



MINISTRY OF LABOUR & SOCIAL PROTECTION

STATE DEPARTMENT FOR LABOUR

BIDDING DOCUMENT

for

**PROCUREMENT OF 2 NO. LOTS OF MOTOR
VEHICLES FOR KYEOP-LMIS**

Tender No: ML&SP/SDL/ONT/NHRPD/14/FY 2018-2019

**PROJECT: KENYA YOUTH EMPLOYMENT
OPPORTUNITIES PROJECT (KYEOP)**

IDA CREDIT NO.: 58120-KE

COUNTRY: KENYA

ISSUED ON: MAY 2019

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PART 1 – BIDDING PROCEDURES

Section I. Instructions to Bidders

A. General

- 1.Scope of Bid**
- 1.1 In connection with the Invitation for Bids, **specified in the Bid Data Sheet (BDS)**, the Purchaser, **as specified in the BDS**, issues these Bidding Documents for the supply of Goods and Related Services incidental thereto as specified in Section VII, Schedule of Requirements. The name, identification and number of lots (contracts) of this National Competitive Bidding (NCB) procurement are **specified in the BDS**.
- 1.2 Throughout these Bidding Documents:
- (a) the term “in writing” means communicated in written form (e.g. by mail, e-mail, fax, telex) with proof of receipt;
 - (b) if the context so requires, “singular” means “plural” and vice versa; and
 - (c) “day” means calendar day.
- 2.Source of Funds**
- 2.1 The Borrower or Recipient (hereinafter called “Borrower”) **specified in the BDS** has applied for or received financing (hereinafter called “funds”) from the International Bank for Reconstruction and Development or the International Development Association (hereinafter called “the Bank”) in an amount **specified in BDS**, toward the project named **in BDS** The Borrower intends to apply a portion of the funds to eligible payments under the contract for which these Bidding Documents are issued.
- 2.2 Payment by the Bank will be made only at the request of the Borrower and upon approval by the Bank in accordance with the terms and conditions of the Loan (or other financing) Agreement. The Loan (or other financing) Agreement prohibits a withdrawal from the Loan (or other financing) account for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import, to the knowledge of the Bank, is prohibited by decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations. No party other than the Borrower shall derive any rights from the Loan (or other financing) Agreement or have any claim to the proceeds of the Loan (or other financing).
- 3.Corrupt and Fraudulent Practices**
- 3.1 The Bank requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Section VI.
- 3.2 In further pursuance of this policy, Bidders shall permit and shall cause its agents (where declared or not), sub-contractors, sub-consultants, service providers or suppliers and to permit the

Bank to inspect all accounts, records and other documents relating to the submission of the application, bid submission (in case prequalified), and contract performance (in the case of award), and to have them audited by auditors appointed by the Bank.

- 4. Eligible Bidders**
- 4.1 A Bidder may be a firm that is a private entity, a government-owned entity—subject to ITB 4.5—or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the bidding process and, in the event the JV is awarded the Contract, during contract execution. **Unless specified in the BDS**, there is no limit on the number of members in a JV.
- 4.2 A Bidder shall not have a conflict of interest. Any Bidder found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest for the purpose of this bidding process, if the Bidder:
- (a) directly or indirectly controls, is controlled by or is under common control with another Bidder; or
 - (b) receives or has received any direct or indirect subsidy from another Bidder; or
 - (c) has the same legal representative as another Bidder; or
 - (d) has a relationship with another Bidder, directly or through common third parties, that puts it in a position to influence the bid of another Bidder, or influence the decisions of the Purchaser regarding this bidding process; or
 - (e) participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which such Bidder is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or
 - (f) any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the bid; or
 - (g) any of its affiliates has been hired (or is proposed to be hired) by the Purchaser or Borrower for the Contract implementation; or
 - (h) would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the project specified in the BDS ITB 2.1 that it provided or were provided by any affiliate that directly or indirectly

controls, is controlled by, or is under common control with that firm; or

- (i) has a close business or family relationship with a professional staff of the Borrower (or of the project implementing agency, or of a recipient of a part of the loan) who: (i) are directly or indirectly involved in the preparation of the bidding documents or specifications of the contract, and/or the bid evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Bank throughout the procurement process and execution of the contract

4.3 A Bidder may have the nationality of any country, subject to the restrictions pursuant to ITB 4.7. A Bidder shall be deemed to have the nationality of a country if the Bidder is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed sub-contractors or sub-consultants for any part of the Contract including related Services.

