

**NYAYO TEA ZONES DEVELOPMENT CORPORATION**

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**TENDER NO. NTZDC/TN/29/2018-2019 FOR  
PROVISION OF TRANSPORT SERVICES FOR  
MADE TEA**

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**(Submission Date Tuesday 26<sup>th</sup> February 2019 at 12.00 Noon)**

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# Section A. Tender Notice

Reference: Tender No. NTZDC/TN/29/2018-2019 Provision of Transport Services for Made Tea

1. **Nyayo Tea Zones Development Corporation** now invites sealed tenders from eligible candidates for the Provision of Transport Services for processed tea. The contract shall be for two years subject to annual satisfactory performance review.
2. Interested eligible candidates may obtain further information from and inspect the tender documents at the office of:

MANAGING DIRECTOR,  
NYAYO TEA ZONES DEVELOPMENT CORPORATION,  
P.O. BOX 48552,  
**NAIROBI.**

NYAYO HOUSE, 11<sup>TH</sup> FLOOR, SOUTH WING,  
KENYATTA AVENUE  
TEL NOS: 315650,219376 FAX NO. 216777  
E-MAIL info@teazones.co.ke

3. A complete set of tender documents may be obtained from PPIP portal [www.tenders.go.ke](http://www.tenders.go.ke)
4. Completed Tender Document enclosed in plain, sealed envelope marked – “Tender No. NTZDC/TN/29/2018-2019 – ‘Provision of Transport Services for processed tea’ bearing no indication of the identity of the tenderer should be addressed/returned to

MANAGING DIRECTOR,  
NYAYO TEA ZONES DEVELOPMENT CORPORATION,  
P.O. BOX 48552,  
NAIROBI.

***OR***

Be deposited in the Tender Box at the Reception area, 11<sup>th</sup> Floor Nyayo House so as to reach her on or before, **Tuesday 26<sup>th</sup> February 2019 at 12.00 noon.** Tenders will be opened immediately thereafter in the presence of tenderers/representatives who may choose to attend.

# **Section B. INSTRUCTIONS TO TENDERS**

## **Introduction**

### **1. Eligible Tenderers**

- 1.1 This Invitation for Tenders is open to all tenderers eligible as described in the tender documents. Successful tenderers shall provide the services by the intended completion date specified in the tender documents.
- 1.2 The procuring entity's employees, committee members, Board members and their relative (spouse and children) are not eligible to participate in the tender.
- 1.3 Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods under this Invitation for tenders.
- 1.4 Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices.

### **2. Cost of Tendering**

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

## **The Tender Document**

### **3 Contents**

- 3.1 The tender document comprises the documents listed below, and addenda issued in accordance with clause 6 of these instructions to tenders.
  - (i) Invitation for Tenders
  - (ii) General information
  - (iii) General Conditions of Contract
  - (iv) Special Conditions of Contract
  - (v) Schedule of Requirements
  - (vi) Technical Specifications
  - (vii) Tender Form and Price Schedules
  - (viii) Contract Form
  - (ix) Confidential business questionnaire

- (ix) Performance Security Form
- (x) Bank Guarantee for Advance Payment Form
- (xi) Manufacturer's Authorization Form

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

#### **4. Clarification of Documents**

4.1 A prospective tenderer requiring any clarification of the tender document may notify the Procuring entity in writing or by cable (hereinafter, the term *cable* is deemed to include telex and facsimile) at the entity's address indicated in the Invitation for tenders. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives no later than seven (7) days prior to the deadline for the submission of tenders, prescribed by the procuring entity. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderer that have received the tender document.

#### **5. Amendment of Documents**

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

5.2 All prospective candidates that have received the tender documents will be notified of the amendment in writing or by cable and will be binding on them.

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

### **Preparation of Tenders**

#### **6. Language of Tender**

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

#### **7. Documents Comprising the Tender**

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

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

and 11 below.

- (b) documentary evidence established in accordance with paragraph 12 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
- (c) documentary evidence established in accordance with paragraph 13 that the goods and ancillary services to be supplied by the tenderer are eligible goods and services and conform to the tender documents; and
- (d) tender security furnished in accordance with paragraph 13
- (e) Confidential business questionnaire

## **8. Tender Form**

- 8.1 The tenderer shall complete the Tender Form and the appropriate Price Schedule furnished in the tender documents, indicating the goods to be supplied, a brief description of the goods, their country of origin, quantity, and prices.

