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**STANDARD TENDER DOCUMENT**

**TENDER NO. KOTDA/RFP/066/2021-2022**

**FOR**

**FRAMEWORK AGREEMENT FOR THE SUPPLY AND DELIVERY OF NEWSPAPER,  
MAGAZINES, AND PERIODICALS**



**APRIL 2022**

<b>Table of Content</b>	<b>Pages</b>
<b>SECTION I INVITATION FOR TENDERS .....</b>	<b>3</b>
<b>SECTION II INSTRUCTION TO TENDERERS .....</b>	<b>5</b>
<b>Appendix to instructions to Tenderers.....</b>	<b>16</b>
<b>SECTION III GENERAL CONDITIONS OF CONTRACT.....</b>	<b>18</b>
<b>SECTION IV SPECIAL CONDITIONS OF CONTRACT .....</b>	<b>23</b>
<b>SECTION V SCHEDULE OF REQUIREMENTS .....</b>	<b>25</b>
<b>SECTION VI STANDARD FORMS.....</b>	<b>31</b>
<b>1. FORM OF TENDER .....</b>	<b>32</b>
<b>2. PRICE SCHEDULE.....</b>	<b>33</b>
<b>3. CONTRACT FORM.....</b>	<b>34</b>
<b>4. CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM .....</b>	<b>35</b>
<b>5. TENDER SECURITY FORM .....</b>	<b>36</b>
<b>6. LETTER OF NOTIFICATION OF AWARD FORM.....</b>	<b>37</b>
<b>7. PERFORMANCE SECURITY FORM.....</b>	<b>38</b>

## SECTION I – INVITATION TO TENDER

**Konza Technopolis Development Authority (KoTDA)** now invites proposals from interested eligible newspapers vendors for the following tender:

No.	Reference	Description	Category	Closing Date
1.	KoTDA/RFP/066/2021-2022	Framework Agreement for Supply and Delivery of Newspapers, Magazines, and Periodicals	AGPO(PWD)	Thursday 5 <sup>th</sup> May 2022 at 2:00pm

Tender document with detailed information may be viewed and downloaded from [www.konza.go.ke](http://www.konza.go.ke) website free of charge from **Tuesday 12<sup>th</sup> April 2022** to **Thursday 5<sup>th</sup> May 2022**. Bidders who download the tender document from the website will be required to email their detailed contact information to [procurement@konza.go.ke](mailto:procurement@konza.go.ke) for recording, further clarifications, addenda and security clearance to facilitate site access.

All questions/clarifications regarding the project or offer of submission including requests for site visit, should be sent by email to [procurement@konza.go.ke](mailto:procurement@konza.go.ke) and copied to [ceo@konza.go.ke](mailto:ceo@konza.go.ke) by **Tuesday 26<sup>th</sup> April 2022** at 1700hrs local Kenyan time. No other email addresses shall be used and KoTDA shall not be liable if bidders choose to send their information and/or enquiries to other email addresses.

Tenderers shall submit **One Original** and **One Soft Copy** in a Flash disk or CD of all tender documents in plain sealed envelopes, with the Tender Number Clearly marked on the right-hand side corner and bearing no indication of the tenderer's name and addressed to:

**The Chief Executive Officer  
Konza Technopolis Development Authority  
P.O. Box 1 - 90150,  
KONZA TECHNOPOLIS, KENYA.**

E-Mail; [procurement@konza.go.ke](mailto:procurement@konza.go.ke) and [ceo@konza.go.ke](mailto:ceo@konza.go.ke)

Tel; +254-20-4343013/4

and placed in the KoTDA Tender Box on the **7<sup>th</sup> Floor** of **Konza Complex, Konza Technopolis, located along Nairobi-Mombasa Road near Malili Township** to reach the above address not later **Thursday 5<sup>th</sup> May 2022** at **1400hrs** local time.

Submitted bids will be opened publicly at the same venue shortly thereafter in the presence of the tenderers or their representatives who choose to attend.