4.4 A Bidder that has been sanctioned by the Bank in accordance with the above ITB 3.1, including in accordance with the Bank's Guidelines on Preventing and Combating Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants ("Anti-Corruption Guidelines"), shall be ineligible to be prequalified for, bid for, or be awarded a Bank-financed contract or benefit from a Bank-financed contract, financially or otherwise, during such period of time as the Bank shall have determined. The list of debarred firms and individuals is available at the electronic address **specified in the BDS.**

4.5 Bidders that are Government-owned enterprises or institutions in the Purchaser's Country may participate only if they can establish that they (i) are legally and financially autonomous (ii) operate under commercial law, and (iii) are not dependent agencies of the Employer. To be eligible, a government-owned enterprise or institution shall establish to the Bank's satisfaction, through all relevant documents, including its Charter and other information the Bank may request, that it: (i) is a legal entity separate from the government (ii) does not currently receive substantial subsidies or budget support; (iii) operates like any commercial enterprise, and, inter alia, is not obliged to pass on its surplus to the government, can

acquire rights and liabilities, borrow funds and be liable for repayment of its debts, and can be declared bankrupt; and (iv) is not bidding for a contract to be awarded by the department or agency of the government which under their applicable laws or regulations is the reporting or supervisory authority of the enterprise or has the ability to exercise influence or control over the enterprise or institution.

- 4.6 A Bidder shall not be under suspension from bidding by the Purchaser as the result of the operation of a Bid-Securing Declaration.
- 4.7 Firms and individuals may be ineligible if so indicated in Section V and (a) as a matter of law or official regulations, the Borrower's country prohibits commercial relations with that country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the supply of goods or the contracting of works or services required; or (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's country prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person, or entity in that country.
- 4.8 A Bidder shall provide such evidence of eligibility satisfactory to the Purchaser, as the Purchaser shall reasonably request.

5. Eligible Goods and Related Services

- 5.1 All the Goods and Related Services to be supplied under the Contract and financed by the Bank may have their origin in any country in accordance with Section V, Eligible Countries.
- 5.2 For purposes of this Clause, the term "goods" includes commodities, raw material, machinery, equipment, and industrial plants; and "related services" includes services such as insurance, installation, training, and initial maintenance.
- 5.3 The term "origin" means the country where the goods have been mined, grown, cultivated, produced, manufactured or processed; or, through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

B. Contents of Bidding Document

6. Sections of Bidding Document

- 6.1 The Bidding Documents consist of Parts 1, 2, and 3, which include all the Sections indicated below, and should be read in conjunction with any Addenda issued in accordance with ITB 8.

PART 1 Bidding Procedures

- Section I. Instructions to Bidders (ITB)
- Section II. Bidding Data Sheet (BDS)
- Section III. Evaluation and Qualification Criteria
- Section IV. Bidding Forms
- Section V. Eligible Countries
- Section VI. Bank Policy-Corrupt and Fraudulent Practices

PART 2 Supply Requirements

- Section VII. Schedule of Requirements

PART 3 Contract

- Section VIII. General Conditions of Contract (GCC)
- Section IX. Special Conditions of Contract (SCC)
- Section X. Contract Forms

- 6.2 The Invitation for Bids issued by the Purchaser is not part of the Bidding Document.
- 6.3 Unless obtained directly from the Purchaser, the Purchaser is not responsible for the completeness of the document, responses to requests for clarification, the Minutes of the pre-Bid meeting (if any), or Addenda to the Bidding Document in accordance with ITB 8. In case of any contradiction, documents obtained directly from the Purchaser shall prevail.
- 6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents and to furnish with its Bid all information or documentation as is required by the Bidding Documents.

7. Clarification of Bidding Documents, Site Visit, Pre-Bid Meeting

- 7.1 A Bidder requiring any clarification of the Bidding Document shall contact the Purchaser in writing at the Purchaser's address **specified in the BDS** or raise its enquiries during the pre-bid meeting if provided for in accordance with ITB 7.4. The Purchaser will respond in writing to any request for clarification, provided that such request is received prior to the deadline for submission of bids within a period **specified in the BDS**. The Purchaser shall forward copies of its response to all Bidders who have acquired the Bidding Documents in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. If so **specified in the BDS**, the Purchaser shall also

promptly publish its response at the web page **identified in the BDS**. Should the clarification result in changes to the essential elements of the Bidding Documents, the Purchaser shall amend the Bidding Documents following the procedure under ITB 8 and ITB 22.2.