## **9. Tender Prices**

- 9.1 The tenderer shall indicate on the appropriate Price Schedule the unit prices and total tender price of the services it proposes to supply under the contract.
- 9.2 Prices indicated on the Price Schedule shall be the cost of services quoted including all customs duties and VAT and other taxes payable:
- 9.3 Prices quoted by the tenderer shall be fixed during the term of the contract unless otherwise agreed by parties. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 22.
- 9.4 Contract price variations shall not be allowed for contracts not exceeding one year (12 months)
- 9.5 Where contract variation is allowed, the variation shall not exceed 10% of the original contract price

## **10. Tender Currencies**

- 10.1 Prices shall be quoted in Kenya shillings.

## **11. Tenderers Eligibility and Qualifications.**

- 11.1 Pursuant to paragraph 1 of section III, the tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.
- 11.2 The documentary evidence of the tenderers eligibility to tender shall establish to the Procuring entity's satisfaction that the tenderer, at the time of submission of its tender, is from an eligible source country as defined under paragraph I of section III.

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

## **12. Tender Security**

The tenderer shall furnish, as part of its tender, a tender security

## **12. Validity of Tenders**

12.1 Tenders shall remain valid for 90 days or as specified in the tender documents after date of tender opening prescribed by the Procuring entity, pursuant to paragraph 18. A tender valid for a shorter period shall be rejected by the Procuring entity as nonresponsive.

12.2 In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 14 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

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

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

13.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. The latter authorization shall be indicated by written power-of-attorney accompanying the tender. All pages of the tender, except for unamended printed literature, shall be initialled by the person or persons signing the tender.

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

## **Submission of Tenders**

### **14. Sealing and Marking of Tenders**

14.1 The tenderer shall seal the original and each copy of the tender in separate envelopes, duly marking the envelopes as "ORIGINAL" and "COPY." The envelopes shall then be sealed in an outer envelope.

14.2 The inner and outer envelopes shall:

(a) be addressed to the Procuring entity at the following address:  
MANAGING DIRECTOR  
NYAYO TEA ZONES DEV. CORPORATION  
P.O. BOX 48552  
NAIROBI.

(b) Bear, NTZDC/TN/29 /2018-2019 Provision of Transport Services for Made Tea the Invitation for tenders (IFT), and the words: “DO NOT OPEN BEFORE,” **Tuesday 26<sup>th</sup> February, 2019 at 12.00 noon.**

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

14.4 If the outer envelope is not sealed and marked as required by paragraph 14.2, the Procuring entity will assume no responsibility for the tender’s misplacement or premature opening.

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

15.1 Tenders must be received by the Procuring entity at the address specified under paragraph 15.2 no later than, **Tuesday 26<sup>th</sup> February, 2018 at 12.00 noon.**

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

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

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

16.2 The Tenderer’s modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 14. A withdrawal notice may also be sent by cable, but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.

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

16.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the tenderer on the Tender Form.

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

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



## **Opening and Evaluation of Tenders**

### **17. Opening of Tenders**

17.1 The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, **Monday 24<sup>th</sup> December 2018 at 12.00 noon** in the Corporation's Boardroom. The tenderers' representatives who are present shall sign a register evidencing their attendance.

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

17.3 The Procuring entity will prepare minutes of the tender opening.

### **18. Clarification of Tenders**

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

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

## **19. Preliminary Examination**

- 19.1 The Procuring entity will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the tenders are generally in order.
- 19.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security may be forfeited. If there is a discrepancy between words and figures, the amount in words will prevail.
- 19.3 The Procuring entity may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any tenderer.
- 19.4 Prior to the detailed evaluation, pursuant to paragraph 23, the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one which conforms to all the terms and conditions of the tender documents without material deviations. The Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.
- 19.5 If a tender is not substantially responsive, it will be rejected by the Procuring entity and may not subsequently be made responsive by the tenderer by correction of the nonconformity.

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

20.1 The Procuring entity will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 20.

20.2 The comparison shall be of the price including all costs of as well as duties and taxes payable on all the materials to be used in the provision of the services.

