dully signed

Authorized Signature

:.....

Name and Title of Signatory :.....

Name of Agency:.....

Attachment: Contract

**Form of Contract**

*[Form head paper of the Procuring Entity]*

**LUMP-SUM REMUNERATION**

This CONTRACT (here in after called the “Contract”) is made the *[day]* day of the month of *[month]*, *[year]*, between, on the one hand, *[name of Procuring Entity]* (here in after called the “Procuring Entity”) and, on the other hand, *[name of the air conditioners firm]*

*[Note: In the text below text in brackets is optional; all notes should be deleted in final text. If the service Provider consist of more than one entity, the above should be partially amended to read as follows:“... (here in after called the “Procuring Entity”) and, on the other hand, a joint venture consisting of the following entities, each of which will be jointly and severally liable to the Procuring Entity for all the air conditioners providers obligations under this Contract, namely, [name of air conditioners Provider] (here in after called the “air conditioners Provider”).]*

**WHEREAS**

- a) the Procuring Entity has requested the *air conditioners Services Provider* to provide certain *Services* as defined in the *General Conditions of Contract* attached to this Contract (here in after called the “*Services*”);
- b) the *air conditioners Services Provider*, having represented to the Procuring Entity that they have the required professional skills, and personnel and technical resources, have agreed to provide the *Services* on the terms and conditions set forth in this Contract at a contract price of.....;

NOW THEREFORE the parties hereto hereby agree as follows:

1. The following documents shall be deemed to form and be read and construed as part of this Agreement, and the priority of the documents shall be as follows:
  - a) The Form of Acceptance;
  - b) The *air conditioners Provider's Tender*
  - c) The *General Conditions of Contract*;
  - d) The *Special Conditions of Contract*;
  - e) The *Priced Schedule of Requirements*; and
  - f) The following Appendices: Appendix: *Negotiated cost* if any
2. The mutual rights and obligations of the Procuring Entity and the *air conditioners Provider* shall be as set forth in the Contract, in particular:
  - a) The *air conditioners Provider* shall carry out the *Services* in accordance with the provisions of the Contract; and
  - b) The Procuring Entity shall make payments to the *air conditioners service Provider* in accordance with the provisions of the Contract.

IN WITNESS WHERE OF, the Parties here to have caused this Contract to be signed in the irrespective names as of the day and year first above written.

For and on behalf of..... *[name of Procuring Entity]*  
*[Authorized Representative]*

For and on behalf of *[name of air conditioners Provider]*  
*[Authorized Representative]*

**[Note:** *If the air conditioners Provider consists of more than one entity, all these entities should appear as signatories, e.g., in the following manner:]*

For and on behalf of each of the Members of the air conditioners Provider..... *[name of member]* *[Authorized Representative]*  
*[name of member]*  
*[Authorized Representative]*

**7. FORM OF TENDER SECURITY** (Bank Guarantee)

*[The bank shall fill in this Bank Guarantee Form in accordance with the instructions indicated.]*

*[Guarantor Form head or SWIFT identifier code]*

**Beneficiary:** ..... *[Procuring Entity to insert its name and address]*

**ITT No.:**..... *[Procuring Entity to insert reference number for the Request for Tenders]*

**Alternative No.:** ..... *[Insert identification No if this is a Tender for an*

*alternative]* **Date:** ..... *[Insert date of*

*issue]* **TENDER GUARANTEE No.:** ..... *[Insert guarantee reference number]*

**Guarantor:** ..... *[Insert name and address of place of issue, unless indicated in the Form head]*

We have been informed that \_\_\_\_\_ *[insert name of the Tenderer, which in the case of a joint venture shall be the name of the joint venture (whether legally constituted or prospective) or the names of all members there of]* (here in after called "the Applicant") has submitted or will submit to the Beneficiary its Tender (here in after called" the Tender") for the execution of \_\_\_\_\_ under Request for Tenders No. \_\_\_\_\_ ("the ITT").

Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee..

At the request of the Applicant, we, as Guarantor, here by irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ (\_\_\_\_\_ ) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:

- a) has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Form of Tender ("the Tender Validity Period"), or any extension there to provided by the Applicant; or
- b) having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension thereto provided by the Applicant, (i) has failed to sign the contract agreement, or (ii) has failed to furnish the performance security, in accordance with the Instructions to Tenderers ("ITT") of the Beneficiary's tendering document.