- 7.2 If so **specified in the BDS**, the Bidder is advised to visit and examine the project site and obtain for itself on its own responsibility all information that may be necessary for preparing the bid and entering into a contract for procurement of Goods. The costs of visiting shall be at the Bidder's own expense.
- 7.3 The Bidder and any of its personnel or agents will be granted permission by the Purchaser to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Purchaser and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the visit.
- 7.4 If so **specified in the BDS**, the Bidder's designated representative is invited to attend a pre-bid meeting. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 7.5 The Bidder is requested to submit any questions in writing, to reach the Employer not later than one week before the meeting.
- 7.6 Minutes of the pre-bid meeting, if applicable, including the text of the questions asked by Bidders, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Documents in accordance with ITB 6.3. Any modification to the Bidding Documents that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting. Nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

8. Amendment of Bidding Document

- 8.1 At any time prior to the deadline for submission of bids, the Purchaser may amend the Bidding Documents by issuing addenda.
- 8.2 Any addendum issued shall be part of the Bidding Documents and shall be communicated in writing to all who have obtained the Bidding Documents from the Purchaser in accordance with ITB 6.3. The Purchaser shall also promptly publish the addendum

on the Purchaser's web page in accordance with ITB 7.1.

- 8.3 To give prospective Bidders reasonable time in which to take an addendum into account in preparing their bids, the Purchaser may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB 22.2.

C. Preparation of Bids

- 9. Cost of Bidding** 9.1 The Bidder shall bear all costs associated with the preparation and submission of its bid, and the Purchaser shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

- 10. Language of Bid** 10.1 The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Purchaser, shall be written in the language **specified in the BDS**. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages into the language **specified in the BDS**, in which case, for purposes of interpretation of the Bid, such translation shall govern.

- 11. Documents Comprising the Bid** 11.1 The Bid **SHALL** comprise the following:
- (a) Letter of Bid
 - (b) Completed schedules, in accordance with ITB 12 and 14
 - (c) Bid Security or Bid-Securing Declaration, in accordance with ITB 19.1;
 - (d) Alternative bids, if permissible, in accordance with ITB 13;
 - (e) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2;
 - (f) documentary evidence in accordance with ITB 17 establishing the Bidder's qualifications to perform the contract if its bid is accepted;
 - (g) documentary evidence in accordance with ITB 17 establishing the Bidder's eligibility to bid;
 - (h) documentary evidence in accordance with ITB 16, that the Goods and Related Services to be supplied by the Bidder are of eligible origin;
 - (i) documentary evidence in accordance with ITB 16 and 30, that the Goods and Related Services conform to the Bidding Documents;
 - (j) any other document **required in the BDS**.

11.2 In addition to the requirements under ITB 11.1, bids submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful bid shall be signed by

all members and submitted with the bid, together with a copy of the proposed Agreement.

11.3 The Bidder shall furnish in the Letter of Bid information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Bid.

12. Letter of Bid and Price Schedules

12.1. The Letter of Bid and Price Schedules shall be prepared using the relevant forms furnished in Section IV, Bidding Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITB 20.2. All blank spaces shall be filled in with the information requested.

13. Alternative Bids

13.1. Unless otherwise **specified in the BDS**, alternative bids shall not be considered.

14. Bid Prices and Discounts

14.1 The prices and discounts quoted by the Bidder in the Letter of Bid and in the Price Schedules shall conform to the requirements specified below.

14.2 All lots (contracts) and items must be listed and priced separately in the Price Schedules.

14.3 The price to be quoted in the Letter of Bid in accordance with ITB 12.1 shall be the total price of the bid, excluding any discounts offered.

14.4 The Bidder shall quote any discounts and indicate the methodology for their application in the Letter of Bid, in accordance with ITB 12.1.

14.5 Prices quoted by the Bidder shall be fixed during the Bidder's performance of the Contract and not subject to variation on any account, **unless otherwise specified in the BDS**. A bid submitted with an adjustable price quotation shall be treated as nonresponsive and shall be rejected, pursuant to ITB 29. However, if in accordance with the BDS, prices quoted by the Bidder shall be subject to adjustment during the performance of the Contract, a bid submitted with a fixed price quotation shall not be rejected, but the price adjustment shall be treated as zero.