20.3 The Procuring entity's evaluation of a tender will take into account, in addition to the price, the following factors as indicated in paragraph 21.4:

- (a) Operational plan proposed in the tender
- (b) Deviations in payment schedule from that specified in the special conditions of contract

### **20.4 (a) Operational Plan**

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

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

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

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

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

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

## **21. Contacting the Procuring Entity**

21.1 Subject to paragraph 20, no tenderer shall contact the Procuring entity on any matter relating to its tender, from the time of the tender opening to the time the contract is awarded.

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

## **Award of Contract**

### **22. Post-qualification**

- 22.1 In the absence of pre-qualification, the Procuring entity will determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.
- 22.2 The determination will take into account the tenderer financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 11.3, as well as such other information as the Procuring entity deems necessary and appropriate.
- 22.3 An affirmative determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the Tenderer's tender, in which event the Procuring entity will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

### **23. Award Criteria**

- 23.1 Subject to paragraph 8, 21 and 26 the Procuring entity will award the contract to the successful tenderer(s) whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

### **24. Procuring entity's Right to Vary quantities**

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

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

- 25.1 The Procuring entity reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the Procuring entity's action.

### **26. Notification of Award**

- 26.1 Prior to the expiration of the period of tender validity, the Procuring entity will notify the successful tenderer in writing that its tender has been accepted.
- 26.2 The notification of award will constitute the formation of the Contract.
- 26.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 30, the Procuring entity will promptly notify each unsuccessful Tenderer.

## **27. Signing of Contract**

27.1 At the same time as the Procuring entity notifies the successful tenderer that its tender has been accepted, the Procuring entity will send the tenderer the Contract Form provided in the tender documents, incorporating all agreements between the parties.

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

## **28. Performance Security**

28.1 Within fourteen (14) days of the receipt of notification of award from the Procuring entity, the successful tenderer shall furnish the performance security in accordance with the Conditions of Contract, in the Performance Security Form provided in the tender documents, or in another form acceptable to the Procuring entity.

28.2 Failure of the successful tenderer to comply with the requirement of paragraph 28 or paragraph 29 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Procuring entity may make the award to the next lowest evaluated Candidate or call for new tenders.

## **29. Corrupt Fraudulent Practices**

29.1 The Procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts. In pursuance of this policy, the Procuring entity:-

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
  - (i) “corrupt practice” means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution; and
  - (ii) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring entity, and includes collusive practice among tenderer (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;
- (b) will reject a proposal for award if it determines that the tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;
- (c) will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded any contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a contract.

29.2 Furthermore, tenderers shall be aware of the provision stated in the General Conditions of Contract.

## **SECTION III - GENERAL CONDITIONS OF CONTRACT**

### **3.1 Definitions**

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

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

### **3.2 Application**

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

### **3.3 Standards**

- 3.3.1 The services provided under this contract shall conform to the 7 standards mentioned in the schedule of requirements

### **3.4 Patent Rights**

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

### **3.5 Performance Security**

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

3.5.2 The proceeds of the performance security shall be payable to the Procuring entity as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.

3.5.3 The performance security shall be denominated in the currency of the Contract or in a freely convertible currency acceptable to the Procuring entity and shall be in the form of:

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

3.5.4 The performance security will be discharged by the Procuring entity and returned to the Candidate not later than thirty (30) days following the date of completion of the Tenderer's performance obligations under the Contract, including any warranty obligations, under the Contract.

### **3.6 Inspection and Tests**

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

3.6.2 The inspections and tests may be conducted on the premises of the tenderer or its subcontractor(s). If conducted on the premises of the tenderer or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring entity.

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

3.6.4 Nothing in paragraph 3.6 shall in any way release the tenderer from any warranty or other obligations under this Contract.

### **3.7. Payment**

3.7.1 The method and conditions of payment to be made to the tenderer under this Contract shall be specified in Special Conditions of Contract (SCC).

### **3.8. Prices**

3.8.1 Prices charged by the contractor for Services performed under the Contract shall not, with

the exception of any price adjustments authorized in Special Conditions of Contract (SCC), vary from the prices by the tenderer in its tender or in the procuring entity's request for tender validity extension as the case may be. No variation in or modification to the terms of the contract shall be made except by written amendment signed by the parties.