This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the Contract agreement signed by the Applicant and the performance security issued to the Beneficiary in relation to such Contract agreement; or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) twenty-eight days after the end of the Tender Validity Period.

Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758.

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*[Signature(s)]*

*Note: All italicized text is for use in preparing this form and shall be deleted from the final product.*

**8 FORM OF TENDER SECURITY (TENDER BOND)** *[The Surety shall fill in this Tender Bond*

*Form in accordance with the instructions indicated.]* BOND NO. \_\_\_\_\_

BY THIS BOND..... *[name of Tenderer]* as Principal (hereinafter called “the principal”), and  
.....*[name, legal title, and address of surety]*, **authorized to transact business in Kenya**, as Surety (here  
in after called“ the Surety”), are held and firmly bound un to.....*[name of Procuring Entity]* as Ob  
li gee (here in after called “the Procuring Entity”) in the sum of.....*[amount of*  
*Bond<sup>1</sup>]**[amount in words]*, for the payment of which sum, well and truly to be made, we, the said Principal and  
Surety, bind ourselves, our successors and as signs, jointly and severally, firmly by these presents.

WHEREAS the Principal has submitted or will submit a written Tender to the Procuring Entity dated the  
\_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_\_, for the supply of  
*[name of Contract]* (hereinafter called the “Tender”). NOW,

THERE FORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal:

- a) has withdrawn its Tender during the period of Tender validity set forth in the Principal's Form of Tender (“the Tender Validity Period”), or any extension there to provide by the Principal; or
- b) having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity Period or any extension there to provide by the Principal; (i) failed to execute the Contract agreement; or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to Tenderers (“ITT”) of the Procuring Entity's tendering document.

Then the Surety undertakes to immediately pay to the Procuring Entity up to the above amount upon receipt of the Procuring Entity's first written demand, without the Procuring Entity having to substantiate its demand, provided that in its demand the Procuring Entity shall state that the demand arises from the occurrence of any of the above events, specifying which event (s) has occurred.

The Surety here by agrees that its obligation will remain in full force and effect up to and including the date 28days after the date of expiration of the Tender Validity Period set forth in the Principal's Form of Tender or any extension there to provide by the Principal.

IN TESTIMONY WHEREOF, the Principal and the Surety have caused these presents to be executed in the  
irrespective names this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

Principal: \_\_\_\_\_

Surety: \_\_\_\_\_

Corporate Seal (where appropriate)

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

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<sup>1</sup>*The amount of the Bond shall be denominated in Kenya Shillings or the equivalent amount in a freely convertible currency.*

**FORM OF TENDER-SECURING DECLARATION**

*[The Bidder shall complete this Form in accordance with the instructions indicated]*

Date: ..... *[insert date (as day, month and year) of Tender Submission]*

Tender No.: ..... *[insert number of tendering process]*

To: ..... *[insert complete name of Purchaser]*

I/We, the undersigned, declare that:

1. I/We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.
2. I/We accept that I/we will automatically be suspended from being eligible for tendering in any contract with the Purchaser for the period of time of *[insert number of months or years]* starting on *[insert date]*, if we are in breach of our obligation (s) under the bid conditions, because we– (a) have withdrawn our tender during the period of tender validity specified by us in the Tendering Data Sheet; or (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the instructions to tenders.
3. I/We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer (s), upon the earlier of:
  - a) Our receipt of a copy of your notification of the name of the successful Tenderer; or
  - b) Thirty days after the expiration of our Tender.
4. I/We understand that if I am/we are/ in a Joint Venture, the Tender Securing Declaration must be in the name of the Joint Venture that submits the bid, and the Joint Venture has not been legally constituted at the time of bidding, the Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed: ..... Capacity /  
title (director or partner or sole proprietor, etc.) .....

Name: ..... Duly authorized to  
sign the bid for and on behalf of: ..... *[insert complete name of Tenderer]* Dated  
on ..... day of ..... *[Insert date of signing]*