Any form of canvassing will lead to automatic disqualification

## Table of Clauses

	Page
2.1 Eligible Tenderers.....	6
2.2 Cost of Tendering .....	6
2.3 Contents of Tender document .....	6
2.4 Clarification of Tender document.....	7
2.5 Amendments of Tender document.....	7
2.6 Language of Tenders.....	8
2.7 Documents Comprising the Tender .....	8
2.8 Tender Form .....	8
2.9 Tender Prices .....	8
2.10 Tender Currencies .....	9
2.11 Tenderers Eligibility and Qualifications .....	9
2.12 Tender Security .....	9
2.13 Validity of Tenders .....	10
2.14 Format and Signing of Tenders.....	10
2.15 Sealing and Marking of Tenders.....	10
2.16 Deadline for Submission of Tenders.....	11
2.17 Modification and Withdrawal of Tenders .....	11
2.18 Opening of Tenders .....	12
2.19 Clarification of Tenders .....	12
2.20 Preliminary Examination.....	12
2.21 Conversion to Single Currency .....	13
2.22 Evaluation and Comparison of Tenders.....	13
2.23 Contacting KOTDA the Procuring Entity .....	14
2.24 Post-Qualification .....	14
2.25 Award Criteria.....	14
2.26 KOTDA's Right to Accept or Reject any or all Tenders .....	15
2.27 Notification of Award .....	15
2.28 Signing of Contract .....	16
2.29 Performance Security.....	16
2.30 Corrupt or Fraudulent Practices .....	16

## **SECTION II INSTRUCTION TO TENDERERS**

### **2.1. Eligible Tenderers**

This Invitation for Tenders is open to all Tenderers eligible as described in the Appendix to Instructions to Tenderers. Successful Tenderers shall provide the services for the stipulated duration from the date of commencement (hereinafter referred to as the term) specified in the tender documents.

- 2.1.1 The KoTDA's employees, committee members, board members and their relatives (spouse and children) are not eligible to participate in the tender unless where specially allowed under SECTION 131 of the Act.
- 2.1.2 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 KoTDA to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the services under this Invitation for tenders.
- 2.1.3 Tenderers involved in the corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

### **2.2 Cost of Tendering**

- 2.2.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and KOTDA, will in no case be responsible or liable for those costs. Regardless of the conduct or outcome of the tendering process
- 2.2.2 KOTDA shall allow the tenderer to review the tender document free of charge before purchase.

### **2.3 Contents of Tender Document**

2.3.1 The tender documents comprise the documents listed below and addenda issued in accordance with clause 2.5 of these instructions to Tenderers.

- (i) Instructions to Tenderers
- (ii) General Conditions of Contract
- (iii) Special Conditions of Contract
- (iv) Schedule of Requirements
- (v) Details of Insurance Cover
- (vi) Form of Tender
- (vii) Price Schedules
- (viii) Contract Form
- (ix) Confidential Business Questionnaire Form
- (x) Tender security Form
- (xi) Performance security Form
- (xii) Insurance Company's Authorization Form
- (xiii) Form KOTDA 1 – Professional Qualifications
- (xiv) Form KOTDA 2 – Client Reference Form

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

## **2.4 Clarification of Tender Documents**

- 2.4.1 A Candidate making inquiries of the tender documents may notify KoTDA by email at KoTDA address indicated in the Invitation for tenders. KoTDA will respond in writing to any request for clarification of the tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of the tenders, prescribed by KoTDA. Written copies of KoTDA response (including an explanation of the query but without identifying the source of inquiry) will be sent to all candidates who have received the tender documents.
- 2.4.2 KoTDA shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.
- 2.4.3 Preference where allowed in the evaluation of tenders shall not exceed 15%.

## **2.5 Amendment of Tender Documents**

- 2.5.1 At any time prior to the deadline for submission of tenders, KoTDA, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by issuing an addendum.
- 2.5.2 All prospective Tenderers who have obtained the tender documents will be notified of the amendment by post, fax or email and such amendment will be binding on them.
- 2.5.3 In order to allow prospective Tenderers reasonable time in which to take the amendment into account in preparing their tenders, KoTDA, at its discretion, may extend the deadline for the submission of tenders.

## **2.6 Language of Tenders**

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

## **2.7 Documents Comprising the Tender**

- 2.7.1 The tender prepared by the tenderer shall comprise the following components:
  - (a) A Tender Form and a Price Schedule completed in accordance with paragraph 2.8, 2.9 and 2.10 below
  - (b) Documentary evidence established in accordance with paragraph 2.1.2 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted.
  - (c) Tender security furnished in accordance with paragraph 2.12 (if applicable)
  - (d) Declaration Form.

## 2.8. Form of Tender

2.8.1 The tenderer shall complete the Tender Form and the Price Schedule furnished in the tender documents, indicating the services to be provided.

## 2.9. Tender Prices

2.9.1 The tenderer shall indicate on the form of tender and the appropriate Price Schedule the unit prices and total tender price of the services it proposes to provide under the contract.