### **3.9 Assignment**

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

### **3.10 Termination for Default**

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

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

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

### **3.11 Termination of insolvency**

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

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

### **3.12. Resolution of Disputes**

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

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



### **3.13 Governing Language**

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

### **3.14. Force Majeure**

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

### **3.15 Applicable Law**

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

### **3.15 Notices**

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

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

## Section D. Special Conditions of Contract

1. Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict between the GCC and the SCC, the provisions of the SCC herein shall prevail over those in the General Conditions of Contract (GCC).
2. Special conditions of contract with reference to the general conditions of contract

GENERAL CONDITIONS OF CONTRACT	SPECIAL CONDITIONS OF CONTRACT
3.5.3	<i>Not applicable</i>
3.8.1	<i>Not applicable</i>
3.12	<i>As per clause 3.12.1</i>

1. The transporter shall not sub contract or use any vehicle not legally owned by it.
2. The Transporter shall provide sufficient vehicles for loading at the factory not later than two (2) days after receipt of requisition from the Corporation, or the factory in writing to the effect and convey the loaded tea safely and expeditiously in the said vehicles to the destination specified in the Dispatch Note not later than three (3 days) from date of loading.
3. Where the transporter fails to provide the necessary vehicles, the Corporation shall have the option of contracting a 3<sup>rd</sup> party to transport its teas and the transporter shall meet the additional transportation costs incurred, by the Corporation as a result of the transporter's failure to provide transportation and any charges levied on the Corporation.
4. The transporter shall bear full responsibility for any loss or damage or contamination of the made tea in his possession caused by any act omission or default of the transporter, its agents and or employees and the transporter shall indemnify the Corporation against all expenses, costs, claims and demand occasioned by such loss damaged or contaminated as foresaid.

## SECTION V – SCHEDULE OF REQUIREMENTS

Provision of Transport services	Charges per Kg (Net of applicable charges)	Remarks
<p><b>Kipchabo Tea Factory - Nairobi</b></p> <p><b>Kipchabo Tea Factory – Mombasa</b></p> <p><b>Gatitu Tea Factory- Nairobi</b></p> <p><b>Gatitu Tea Factory - Mombasa</b></p>		

**Note**

Kipchabo Tea Factory is in Nandi County (Kapsabet)

Gatitu Tea Factory is in Kirinyaga County (Kirinyaga)

## **Section E. Schedule of Requirements**

### **TENDER CONDITIONS**

**The following documents are mandatory and must be attached on the tenders: -**

1. Tax Compliant Certification
2. Current copy of Fidelity Insurance Cover
3. Certificate of Registration by Kenya Revenue Authority
4. Certificate of Registration by Registrar of Companies
5. Audited accounts for the last 3 years
6. List of Corporate clients
7. Valid Public or Commercial carrier's license
8. Road License and other licenses provided in the transport licensing Act, or any other statute now or thereafter in force.
9. Goods License and /or necessary authorization from the relevant Public body to transport the consignment

## **SECTION V- TECHNICAL SPECIFICATIONS**

1. Rates quoted to be based on return Cargo.
2. Body of the vehicle to be fully containerised.
3. Goods to be insured on transit – Name your Insuring firm
4. To provide Fidelity Guarantee Insurance Policy held with a reputable company duly registered in Kenya and facilitated by the Insurance Brokers.
5. Minimum of 15 tons vehicle recommended
6. Should be able to start work as soon as the contract is signed.
7. The duration of the contract shall be for a period of 2 years from the date of contract signature.
8. Provide a list of vehicles that will be deployed incase you are awarded the contract.

# Price Schedule Services

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

<b>Provision of Transport services</b>	<b>Charges per Kg (Net of applicable charges)</b>	<b>Remarks</b>
Kipchabo Tea Factory - Nairobi  Kipchabo Tea Factory - Mombasa  Gatitu Tea Factory- Nairobi  Gatitu Tea Factory - Mombasa		

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

## **SECTION VII - STANDARD FORMS**

### **Notes on Standard Forms**

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

## **SECTION VII - STANDARD FORMS**

1. Form of tender
2. Price schedules
3. Contract form
4. Confidential Questionnaire form
5. Tender security form
6. Performance security form
7. Bank guarantee for advance payment
8. Declaration form



## 8.1 **FORM OF TENDER**

Date \_\_\_\_\_

Tender No. \_\_\_\_\_

To: \_\_\_\_\_

\_\_\_\_\_  
*[Name and address of procuring entity]*

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda Nos. .... *[Insert numbers]*.the of which is hereby duly acknowledged, we, the undersigned, offer to provide ..... *(Description of services)* in conformity with the said tender documents for the sum of ..... *(total tender amount in words and figures)* or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

2. We undertake, if our Tender is accepted, to provide the services in accordance with services schedule specified in the Schedule of Requirements.