Seal or stamp

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**PART III – CONDITIONS OF CONTRACT AND CONTRACT FORMS**

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## SECTION VI - GENERAL CONDITIONS OF CONTRACT

### A. General Provisions

#### 1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- a) "Schedule of Requirements" is the priced and completed list of items of Services to be performed by the air conditioners Provider forming part of his Tender;
- b) "Completion Date" means the date of completion of the Services by the air conditioners Provider as certified by the Procuring Entity
- c) "Contract" means the Contract signed by the Parties, to which these General Conditions of Contract (GCC) are attached, together with all the documents listed in Clause 1 of such signed Contract;
- d) "Contract Price" means the price to be paid for the performance of the Services, in accordance with Clause 6;
- e) "Procuring Entity" means the Procuring Entity or party who employs the air conditioners Provider
- f) "Foreign Currency" means any currency other than the currency of Kenya;
- g) "GCC" means these General Conditions of Contract;
- h) "Government" means the Government of Kenya;
- i) "Local Currency" means Kenya shilling;
- j) "Party" means the Procuring Entity or the air conditioners provider, as the case may be, and "Parties" means both of them;
- k) "Personnel" means persons hired by the air conditioners Provider;
- l) "Air conditioners Provider" is a person or corporate body whose Tender to provide the Services has been accepted by the Procuring Entity;
- m) "Air conditioners Provider's Tender" means the completed Tendering Document submitted by the air conditioners Provider to the Procuring Entity
- n) "SCC" means the Special Conditions of Contract by which the GCC may be amended or supplemented.
- o) "Services" means the work to be performed by the air conditioners Provider pursuant to this Contract, as described in Schedule of Requirements included in the air conditioners provider's Tender.
- p) "Public Procurement Regulatory Authority (PPRA)" shall mean the Government Agency responsible for oversight of public procurement.
- q) "ICPAK" Institute of Certified Public Accountants of Kenya.

#### 1.2 Applicable Law

The Contract shall be interpreted in accordance with the laws of Kenya.

#### 1.3 Language

This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

#### **1.4 Notices**

Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, hand delivery, or email to such Party at the address **specified in the SCC.**

#### **1.5 Location**

The Services shall be performed at such locations as are specified in Appendix A, in the specifications and, where the location of a particular task is not so specified, at such locations, whether in Kenya or elsewhere, as the Procuring Entity may approve.

#### **1.6 Authorized Representatives**

Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Procuring Entity Provider may be taken or executed by the officials **specified in the SCC.**

## **1.7 Inspection and Audit by ICPAK**

Pursuant to paragraph 2.2e. of Attachment1 to the General Conditions, the service Provider shall permit and shall cause its subcontractors and sub-consultants to permit, ICPAK and/ or persons appointed by ICPAK to inspect the Site and/ or the accounts and records relating to the procurement process, selection and/ or contract execution, and to have such accounts and records audited by auditors appointed by ICPAK. The Service Provider's and its Subcontractors' and sub-consultants' attention is drawn to Sub-Clause 3.10 which provides, inter alia, that acts intended to materially impede the exercise of ICPAK's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to ICPAK's prevailing sanctions procedures).

## **1.8 Taxes and Duties, e t c**

The Air conditioners Provider shall pay such taxes, duties, fees, levies and other impositions as may be levied under the Applicable Law, the amount of which is deemed to have been included in the Contract Price.

## **2 Commencement, Completion, Modification, and Termination of Contract**

### **2.21 Effectiveness of Contract**

This Contract shall come into effect on the date the Contract is signed by both parties or such other later date as may be **stated in the SCC.**

**2.2.2 Duration and Commencement of Services** The Commencement date and duration of the services shall be **specified in the SCC.**

### **2.3. Modification**

Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written agreement between the Parties.

## **2.4 Force Majeure**

### **2.4.1 Definition**

For the purposes of this Contract, “ Force Majeure” means an event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

### **2.4.2 No Breach of Contract**

The failure of a Party to fulfill any of its obligations under the contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (b) has informed the other Party as soon as possible about the occurrence of such an event.

### **2.4.3 Extension of Time**

Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

#### **2.4.4 Payments**

During the period of their inability to perform the Services as a result of an event of Force Majeure, the Air conditioners Provider shall be entitled to continue to be paid under the terms of this Contract, as well as to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of the Services and in reactivating the Service after the end of such period.