14.6 If so specified in ITB 1.1, bids are being invited for individual lots (contracts) or for any combination of lots (packages). Unless otherwise **specified in the BDS**, prices quoted shall correspond to 100 % of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Bidders wishing to offer discounts for the award of more than one Contract shall specify in their bid the price reductions applicable to each package, or alternatively, to individual Contracts within

the package. Discounts shall be submitted in accordance with ITB 14.4 provided the bids for all lots (contracts) are opened at the same time.

14.7 The terms EXW, CIP, and other similar terms shall be governed by the rules prescribed in the current edition of Incoterms, published by The International Chamber of Commerce, **as specified in the BDS.**

14.8 Prices shall be quoted as specified in each Price Schedule included in Section IV, Bidding Forms. The dis-aggregation of price components is required solely for the purpose of facilitating the comparison of bids by the Purchaser. This shall not in any way limit the Purchaser's right to contract on any of the terms offered. In quoting prices, the Bidder shall be free to use transportation through carriers registered in any eligible country, in accordance with Section V, Eligible Countries. Similarly, the Bidder may obtain insurance services from any eligible country in accordance with Section V, Eligible Countries. Prices shall be entered in the following manner:

- (a) For Goods manufactured in the Purchaser's Country:
 - (i) the price of the Goods quoted EXW (ex-works, ex-factory, ex warehouse, ex showroom, or off-the-shelf, as applicable), including all customs duties and sales and other taxes already paid or payable on the components and raw material used in the manufacture or assembly of the Goods;
 - (ii) any Purchaser's Country sales tax and other taxes which will be payable on the Goods if the contract is awarded to the Bidder; and
 - (iii) the price for inland transportation, insurance, and other local services required to convey the Goods to their final destination (Project Site) **specified in the BDS.**
- (b) For Goods manufactured outside the Purchaser's Country, to be imported:
 - (i) the price of the Goods, quoted CIP named place of destination, in the Purchaser's Country, **as specified in the BDS;**
 - (ii) the price for inland transportation, insurance, and other local services required to convey the Goods from the named place of destination to their final destination (Project Site) **specified in the BDS;**

- (c) For Goods manufactured outside the Purchaser's Country, already imported:
 - (i) the price of the Goods, including the original import value of the Goods; plus any mark-up (or rebate); plus any other related local cost, and custom duties and other import taxes already paid or to be paid on the Goods already imported.
 - (ii) the custom duties and other import taxes already paid (need to be supported with documentary evidence) or to be paid on the Goods already imported;
 - (iii) the price of the Goods, obtained as the difference between (i) and (ii) above;
 - (iv) any Purchaser's Country sales and other taxes which will be payable on the Goods if the contract is awarded to the Bidder; and
 - (v) the price for inland transportation, insurance, and other local services required to convey the Goods from the named place of destination to their final destination (Project Site) **specified in the BDS**.
- (d) for Related Services, other than inland transportation and other services required to convey the Goods to their final destination, whenever such Related Services are specified in the Schedule of Requirements:
 - (i) the price of each item comprising the Related Services (inclusive of any applicable taxes).

15.Currencies of Bid and Payment

- 15.1 The currency(ies) of the bid and the currency(ies) of payments shall be **as specified in the BDS**. The Bidder shall quote in the currency of the Purchaser's Country the portion of the bid price that corresponds to expenditures incurred in the currency of the Purchaser's country, unless otherwise **specified in the BDS**.
- 15.2 The Bidder may express the bid price in any currency. If the Bidder wishes to be paid in a combination of amounts in different currencies, it may quote its price accordingly but shall use no more than three foreign currencies in addition to the currency of the Purchaser's Country.

16.Documents Establishing the Eligibility and Conformity of the

- 16.1 To establish the eligibility of the Goods and Related Services in accordance with ITB 5, Bidders shall complete the country of origin declarations in the Price Schedule Forms, included in

Goods and Related Services

Section IV, Bidding Forms.

- 16.2 To establish the conformity of the Goods and Related Services to the Bidding Documents, the Bidder shall furnish as part of its Bid the documentary evidence that the Goods conform to the technical specifications and standards specified in Section VII, Schedule of Requirements.
- 16.3 The documentary evidence may be in the form of literature, drawings or data, and shall consist of a detailed item by item description of the essential technical and performance characteristics of the Goods and Related Services, demonstrating substantial responsiveness of the Goods and Related Services to the technical specification, and if applicable, a statement of deviations and exceptions to the provisions of the Section VII, Schedule of Requirements.
- 16.4 The Bidder shall also furnish a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the Goods during the period **specified in the BDS** following commencement of the use of the goods by the Purchaser.
- 16.5 Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by the Purchaser in the Schedule of Requirements, are intended to be descriptive only and not restrictive. The Bidder may offer other standards of quality, brand names, and/or catalogue numbers, provided that it demonstrates, to the Purchaser's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in the Section VII, Schedule of Requirements.