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

2.9.3 Prices quoted by the tenderer shall remain fixed during the Term of the contract unless otherwise agreed by the parties. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.20.5

## 2.10 Tender Currencies

2.10.1 Prices shall be quoted in Kenya Shillings

## 2.11. Tenderers Eligibility and Qualifications

2.11.1 Pursuant to paragraph 2.1 the tenderer shall furnish, as part of its tender, documents establishing the Tenderers eligibility to tender and its qualifications to perform the contract if it's tender is accepted.

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

## 2.12. Tender Security

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

2.12.2 The tender security is **N/A**

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

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

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

2.12.5 Any tender not secured in accordance with paragraph 2.12.1. and 2.12.3 **shall be rejected by KoTDA as non-responsive**, pursuant to paragraph 2.20.5

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

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

The Tender Security maybe forfeited:

- (a) If a tenderer withdraws its tender during the period of tender validity.
- (b) in the case of a successful tenderer, if the tenderer fails:
  - (i) To sign the contract in accordance with paragraph 2.29 or
  - (ii) To furnish performance security in accordance with paragraph 2.30.
- (c) If the tenderer rejects correction of an arithmetic error in the tender.

### **2.13. Validity of Tenders**

2.13.1 Tenders shall remain valid for 150 days after date of tender opening pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by KoTDA as non-responsive.

2.13.2 In exceptional circumstances, KoTDA may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 2.12 shall also be suitably extended. A tenderer granting the request will not be required nor permitted to modify its tender.

### **2.14. Format and Signing of Tenders**

2.14.1 The tenderer shall prepare an original and a copy of the tender, clearly marking each "**ORIGINAL TENDER**" and "**SOFT COPY OF TENDER**," as appropriate. In the event of any discrepancy between them, the original shall govern.

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

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

### **2.15 Sealing and Marking of Tenders**

2.15.1 The tenderer shall seal the original and the copy of the tender in separate Envelopes, duly marking the envelopes as "**ORIGINAL TENDER**" and "**SOFT COPY OF TENDER**". The envelopes shall then be sealed in an outer envelope.

The inner and outer envelopes shall:

- a) Be addressed to KoTDA at the address given in the Invitation to Tender.
- b) Bear tender number and name in the invitation to tender and the words "**DO NOT OPEN BEFORE THURSDAY 5<sup>TH</sup> MAY 2022 AT 1400hrs.**"



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

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

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

2.16.1 Tenders must be received by KoTDA at the address specified under paragraph 2.15.2 not later than **Thursday 5<sup>th</sup> May 2022 at 1400Hrs.**

2.16.2 KoTDA may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 2.5.3 in which case all rights and obligations of KoTDA and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

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

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

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

2.17.2 The Tenderer's modification or withdrawal notice shall be prepared, sealed, marked and dispatched in accordance with the provisions of paragraph 2.15. A withdrawal notice may also be sent by fax or email but followed by a signed confirmation copy, postmarked no later than the deadline for submission of tenders.

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

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

## **2.18 Opening of Tenders**

2.18.1 KoTDA will open all tenders in the presence of Tenderers' representatives who choose to attend, on **Thursday 5<sup>th</sup> May 2022 at 1400Hrs** and in the location specified in the invitation for tenders. The Tenderers' representatives who are present shall sign a register evidencing their attendance.

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

2.18.3 KoTDA will prepare minutes of the tender opening, which will be submitted to Tenderers that signed the tender opening register and will have made the request.

## **2.19 Clarification of Tenders**

- 2.19.1 To assist in the examination, evaluation and comparison of tenders KoTDA 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.
- 2.19.2 Any effort by the tenderer to influence KoTDA in KoTDA's tender evaluation, tender comparison or contract award decisions may result in the rejection of the Tenderers' tender.

## **2.20 Preliminary Examination and Responsiveness**

- 2.20.1 KoTDA 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.
- 2.20.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security forfeited. If there is a discrepancy between words and figures, the amount in words will prevail
- 2.20.3 KoTDA 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.
- 2.20.4 Prior to the detailed evaluation, pursuant to paragraph 2.20, KoTDA 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 KoTDA's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.
- 2.20.5 If a tender is not substantially responsive, it will be rejected by KoTDA and may not subsequently be made responsive by the tenderer by correction of the nonconformity.

## **2.21. Conversion to single currency**

- 2.21.1 Where other currencies are used, KoTDA will convert those currencies to Kenya Shillings using the selling exchange rate on the date of tender closing provided by The Central Bank of Kenya.

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

- 2.22.1 KoTDA will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.20
- 2.22.2 KoTDA's evaluation of a tender will take into account, in addition to the tender price, the following factors, in the manner and to the extent indicated in paragraph 2.22.3.