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
8.4.1	<p>The rules of procedure for arbitration proceedings <i>with a foreign Air conditioners Provider</i> shall be as follows:</p> <p><i>[For contracts entered into with foreign sellers, International commercial arbitration may have practical advantages over other dispute settlement methods].</i></p> <p><b><i>/the Procuring Entity chooses the UNCITRAL Arbitration Rules, the following sample clause should be inserted:</i></b></p> <p>Any dispute, controversy or claim arising out of or relating to this Contract, or breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.</p> <p><b><i>If the Procuring Entity chooses the Rules of ICC, the following sample clause should be inserted:</i></b></p> <p>All disputes arising in connection with the present Contract shall be finally settled under the Rules of Conciliation and Arbitration of <i>the International Chamber of Commerce</i> by one or more arbitrators appointed in accordance with said Rules.</p> <p><b><i>/the Procuring Entity chooses the Rules of Arbitration Institute of Stockholm Chamber of Commerce, the following sample clause should be inserted:</i></b></p> <p>Any dispute, controversy or claim arising out of or in connection with this Contract, or the breach termination or invalidity thereof, shall be settled by arbitration in accordance with the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.</p> <p><b><i>(iv) If the Procuring Entity chooses the Rules of the London Court of International Arbitration, the following clause should be inserted:</i></b></p> <p>Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which rules are deemed to be incorporated by reference to this clause.</p>

- a) Provider that such payment is overdue; or
- b) if, as the result of Force Majeure, the Air conditioners Provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days.

### 2.5.3 Payment upon Termination

Upon termination of this Contract pursuant to Sub-Clauses 2.5.1 or 2.5.2, the ICPAK shall make the following payments to the Air conditioners Provider:

- a) remuneration pursuant to Clause 5 for Services satisfactorily performed prior to the effective date of termination.
- b) except in the case of termination pursuant to paragraphs (a), (b), (d) of Sub-Clause 2.5.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract.
- c) The Air conditioners provider shall pay or refund ICPAK any moneys paid but for which no consume rate services were provided.

## 3. Obligations of the Air Conditioners Provider

### 3.1 General

The Air conditioners Provider shall perform the Services in accordance with the terms of the signed service Schedule of Requirements, and carry out its obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe methods. The air conditioners Provider shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the Procuring Entity, and shall at all times support and safeguard the Institute's legitimate interests in any dealings with Subcontractors or third parties.

### 3.2.3 Prohibition of Conflicting Activities

Neither the Service Provider nor its Subcontractors nor the Personnel shall engage, either directly or indirectly, in any of the following activities:

- a) During the term of this Contract, any business or professional activities in Kenya which would conflict with the activities as signed to them under this Contract;
- b) during the term of this Contract, neither the air conditioners Provider nor their Subcontractors shall hire public employees in active duty or on any type of leave, to perform any activity under this Contract;
- c) after the termination of this Contract, such other activities as may be **specified in the SCC**.

## 3.3 Confidentiality

The air conditioners Provider, its Subcontractors, and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract, or the Procuring Entity's business or operations

without the prior written consent of the Procuring Entity.

### **3.4 Reporting Obligations**

The Service Provider shall submit to the Procuring Entity there ports and documents specified in Appendix B in the form, in the numbers, and within the periods set for thin the said Appendix.

### **Provider to Be the Property of the Procuring Entity.**

All reports, and other documents and software submitted by the service Provider in accordance with Sub- Clause 3.4 shall become and remain the property of the Procuring Entity, and the air conditioners Provider shall, not later than upon termination or expiration of this Contract, deliver all such documents and software to the Procuring Entity, together with a detailed inventory thereof. The air conditioners Provider may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be **specified in the SCC.**

### **3.6 Liquidated Damages**

#### **3.6.1 Payments of Liquidated Damages**

The service Provider shall pay liquidated damages to the Procuring Entity at the rate per day **stated in the SCC** for each day that the service Provider fails to pay the agreed compensation costs beyond or later the agreed date when such compensation should be made. The date by when the compensation costs should be made is specified in **the SCC.** The total amount of liquidated damages shall not exceed the amount **defined in the SCC** The Procuring Entity may deduct liquidated damages from payments due to the service Provider. Payment of liquidated damages shall not affect the air conditioners Provider's liabilities.

#### **3.6.2 Correction for Over-payment**

The Institute shall correct any overpayment of liquidated damages by the air conditioners provider by adjusting the next payment. The service Provider shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 6.5.

### **3.7 Performance Security**

The service Provider shall be required to provide Performance Security to ICPAK.

### **3.8 Fraud and Corruption**

ICPAK requires compliance with the Government's Anti-Corruption laws and its prevailing sanctions. The Institute requires the Air Conditioners provider to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the tendering process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

## **4 Air conditioners Provider's Personnel**

The Contract shall not obligate the air conditioners provider to provide any specific personnel for carrying out of the Services.