**17. Documents
Establishing the
Eligibility and
Qualifications of
the Bidder**

- 17.1 To establish Bidder's their eligibility in accordance with ITB 4, Bidders shall complete the Letter of Bid, included in Section IV, Bidding Forms.
- 17.2 The documentary evidence of the Bidder's qualifications to perform the contract if its bid is accepted shall establish to the Purchaser's satisfaction:
 - (a) that, if **required in the BDS**, a Bidder that does not manufacture or produce the Goods it offers to supply shall submit the Manufacturer's Authorization using the form included in Section IV, Bidding Forms to demonstrate that it has been duly authorized by the manufacturer or producer of the Goods to supply these Goods in the Purchaser's Country;
 - (b) that, if **required in the BDS**, in case of a Bidder not doing

business within the Purchaser's Country, the Bidder is or will be (if awarded the contract) represented by an Agent in the country equipped and able to carry out the Supplier's maintenance, repair and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications; and

- (c) that the Bidder meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.

18.Period of Validity of Bids

- 18.1. Bids shall remain valid for the period **specified in the BDS** after the bid submission deadline date prescribed by the Purchaser in accordance with ITB22.1. A bid valid for a shorter period shall be rejected by the Purchaser as nonresponsive.
- 18.2. In exceptional circumstances, prior to the expiration of the bid validity period, the Purchaser may request bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a Bid Security is requested in accordance with ITB Clause 19, it shall also be extended for a corresponding period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its bid, except as provided in ITB 18.3.
- 18.3. If the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial bid validity, the Contract price shall be determined as follows:
 - (a) In the case of fixed price contracts, the Contract price shall be the bid price adjusted by the factor **specified in the BDS**.
 - (b) In the case of adjustable price contracts, no adjustment shall be made.
 - (c) In any case, bid evaluation shall be based on the bid price without taking into consideration the applicable correction from those indicated above.

19.Bid Security

- 19.1. The Bidder shall furnish as part of its bid, either a Bid-Securing Declaration or a bid security, as **specified in the BDS**, in original form and, in the case of a bid security. In the amount and currency **specified in the BDS**.
- 19.2. A Bid Securing Declaration shall use the form included in Section IV, Bidding Forms.
- 19.3. If a bid security is specified pursuant to ITB 19.1, the bid security shall be a demand guarantee in any of the following

forms at the Bidder's option:

- (a) an unconditional guarantee issued by a bank or financial institution (such as an insurance, bonding or surety company);
- (b) an irrevocable letter of credit;
- (c) a cashier's or certified check; or
- (d) another security **specified in the BDS**,

24.1 from a reputable source from an eligible country. If the unconditional guarantee is issued by a financial institution located outside the Purchaser's Country, the issuing financial institution shall have a correspondent financial institution located in the Purchaser's Country to make it enforceable. In the case of a bank guarantee, the bid security shall be submitted either using the Bid Security Form included in Section IV, Bidding Forms, or in another substantially similar format approved by the Purchaser prior to bid submission. The bid security shall be valid for thirty (30) days beyond the original validity period of the bid, or beyond any period of extension if requested under ITB 18.2.

- 19.4. If a Bid Security is specified pursuant to ITB 19.1, any bid not accompanied by a substantially responsive Bid Security shall be rejected by the Purchaser as non-responsive.
- 19.5. If a Bid Security is specified pursuant to ITB 19.1, the Bid Security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's signing the contract and furnishing the Performance Security pursuant to ITB 42.
- 19.6. The Bid Security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the contract and furnished the required performance security.
- 19.7. The Bid Security may be forfeited or the Bid Securing Declaration executed:
 - (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid, or any extension thereto provided by the Bidder; or
 - (b) if the successful Bidder fails to:
 - (i) sign the Contract in accordance with ITB41; or
 - (ii) furnish a performance security in accordance with ITB 42.
- 19.8. The bid security or Bid- Securing Declaration of a JV must be in the name of the JV that submits the bid. If the JV has not been

legally constituted into a legally enforceable JV at the time of bidding, the bid security or Bid-Securing Declaration shall be in the names of **all future members** as named in the letter of intent referred to in ITB 4.1 and ITB 11.2.