3. If our Tender is accepted, we will obtain the tender guarantee in a sum equivalent to \_\_\_\_\_ percent of the Contract Price for the due performance of the Contract, in the form prescribed by (Procuring *entity*).

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

5. Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a Contract, between us.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

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

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

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

**8.2 CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM**

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

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

<p><i>Part 1 – General:</i></p> <p>Business Name .....</p> <p>Location of business premises. ....</p> <p>Plot No..... Street/Road .....</p> <p>Postal Address ..... Tel No. .... Fax ..... E mail .....</p> <p>Nature of Business .....</p> <p>Registration Certificate No. ....</p> <p>Maximum value of business which you can handle at any one time – Kshs. ....</p> <p>Name of your bankers .....</p> <p>Branch .....</p>
---

	<p style="text-align: center;">Part 2 (a) – Sole Proprietor</p> <p>Your name in full ..... Age .....</p> <p>Nationality ..... Country of origin .....</p> <ul style="list-style-type: none"> <li>• Citizenship details</li> <li>.....</li> <li>.....</li> </ul>																														
	<p style="text-align: center;">Part 2 (b) Partnership</p> <p>Given details of partners as follows:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 20%;"></th> <th style="width: 30%;">Name</th> <th style="width: 20%;">Nationality</th> <th style="width: 20%;">Citizenship Details</th> <th style="width: 10%;">Shares</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>		Name	Nationality	Citizenship Details	Shares	1.	.....	.....	.....	.....	2.	.....	.....	.....	.....	3.	.....	.....	.....	.....	4.	.....	.....	.....	.....					
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	<p style="text-align: center;">Part 2 (c) – Registered Company</p> <p>Private or Public .....</p> <p>State the nominal and issued capital of company-</p> <p style="padding-left: 20px;">Nominal Kshs. ....</p> <p style="padding-left: 20px;">Issued Kshs. ....</p> <p>Given details of all directors as follows</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 25%;">Name</th> <th style="width: 20%;">Nationality</th> <th style="width: 20%;">Citizenship Details</th> <th style="width: 10%;">Shares</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>5.</td> <td>.....</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>		Name	Nationality	Citizenship Details	Shares	1.	.....	.....	.....	.....	2.	.....	.....	.....	.....	3.	.....	.....	.....	.....	4.	.....	.....	.....	.....	5.	.....	.....	.....	.....
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5.	.....	.....	.....	.....																											
<p>Date ..... Signature of Candidate .....</p>																															

### 8.3 TENDER SECURITY FORM

Whereas ..... [*Name of the tenderer*]  
(Hereinafter called “the tenderer”) has submitted its tender dated .....  
[*Date of submission of tender*] for the provision of ..... [*Name and/or*  
*description of the services*] (Hereinafter called “the Tender”)  
..... KNOW ALL PEOPLE by these  
presents that WE ..... of ..... having our  
registered office at ..... (name if procuring entity) (Hereinafter called “the Bank”),  
are bound unto ..... [*Name of procuring entity*] (Hereinafter called “the  
Procuring entity”) in the sum of ..... For which payment well and  
truly to be made to the said Procuring entity, the Bank binds itself, its  
successors, and assigns by these presents. Sealed with the Common Seal of the said  
Bank this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

THE CONDITIONS of this obligation are:-

1. If the tenderer withdraws its Tender during the period of tender validity specified by the tenderer on the Tender Form; or
2. If the tenderer, having been notified of the acceptance of its Tender by the Procuring entity during the period of tender validity:
  - (a) fails or refuses to execute the Contract Form, if required; or
  - (b) fails or refuses to furnish the performance security, in accordance with the Instructions to tenderers;

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

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

[*Signature of the bank*]\_\_\_\_\_

(Amend accordingly if provided by Insurance Company)