- (a) Operational plan proposed in the tender;

- (b) Deviations in payment schedule from that specified in the Special Conditions of Contract

2.22.3 Pursuant to paragraph 2.22.2. The following evaluation methods will be applied.

- (a) Operational Plan
  - (i) KoTDA 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 KoTDA's required delivery time will be treated as non-responsive and rejected.
- (b) Deviation in payment schedule
  - (i) Tenderers shall state their tender price for the payment on 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. KoTDA may consider the alternative payment schedule offered by the selected tenderer.

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

### **2.23. Contacting KoTDA**

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

2.23.2 Any effort by a tenderer to influence KoTDA in its decisions on tender evaluation, tender comparison, or contract award may result in the rejection of the Tenderers' tender.

### **2.24 Post-qualification**

2.24.1 KoTDA will verify and determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.

2.24.2 The determination will take into account the tenderer financial and technical capabilities. It will be based upon an examination of the documentary evidence of the Tenderers qualifications submitted by the tenderer, pursuant to paragraph 2.11.2, as well as such other information as KoTDA deems necessary and appropriate

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

### **2.25 Award Criteria**

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

2.25.2 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.
- (b) 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.
- (b) Shall not be debarred from participating in public procurement.
- (c) Please see other key requirements for consideration of award (Special Conditions of Contracts)

## **2.26. KOTDA's Right to accept or Reject any or all Tenders**

2.26.1 KoTDA 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 KoTDA's action. If KoTDA determines that none of the tenders is responsive, KoTDA shall notify each tenderer who submitted a tender.

2.26.2 KoTDA shall give prompt notice of the termination to the Tenderers and on request give its reasons for termination within 30 days of receiving the request from any tenderer.

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

## **2.27 Notification of Award**

2.27.1 Prior to the expiration of the period of tender validity, KoTDA will notify the successful tenderer in writing that its tender has been accepted.

2.27.2 The notification of award will signify the formation of the contract subject to the signing of the contract between the tenderer and KoTDA pursuant to clause 2.9. Simultaneously the other Tenderers shall be notified that their tenders were not successful.

2.27.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 2.29 KoTDA will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.12.

## **2.28 Signing of Contracts**

2.28.1 At the same time as KoTDA notifies the successful tenderer that its tender has been accepted, KoTDA will simultaneously inform the other Tenderers that their tenders have not been successful.

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

2.28.3 The contract will be definitive upon its signature by the two parties.

2.28.4 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

## **2.29 Performance Security**

2.29.1 The successful tenderer shall furnish the performance security in accordance with the Conditions of Contract, in a form acceptable to KoTDA.

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

## **2.30 Corrupt or Fraudulent Practices**

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

2.30.2 KoTDA will reject a proposal for award if it determines that the tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.

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

## APPENDIX TO INSTRUCTIONS TO TENDERERS

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

Instructions to Tenderers'	Particulars of Appendix to instructions to Tenderers
2.11	The tender is open to qualified firms for supply and delivery of newspapers, magazines and journals Bid validity period is for 150 days after date of Tender Opening.
2.8	Form of Tender Security: The Tender Security is NOT required
2.1.3	Validity of Tenders: Tenders shall remain valid for 150 days after date of Tender Opening.
	<b>Closing Date:</b> Thursday 5 <sup>th</sup> May 2022 at 1400Hrs.
	Deadline for submission of Tenders: As 2.15.2 (b) above.
2.16	Bulky tenders which do not fit in the Tender Box shall be delivered to the Procurement Department at <b>7<sup>th</sup> Floor, Konza Complex, Konza Technopolis.</b>
2.20	<b>Evaluation and Comparison of Tenders</b>
	The proposals will be evaluated in three stages as follows:

### Stage One:

#### MANDATORY REQUIREMENTS:

Tenderers are required to submit copies of the following mandatory documents which will be used during preliminary examination to determine responsiveness.

1. Valid Tax Compliance from KRA
2. Valid Certificate of Registration
3. Pin Certificate
4. Valid AGPO Certificate (PWD)

**Stage Two:  
TECHNICAL EVALUATION**

No.	Descriptio	Weight Score	Score
1	Experience in supplies of similar nature. Demonstrated by list of clients /contracts in last five years.	<ul style="list-style-type: none"> <li>Evidence of at least five corporate clients: 5%</li> </ul>	5
2.	Number of years in business supplying newspaper, magazines and periodicals. Bidders to indicate the years in the response column	<ul style="list-style-type: none"> <li>5 years and above: 10%</li> <li>Others prorated at: <math>\frac{\text{Number of years}}{10} \times 10</math></li> </ul>	10
3.	List of personnel in employment: the bidder to indicate in the remark's column	<ul style="list-style-type: none"> <li>Five and above employees: 10%</li> <li>Below five: 5%.</li> </ul>	10
4.	Commitment to supply the daily newspaper at 6.30 a.m.	Indication in the response column the time of delivery.	5
5.	Willingness to supply all the newspapers listed in the Price schedule A	Comprehensive quotation for all newspapers under Schedule A in the price schedule	2.5
6.	Source of newspapers or Magazines. Bidder to indicate the source in the response column	<ul style="list-style-type: none"> <li>Publishers/printers: 5%</li> <li>Agents/distributors: 3%</li> </ul>	5
	Total		40