- 19.9. If a bid security is **not required in the BDS**, pursuant to ITB 19.1, and
- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid, or
 - (b) if the successful Bidder fails to: sign the Contract in accordance with ITB41; or furnish a performance security in accordance with ITB 42;

the Borrower may, **if provided for in the BDS**, declare the Bidder ineligible to be awarded a contract by the Purchaser for a period of time **as stated in the BDS**.

20.Format and Signing of Bid

- 20.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB 11 and clearly mark it **“ORIGINAL.”** Alternative bids, if permitted in accordance with ITB 13, shall be clearly marked **“ALTERNATIVE.”** In addition, the Bidder shall submit copies of the bid, in the number **specified in the BDS** and clearly mark them **“COPY.”** In the event of any discrepancy between the original and the copies, the original shall prevail.
- 20.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation **as specified in the BDS** and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the bid where entries or amendments have been made shall be signed or initialed by the person signing the bid.
- 20.3 In case the Bidder is a JV, the Bid shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.
- 20.4 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the bid.

D. Submission and Opening of Bids

21.Sealing and Marking of Bids

- 21.1. The Bidder shall enclose the original and all copies of the bid, including alternative bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as **“ORIGINAL”**, **“ALTERNATIVE”** and **“COPY.”** These envelopes

containing the original and the copies shall then be enclosed in one single envelope.

21.2. The inner and outer envelopes shall:

- (a) bear the name and address of the Bidder;
- (b) be addressed to the Purchaser in accordance with ITB 24.1;
- (c) bear the specific identification of this bidding process indicated in ITB1.1; and
- (d) bear a warning not to open before the time and date for bid opening.

21.3. If all envelopes are not sealed and marked as required, the Purchaser will assume no responsibility for the misplacement or premature opening of the bid.

22. Deadline for Submission of Bids

22.1. Bids must be received by the Purchaser at the address and no later than the date and time **specified in the BDS** when so **specified in the BDS**, bidders shall **NOT** have the option of submitting their bids electronically.

22.2. The Purchaser may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Documents in accordance with ITB 8, in which case all rights and obligations of the Purchaser and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

23. Late Bids

23.1. The Purchaser shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB 22. Any bid received by the Purchaser after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.

24. Withdrawal, Substitution, and Modification of Bids

24.1. A Bidder may withdraw, substitute, or modify its Bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization (the power of attorney) in accordance with ITB 20.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:

- (a) prepared and submitted in accordance with ITB 20 and 21 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL,” “SUBSTITUTION,” or “MODIFICATION;” and
- (b) received by the Purchaser prior to the deadline prescribed

for submission of bids, in accordance with ITB 22.

- 24.2. Bids requested to be withdrawn in accordance with ITB 24.1 shall be returned unopened to the Bidders.
- 24.3. No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Letter of Bid or any extension thereof.

25. Bid Opening

- 24.2 Except as in the cases specified in ITB 23 and 24, the Purchaser shall publicly open and read out in accordance with ITB 25.3 all bids received by the deadline at the date, time and place **specified in the BDS** in the presence of Bidders' designated representatives and anyone who choose to attend. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 22.1, shall be as **specified in the BDS**.
- 24.3 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. If the withdrawal envelope does not contain a copy of the "power of attorney" confirming the signature as a person duly authorized to sign on behalf of the Bidder, the corresponding bid will be opened. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. No Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at bid opening. Envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Bid. No Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Bid opening. Only bids that are opened and read out at Bid opening shall be considered further.
- 24.4 All other envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the total Bid Prices, per lot (contract) if applicable, including any discounts and alternative bids; the presence or absence of a Bid Security, if required; and any other details as the Purchaser may consider appropriate. Only discounts and alternative bids read out at Bid opening shall be considered for evaluation. The Letter of Bid and the Price Schedules are to be initialed by

representatives of the Purchaser attending bid opening in the manner **specified in the BDS**. The Purchaser shall neither discuss the merits of any bid nor reject any bid (except for late bids, in accordance with ITB 25.1).

- 24.5 The Purchaser shall prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per lot (contract) if applicable, including any discounts, and alternative bids; and the presence or absence of a Bid Security, if one was required. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders.