## 8.4 Contract Form

THIS AGREEMENT made the \_\_\_\_ day of \_\_\_\_\_ 20\_\_ between..... [*name of Procurement entity*] of..... [*Country of Procurement entity*] (Hereinafter called “the Procuring entity”) of the one part and..... [*Name of tenderer*] of..... [*City and country of tenderer*] (Hereinafter called “the tenderer”) of the other part:

WHEREAS the Procuring entity invited tenders for certain material and spares. Viz..... [*Brief description of material and spares*] and has accepted a tender by the tenderer for the supply of those materials and spares in the spares on the sum of ..... [*Contract price in words and figures*]

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz.:
  - (a) the Tender Form and the Price Schedule submitted by the tenderer;
  - (b) the Schedule of Requirements;
  - (c) the Technical Specifications;
  - (d) the General Conditions of Contract;
  - (e) the Special Conditions of Contract; and
  - (f) The Procuring entity’s Notification of Award.
3. In consideration of the payments to be made by the Procuring entity to the tenderer as hereinafter mentioned, the tenderer hereby covenants with the Procuring entity to provide the materials and spares and to remedy defects therein in conformity in all respects with the provisions of the Contract
4. The Procuring entity hereby covenants to pay the tenderer in consideration of the provision of the materials and spares and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the contract at the times and in the manner prescribed by the contract.

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

Signed, sealed, delivered by \_\_\_\_\_ the \_\_\_\_\_ (for the Procuring entity)

Signed, sealed, delivered by \_\_\_\_\_ the \_\_\_\_\_ (for the tenderer)

In the presence of \_\_\_\_\_.

## 8.5 Performance Security Form

To: .....  
*[Name of procuring entity]*

WHEREAS ..... *[Name of tenderer]*

(Hereinafter called "the tenderer") has undertaken, in pursuance of Contract No. \_\_\_\_\_  
*[reference number of the contract]* dated \_\_\_\_\_ 20\_\_\_\_ to

Supply.....

*[Description of services]* (Hereinafter called "the Contract").

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

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

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

and we undertake to pay you, upon your first written demand declaring the tenderer to be in default under the Contract and without cavil or argument, any sum or sums within the limits of.....

*[Amount of guarantee]* as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

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

Signature and seal of the Guarantors

\_\_\_\_\_  
*[Name of bank or financial institution]*

\_\_\_\_\_  
*[Address]*

\_\_\_\_\_  
*[Date]*

**(Amend accordingly if provided Insurance Company)**

## 8.6 Bank Guarantee for Advance Payment

To: .....  
*[Name of procuring entity]*

*[Name of tender]* .....

Gentlemen and/or Ladies:

In accordance with the payment provision included in the Special Conditions of Contract, which amends the General Conditions of Contract to provide for advance payment,

..... *[Name and address of tenderer]* (hereinafter called “the tenderer”) shall deposit with the Procuring entity a bank guarantee to guarantee its proper and faithful performance under the said Clause of the Contract in an amount of.....

*[Amount of guarantee in figures and words].*

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

*[Amount of guarantee in figures and words].*

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

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

Yours truly,

Signature and seal of the Guarantors

\_\_\_\_\_  
*[Name of bank or financial institution]*

\_\_\_\_\_  
*[Address]*

\_\_\_\_\_  
*[Date]*

## 8.7 Manufacturer's Authorization Form

To: *[name of the Procuring entity]*.....

WHEREAS .....  
*[Name of the Manufacturer]*

Who are established and reputable manufacturers of.....  
*[name and/or description of the goods]*

having factories at.....  
*[Address of factory]*

Do hereby authorize.....  
*[Name and address of Agent]*

To submit a tender, and subsequently negotiate and sign the Contract with you against tender  
No.....  
*[Reference of the Tender]*

For the above goods manufactured by us.

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

---

*[Signature for and on behalf of Manufacturer]*

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

**8.8 LETTER OF NOTIFICATION OF AWARD**

Address of Procuring Entity \_\_\_\_\_  
\_\_\_\_\_

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RE: Tender No. \_\_\_\_\_

Tender Name \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_

1. Please acknowledge receipt pf this letter of notification signifying your acceptance.
2. The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.
3. You may contract the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.

(FULL  
PARTICULARS) \_\_\_\_\_  
\_\_\_\_\_

SIGNED FOR ACCOUNTING OFFICER