**Award Criteria:**

Only bidders who score above 80% of the total technical score will be subjected to financial evaluation. Those who score below 80% will be eliminated at this stage from the entire evaluation process and will not be considered further.

**N/B**

**The Authority will enter into a framework contract with bidders who shall have been determined to be technically and financially responsive in accordance with the evaluation criteria.**

### SECTION III GENERAL CONDITIONS OF CONTRACT

<b>Table of Clauses</b>	<b>Page</b>
3.1 Definitions .....	21
3.2 Application .....	21
3.3 Standards .....	21
3.4 Use of Contract Documents and Information .....	21
3.5 Patent Rights.....	22
3.6 Performance Security.....	22
3.7 Delivery of Services and Documents .....	22
3.8 Payment.....	23
3.9 Prices .....	23
3.10 Assignment.....	23
3.11 Termination for Default .....	23
3.12 Termination for Insolvency.....	24
3.13 Termination for Convenience .....	24
3.14 Resolution of Disputes .....	24
3.15 Governing Language.....	24
3.16 Applicable law.....	25
3.17 Force Majeure.....	25
3.18 Notices.....	25



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

### **3.1 Definitions**

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

- a) "The Contract Price" means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations.
- b) "The Services" means services to be provided by the tenderer including any documents, which the tenderer is required to provide to KoTDA under the Contract.
- c) "KoTDA" means Konza Technopolis Development Authority
- d) "The Contractor" means the organization or firm providing the services under this Contract.
- e) "GCC" mean the General Conditions of Contract contained in this SECTION
- f) "SCC" means the Special Conditions of Contract

3.1.1.1 "Day" means calendar day

### **3.2 Application**

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

### **3.3 Standards**

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

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

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

3.4.2 The Service Provider shall not, without KoTDA's prior written consent, make use of any document or information enumerated in paragraph 2.4.1 above.

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

### **3.5. Patent Rights**

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

### **3.6 Performance Security**

3.6. Before signing the of Contract, the successful tenderer shall furnish to KoTDA the performance security where applicable in the amount specified in SCC.

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

3.6.3. The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to KoTDA 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

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

### **3.7 Delivery of services and Documents**

3.7.1 Delivery of the services shall be made by the contractor in accordance with the terms specified by the procuring entity in the schedule of requirements and the special conditions of contract

### **3.8. Payment**

3.81. The method and conditions of payment to be made to the contractor under this Contract shall be specified in SCC

3.82. Payment shall be made promptly by KoTDA, but in no case later than sixty (60) days after submission of an invoice or claim by the Contractor.

### **3.9. Prices**

3.9.1 Prices charges by the contractor for Services performed under the Contract shall not, with the exception of any price adjustments authorized in SCC vary from the prices quoted by the tenderer in its tender or in KoTDA'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 amendments signed by the parties.

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

3.9.3 Where contract price variation is allowed the variation shall not exceed 10% of the original contract price

3.9.4 Price variation requests shall be processed by KoTDA within 30 days of receiving the request.

### **3.10. Assignment**

3.10.1 The Contractor shall not assign, in whole or in part, its obligations to perform under this Contract, except with KoTDA's prior written consent.

### **3.11. Termination for Default**

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

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

3.11.2 In the event KoTDA 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 un-delivered, and the Contractor shall be liable to KoTDA for any excess costs for such similar services. However, the contractor shall continue performance of the contract to extent not terminated.

### **3.12. Termination for Insolvency**

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

### **3.13. Termination for Convenience**

3.13.1 KoTDA 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 KoTDA's convenience, the extent to which performance of the Contractor of the contract is terminated and the date on which such termination becomes effective.

3.13.2 For the remaining part of the contract after termination KoTDA may elect to cancel the services and pay to the Contractor an agreed amount for partially completed services.