## **5 Obligations of the Procuring Entity**

### **5.1 Change in the Applicable Law**

If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost of the Services rendered by the service Provider, then the remuneration and reimbursable expenses otherwise payable to the service provider under this Contract shall be increased or decreased accordingly by agreement between the Parties, and corresponding adjustments shall be made to the amounts referred to in Sub-Clauses 6.2 (a) or (b), as the case may be.

## **6. Payments to the Service Provider**

### **6.1 Lump-Sum Remuneration**

The Air conditioners provider's remuneration shall not exceed the Contract Price and shall be a fixed lump-sum. Except as provided in Sub-Clause 5.1, the Contract Price may only be increased above the amounts stated in Sub-Clause 6.2 if the Parties have agreed to additional payments in accordance with Sub-Clauses 2.3 and 6.3.

### **6.2 Contract Price**

The price payable is **set forth in the SCC.**

### **6.3 Terms and Conditions of Payment**

Payments will be made to the Service provider according to the payment schedule **stated in the SCC.**

### **6.4 Quality Control**

The contract shall not have any quality control modalities as this is not envisaged in the industry

## **7. Settlement of Disputes**

### **8.1 Amicable Settlement**

Any party with dispute against the other party shall give notice to the other party, requesting the party to make good the matters of the dis

The Parties shall attempt to settle the dispute amicably. If the dispute cannot be settled amicably, the complaining party should move to commence arbitration after thirty days from the day on which a notice was given, even if no attempt at an amicable settlement has been made.

## **8.2 Arbitration if the Tender Provider is a Kenyan firm**

8.2.1 Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 8.1 shall be finally settled by arbitration. Arbitration shall be conducted in accordance with the Arbitration Laws of Kenya.

8.2.2 The arbitrators shall have full power to open up, review all matters relevant to the dispute. Nothing shall disqualify representatives of the Parties from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

8.2.3 Arbitration may be commenced prior to or after completion of the services. The obligations of the Parties shall not be altered by reason of any arbitration being conducted during the progress of the services.

8.2.4 The terms of the remuneration of each or all the members of Arbitration shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

8.2.5 In case of any claim or dispute, such claim or dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed, on the request of the applying party, by the Chairman or Vice Chairman of any of the following institutions the:

- i) Law Society of Kenya, or
- ii) Chartered Institute of Arbitrators (Kenya Branch), or
- iii) Institute of Certified Public Accountants of Kenya of Kenya, or
- iv) The Actuarial Society of Kenya.

8.2.6 The institution written to first by the aggrieved party shall take precedence over all other institutions.

8.2.7 The award of such Arbitrator shall be final and binding upon the parties.

## **8.3 Failure to Comply with Arbitrator's Decision**

8.3.1 In the event that a Party fails to comply with a final and binding Arbitrator's decision, then the other Party may, without prejudice to any other right it may have, refer the matter to a competent Court of law.

## **8.4 Arbitration if the air conditioners provider is a foreign firm**

8.4.1 Arbitration proceedings shall be conducted in accordance with the rules of procedure specified in the **SCC and the Institute Policy**.

**SECTION VII - SPECIAL CONDITIONS OF CONTRACT**

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1	<p><b>The Parties to the Contract are:</b></p> <p>The Procuring Entity is _____</p> <p>Air conditioners firm-----</p> <p>The contract name is _____</p>
1.4	<p>For <b>notices</b>, the Procuring Entity's address shall be:            Attention: <i>[ insert full name of person, if applicable]</i>            Postal address (full postal address)            Physical Address (full Location Address- <i>insert city, street name, Building named floor number, room number</i>)            Telephone: <i>[include telephone number, including country and city codes]</i>            Electronic mail address: <i>[insert e-mail address, if applicable]</i></p>
1.6	<p>The Authorized Representatives are:</p> <p>For the Procuring Entity: _____  <i>[Name, Postal Address, Email, Telephone Number]</i></p> <p>_____</p> <p><i>[Name, Postal Address, Email, Telephone Number]</i></p>
2.1	<p>The date on which this Contract shall come into effect is _____.</p>
2.2	<p>The contract commencement date shall be:</p>
3.2.3	<p>After the termination of this Contract, the activities are:            _____            _____</p>
3.6.1	<p>The liquidated damages per day is _____</p> <p>The date by when the compensation costs should be made is _____ days.</p> <p>The total amount of liquidated damages shall not exceed _____</p>

**6.2-6.4**

Contract Price is \_\_\_\_\_

The price shall be made in one lumpsum on contract signature  
or the price shall be made on monthly installments of

\_\_\_\_\_