E. Evaluation and Comparison of Bids

- 26. Confidentiality**
- 26.1 Information relating to the evaluation of bids and recommendation of contract award, shall not be disclosed to bidders or any other persons not officially concerned with the bidding process until information on Contract Award is communication to all Bidders in accordance with ITB 40.
- 26.2 Any effort by a Bidder to influence the Purchaser in the evaluation or contract award decisions may result in the rejection of its Bid.
- 26.3 Notwithstanding ITB 26.2, from the time of bid opening to the time of Contract Award, if any Bidder wishes to contact the Purchaser on any matter related to the bidding process, it should do so in writing.
- 27. Clarification of Bids**
- 27.1 To assist in the examination, evaluation, comparison of the bids, and qualification of the Bidders, the Purchaser may, at its discretion, ask any Bidder for a clarification of its Bid. Any clarification submitted by a Bidder in respect to its Bid and that is not in response to a request by the Purchaser shall not be considered. The Purchaser's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Purchaser in the Evaluation of the bids, in accordance with ITB 31.
- 27.2 If a Bidder does not provide clarifications of its bid by the date and time set in the Purchaser's request for clarification, its bid may be rejected.

**28.Deviations,
Reservations, and
Omissions**

- 28.1 During the evaluation of bids, the following definitions apply:
- (a) “Deviation” is a departure from the requirements specified in the Bidding Documents;
 - (b) “Reservation” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Documents; and
 - (c) “Omission” is the failure to submit part or all of the information or documentation required in the Bidding Documents

**29.Determination
of Responsiveness**

- 29.1 The Purchaser’s determination of a bid’s responsiveness is to be based on the contents of the bid itself, as defined in ITB 11.
- 29.2 A substantially responsive Bid is one that meets the requirements of the Bidding Documents without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:
- (a) if accepted, would
 - (i) affect in any substantial way the scope, quality, or performance of the Goods and Related Services specified in the Contract; or
 - (ii) limit in any substantial way, inconsistent with the Bidding Documents, the Purchaser’s rights or the Bidder’s obligations under the Contract; or
 - (b) if rectified, would unfairly affect the competitive position of other bidders presenting substantially responsive bids.
- 29.3 The Purchaser shall examine the technical aspects of the bid submitted in accordance with ITB 16 and ITB 17, in particular, to confirm that all requirements of Section VII, Schedule of Requirements have been met without any material deviation or reservation, or omission.

**30.
Nonconformi-
ties, Errors and
Omissions**

- 29.4 If a bid is not substantially responsive to the requirements of Bidding Documents, it shall be rejected by the Purchaser and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.
- 30.1 Provided that a Bid is substantially responsive, the Purchaser may waive any nonconformity in the Bid.
- 30.2 Provided that a bid is substantially responsive, the Purchaser may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the bid related to

documentation requirements. Such omission shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

30.3 Provided that a bid is substantially responsive, the Purchaser shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component.

**31. Correction of
Arithmetical
Errors**

31.1 Provided that the Bid is substantially responsive, the Purchaser shall correct arithmetical errors on the following basis:

- (a) if there is a discrepancy between the unit price and the line item total that is obtained by multiplying the unit price by the quantity, the unit price shall prevail and the line item total shall be corrected, unless in the opinion of the Purchaser there is an obvious misplacement of the decimal point in the unit price, in which case the line item total as quoted shall govern and the unit price shall be corrected;
- (b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
- (c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

31.2 Bidders shall be requested to accept correction of arithmetical errors. Failure to accept the correction in accordance with ITB 31.1 shall result in the rejection of the Bid.

**32. Conversion to
Single Currency**

32.1 For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted in a single currency as **specified in the BDS.**

**33. Margin of
Preference**

33.1 **Unless otherwise specified in the BDS,** a margin of preference shall not apply.

**34. Evaluation of
Bids**

34.1 The Purchaser shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.

34.2 To evaluate a Bid, the Purchaser shall consider the following:

- (a) evaluation will be done for Lots (contracts), as **specified in the BDS;** and the Bid Price as quoted in accordance with clause 14;
- (b) price adjustment for correction of arithmetic errors in

accordance with ITB 31.1;

- (c) price adjustment due to discounts offered in accordance with ITB 14.3;
- (d) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 32;
- (e) price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 30.3;
- (f) the additional evaluation factors are specified in Section III, Evaluation and Qualification Criteria;

34.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation.