### **3.14 Resolution of Disputes**

3.14.1 KoTDA and the Contractor shall make every effort to resolve amicably by direct informal negotiations and disagreement or disputes arising between them under or in connection with the contract

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

### **3.15. Governing Language**

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

### **3.16 Applicable Law**

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

### **3.17 Force Majeure**

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

### **3.18 Notices**

3.18.1 Any notices given by one party to the other pursuant to this contract shall be sent to the other party by post or by Fax or Email and confirmed in writing to the other party's address specified in the SCC.

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

## SECTION IV – SPECIAL CONDITIONS OF CONTRACT

### Notes on Special Conditions of Contract

The clauses in this section are intended to assist the KoTDA in providing contract specific information in relation to corresponding clauses in the general conditions of contract.

The provisions of Section IV complement the general conditions of contract included in section III, specifying contractual requirements linked to the special circumstances of the KoTDA and the procurement of services required. In preparing section IV, the following aspects should be taken into consideration.

1. Information that complements provisions of section III must be incorporated.
2. Amendments and/or supplements to provision of section III, as necessitated by the circumstances of the specific service required must also be incorporated.

Where there is a conflict between the provisions of the special conditions of contract and the provisions of the general conditions of contract the provisions of the special conditions of contract herein shall prevail over the provisions of the general conditions of contract.

**4.1** Special Conditions of Contract (SCC) shall supplement the general conditions of contract, wherever there is a conflict between the General Conditions of Contract (GCC) and the SCC, the provisions of the SCC herein shall prevail over those in the GCC.

**4.2** Special conditions of contract with reference to the general conditions of contract.

General conditions of contract Reference	Special conditions of contract
3.8	<b><i>Performance Security</i></b> <i>10% of estimated Contract Sum in the Form of Bank Guarantee drawn by a bank licensed and operating in Kenya</i>
3.10	<b><i>Payment</i></b> <i>The payment terms are for a credit period of thirty (30) days from the date when the monthly invoices are received at KoTDA; and upon confirmation of satisfactory receipt of services.</i>
3.16	<b><i>Resolution of Disputes</i></b> <i>The provisions of the arbitration act of the laws of Kenya shall apply.</i>

**SECTION V - SCHEDULE OF REQUIREMENTS**

**a) PROCUREMENT ITEM**

Schedule A:

No.	Description	Estimated Annual Quantity	Delivery schedule
1	Daily Nation	7	Timely so as to be received at the delivery point by 6.30 am
2.	The Standard	7	Timely so as to be received at the delivery point by 6.30 am
3.	The East African	4	Timely so as to be received at the delivery point by 6.30 am
4.	Business Daily	4	Timely so as to be received at the delivery point by 6.30 am

**b) Instructions on Submission of Bids**

The tenderer must submit a one-envelope bid in the following format:

SECTION	DOCUMENT
A	Tender Notice/Invitation to tender
B	Confirmation of submission
C	Power of Attorney
D	Confidential Business Questionnaire
E	Business Registration Certificate
F	Organization Chart
G	Key staff competency profiles
H	Physical Address Details
I	Statement of experience
J	Details of three major clients
K	Anti-Corruption Affidavit
L	Tax Compliance
M	Tender Form and Price Schedules

**Tender Responsiveness Criteria**

The submission of the following items will be required in the determination of the Completeness of the Bid. Bids that do not contain all the information required will be declared non responsive and shall not be evaluated further.

	Description of Criteria
1.	<p align="center"><b>Submission of Tender Documents</b></p> <ul style="list-style-type: none"> <li>▪ One envelope –bid</li> <li>▪ Power of Attorney<sup>1</sup></li> </ul>
2.	<p align="center"><b>Company Profile</b></p> <ul style="list-style-type: none"> <li>▪ Attach copy of Registration of Business</li> <li>▪ Confidential Business Questionnaire</li> <li>▪ Copy of Trade License</li> </ul>

<b>3.</b>	<b>Managerial and Key Personnel Competency Profiles</b> Attach: <ul style="list-style-type: none"> <li>▪ Curriculum Vitae of the Manager in charge of operations</li> </ul>
<b>4.</b>	<b>Physical Facilities</b> Physical Address: <ul style="list-style-type: none"> <li>▪ State if owned or leased and attach copy of title or lease documents and latest utility bill.</li> <li>▪ Equipment and other resources related to the procurement item.</li> </ul>
<b>5.</b>	<b>Experience</b> Experience in supplies if similar nature. Demonstrate by listing of clients/contracts in last two years for a value of at least 500,000.00.
<b>6.</b>	<b>Reputation</b> Submit details of three major client, summary of services rendered, value of contracts and contact person, address and telephone numbers, and letters of reference
<b>7.</b>	<b>Social Obligations</b> Submit certificate of compliance for the following; <ul style="list-style-type: none"> <li>▪ Anti-Corruption Affidavit<sup>2</sup></li> <li>▪ Tax Compliance<sup>3</sup></li> </ul>

#### Vendor Evaluation Criteria

The following criteria will be used in the evaluation of all potential suppliers.

The documents submitted will be evaluated for suitability and awarded marks which will contribute to a maximum 30% of the total tender evaluation.

Description of Criteria	Maximum Score	Score
<b>Company Profile</b> Suitability of Service Provider	<b>10</b>	
<b>Managerial and Key Personnel Competency Profiles</b> Qualification of the Manager in charge of operations as relates their ability to manage the contract	<b>5</b>	
<b>Physical Facilities</b> Proof of physical Address and Capacity to deliver goods/services	<b>3</b>	
<b>Experience</b> No. of Continuous Year of Service Required	<b>4</b>	
<b>Reputation</b> Proof of Satisfactory Service. Contracts of similar or higher value	<b>5</b>	
<b>Social Obligations</b> Proof of having satisfied Key Social Obligations	<b>3</b>	
<b>Total Score</b>	<b>30</b>	

#### (d) Overall Tender Evaluation Criteria

The tender evaluation criteria is weighted as follows; -

Criteria	Maximum Score	Scores
Tender Responsiveness	mandatory	Requirement
Vendor Evaluation	30	
Technical Specifications	40	
Financial & Delivery Schedules	30	
<b>Totals</b>	<b>100</b>	

<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>
<b>Item</b>	<b>Description</b>	<b>Estimated Annual Quantities</b>	<b>Current Unit Cover Price as at the date of tender closure i.e</b>	<b>Discount in Percentage (%) off the Cover Price</b>	<b>Net Unit Price after reduction of the Discount in column 4 inclusive of all Taxes</b>
1	Daily Nation	<u>2520</u>			
2.	The Standard	<u>2520</u>			
3.	The East African	<u>2440</u>			
4.	Business Daily	<u>2440</u>			
<b>Grand Total Cost in Kshs.</b>					

*Note: The Estimated Annual Quantities are only indicative for purpose of providing with expected volume of business and in determining the lowest Evaluated Bidder who will then be provided with a framework contract for three (3 years at the indicated net unit prices. Should the cover price change during the contract period, the bidder will be expected to extend the same percentage (%) discount.*

*Tender's Signature* \_\_\_\_\_ *Official Stamp* \_\_\_\_\_ *Date* \_\_\_\_\_



**SECTION VI      STANDARD FORMS**

**1. Form of Tender**

Date .....

To: The Chief Executive Officer,  
Konza Technopolis Development Authority  
7th Floor, Konza Complex,  
P. O. Box 1 - 90150, Konza Technopolis, Kenya

Sir/Madam:

1. Having examined the Tender documents including Addenda Nos. *[insert addenda numbers]*, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to **Supply and Delivery of Newspapers, Magazines and Journals** conformity with the said Tender documents for the sum of *[total Tender amount in words and figures]* being 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 deliver the Services in accordance with the delivery schedule specified in the Schedule of Requirements.
- 3. We agree to abide by this Tender for the Tender validity period specified in Clause 2.13 of the Appendix to Instructions to Tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
- 4. We are not participating, as Tenderers, in more than one Tender in this Tendering process.
- 5. Our firm, its affiliates or subsidiaries – including any subcontractors or suppliers for any part of the contract – has not been declared ineligible by the Government of Kenya under Kenyan laws.
- 6. Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.
- 7. We understand that you are not bound to accept the lowest or any tender you may receive.
- 8. We certify/confirm that we comply with the eligibility requirements as per ITT Clause 3 of the Tender documents

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.  
(Name)

\_\_\_\_\_  
*[Signature] [in the capacity of]*  
Duly authorized to sign Tender for and on behalf of \_\_\_\_\_  
Tender No. **KOTDA/RFP/066/2021-2022**

**2. 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 materials and spares. Viz.....[brief description of materials and spares] and has accepted a tender by the tenderer for the supply of those materials and spares in the sum of .....[contract price in words and figures] NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

- 1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
- 2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz.:

- (a) the Tender Form and the Price Schedule submitted by the tenderer;
- (b) the Schedule of Requirements;
- (c) the Technical Specifications;
- (d) the General Conditions of Contract;
- (e) the Special Conditions of Contract; and
- (f) The Procuring entity’s Notification of award.

3. In consideration of the payments to be made by the Procuring entity to the tenderer as hereinafter mentioned, the tenderer hereby covenants with the Procuring entity to provide the materials and spares and to remedy defects therein in conformity in all respects with the provisions of the Contract

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

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

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

Signed, sealed, delivered by \_\_\_\_\_ the \_\_\_\_\_ (for the tenderer) in the presence of.....

### 3. Confidential Business Questionnaire

You are requested to give the particular indicated in Part 1 and either Part 2(a), 2(b), or 2(c), which ever applies to your type of business. You are advised that it is a serious offence to give false information on this Form.

#### Part - General:

Business Name .....

Location of business premises .....

Plot No .....

Street/Road .....

Postal Address ..... Tel. No ..... Fax

..... Email .....

Nature of business .....

Registration Certificate No .....

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

Name of your bankers.....Branch.....

#### 2(a) - Sole Proprietor:

Your name in full.....Age .....

Nationality..... Country of origin .....

Citizenship details .....

#### Party 2(b) - Partnership

Give details of partners as follows

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

**Part 2(c) -Registered Company**

Private or public .....

State the nominal and issued capital of the company -

Nominal Kshs .....

Issued Kshs .....

Give details of all directors as follows

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

Date..... Signature of Tenderer .....

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

**4. Tender Securing Declaration Form**

**TENDER SECURING DECLARATION FORM**

(The Bidder shall complete this Form in accordance with the instructions indicated)

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

Tender No..... (*insert number of bidding process*)

To: **KONZA TECHNOPOLIS DEVELOPMENT AUTHORITY**

We, the undersigned, declare that: -

- 1 We understand that, according to your conditions, bids must be supported by a Bid-Securing Declaration.
- 2 We accept that we will automatically be suspended from being eligible for bidding 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 with our Bid during the period of bid validity specified by us in the Bidding 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 ITT
- 3 We understand that this Bid Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of
  - i) our receipt of a copy of your notification of the name of successful Bidder, or
  - ii) twenty-eight days after the expiration of our Tender
- 4 We understand that if we are a Joint Venture, the Bid 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 Bid Securing shall be in the names of all future partners as named in the letter of intent.

Signed: ..... (*insert signature of person whose name and capacity are shown*) in the capacity of ..... (*insert legal capacity of person signing the Bid Securing Declaration*)

Name: ..... (*insert complete name of person signing the Bid Securing Declaration*)

Duly authorized to sign the bid for and on behalf of: (insert complete name of Bidder)

**5. PERFORMANCE SECURITY FORM**

[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 insurance services] (Hereinafter called "the Contract")

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

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

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the tenderer, up to a total of .....

[amount of the guarantee in words and figures] and we undertake to pay you, upon your first written demand declaring the tenderer to be in default under the Contract and without cavil or argument, any sum of money within the limits of

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

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

Signature and seal of the Guarantors

[Name of bank of financial institution]

[Address/]

[Date]

(Amend accordingly if provided by Insurance Company)

**KOTDA 1 – PROFESSIONAL QUALIFICATIONS**

Officer's Name	Position Held	Professional Qualifications (list)	Date of Qualification	Education Qualification – Highest Only University Degree (specify) e.g.	Relevant Experience

Signature.....  
**Chief Executive Officer/ Principal**

.....  
**Date**

**6. LITIGATION AND ARBITRATION HISTORY FORM**

**Firms, including each of the partners of a joint venture, must provide information on any history of litigation or arbitration resulting from contracts executed in the last five years or currently under execution. A separate sheet should be used for each partner of a joint venture.**

Firms not involved in any litigation or arbitration proceedings must declare.

Name of Firm or Partner of a joint venture
--

.....

Year	Award FOR or AGAINST Firm	Name of client, cause of litigation and matter in dispute	Disputed amount (current, value, Kshs.)

I certify that the above information is correct.

Name:

.....

.....  
*Title*

.....  
*Signature*

.....  
*Date*

Company Seal / Business Stamp



**7. SELF-DECLARATION FORM/ANTI-CORRUPTION DECLARATION**

We (insert the name of the company / supplier) ----- declares and guarantees that no offer, gift or payment, consideration or benefit of any kind, which constitutes an illegal or corrupt practice, has been or will be made to anyone by our organization or agent, either directly or indirectly, as an inducement or reward for the award or execution of this procurement.

In the event the above is contravened we accept that the following to apply —

- a) The person shall be disqualified from entering into a contract for the procurement;  
or
- b) If a contract has already been entered into with the person, the contract shall be voidable at the option of KOTDA.
- c) The voiding of a contract by the procuring entity under subsection(b) does not limit any other legal remedy That KOTDA may have.

Name .....Signature..... Date .....

Company Seal / Business Stamp