34.4 If these Bidding Documents allows Bidders to quote separate prices for different lots (contracts), the methodology to determine the lowest evaluated price of the lot (contract) combinations, including any discounts offered in the Letter of Bid Form, is specified in Section III, Evaluation and Qualification Criteria

34.5 The Purchaser's evaluation of a bid will exclude and not take into account:

- (a) in the case of Goods manufactured in the Purchaser's Country, sales and other similar taxes, which will be payable on the goods if a contract is awarded to the Bidder;
- (b) in the case of Goods manufactured outside the Purchaser's Country, already imported or to be imported, customs duties and other import taxes levied on the imported Good, sales and other similar taxes, which will be payable on the Goods if the contract is awarded to the Bidder;
- (c) any allowance for price adjustment during the period of execution of the contract, if provided in the bid.

34.6 The Purchaser's evaluation of a bid may require the consideration of other factors, in addition to the Bid Price quoted in accordance with ITB 14. These factors may be related to the characteristics, performance, and terms and conditions of purchase of the Goods and Related Services. The effect of the factors selected, if any, shall be expressed in monetary terms to facilitate comparison of bids, unless otherwise **specified in the BDS** from amongst those set out in Section III, Evaluation and Qualification Criteria. The criteria and methodologies to be used shall be as specified in ITB 34.2 (f).

35. Comparison of

35.1 The Purchaser shall compare the evaluated prices of all

Bids substantially responsive bids established in accordance with ITB 34.2 to determine the lowest evaluated bid. The comparison shall be on the basis of CIP (place of destination) prices for imported goods and EXW prices, plus cost of inland transportation and insurance to place of destination, for goods manufactured within the Borrower's country, together with prices for any required installation, training, commissioning and other services. The evaluation of prices shall not take into account custom duties and other taxes levied on imported goods quoted CIP and sales and similar taxes levied in connection with the sale or delivery of goods.

36. Qualification of the Bidder 36.1 The Purchaser shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

36.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 17.

36.3 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Purchaser shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's qualifications to perform satisfactorily.

37. Purchaser's Right to Accept Any Bid, and to Reject Any or All Bids 37.1 The Purchaser reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all bids submitted and specifically, bid securities, shall be promptly returned to the Bidders.

F. Award of Contract

38. Award Criteria 38.1 Subject to ITB 37.1, the Purchaser shall award the Contract to the Bidder whose bid has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Documents, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

39. Purchaser's Right to Vary Quantities at Time of Award 39.1 At the time the Contract is awarded, the Purchaser reserves the right to increase or decrease the quantity of Goods and Related Services originally specified in Section VII, Schedule of Requirements, provided this does not exceed the percentages **specified in the BDS**, and without any change in the unit prices or other terms and conditions of the bid and the Bidding

Documents.

40. Notification of Award

- 40.1 Prior to the expiration of the period of bid validity, the Purchaser shall notify the successful Bidder, in writing, that its Bid has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the “Letter of Acceptance”) shall specify the sum that the Purchaser will pay the Supplier in consideration of the supply of Goods (hereinafter and in the Conditions of Contract and Contract Forms called “the Contract Price”). At the same time, the Purchaser shall also notify all other Bidders of the results of the bidding and shall publish in *UNDB online* the results identifying the bid and lot (contract) numbers and the following information:
- (i) name of each Bidder who submitted a Bid;
 - (ii) bid prices as read out at Bid Opening;
 - (iii) name and evaluated prices of each Bid that was evaluated;
 - (iv) name of bidders whose bids were rejected and the reasons for their rejection; and
 - (vi) name of the successful Bidder, and the Price it offered, as well as the duration and summary scope of the contract awarded.
- 40.2 Until a formal Contract is prepared and executed, the notification of award shall constitute a binding Contract.
- 40.3 The Purchaser shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB 40.1, requests in writing the grounds on which its bid was not selected.

41. Signing of Contract

- 41.1 Promptly after notification, the Purchaser shall send the successful Bidder the Contract Agreement.
- 41.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Purchaser.
- 41.3 Notwithstanding ITB 41.2 above, in case signing of the Contract Agreement is prevented by any export restrictions attributable to the Purchaser, to the country of the Purchaser, or to the use of the products/goods, systems or services to be supplied, where such export restrictions arise from trade regulations from a country supplying those products/goods, systems or services, the Bidder shall not be bound by its bid, always provided however, that the Bidder can demonstrate to the satisfaction of the Purchaser and of the Bank that signing of the Contract Agreement has not been prevented by any lack of diligence on the part of the Bidder in completing any formalities, including applying for permits, authorizations and licenses necessary for the export of the

products/goods, systems or services under the terms of the Contract.

**42.Performance
Security**

- 42.1 Within twenty-eight (28) days of the receipt of notification of award from the Purchaser, the successful Bidder, if required, shall furnish the Performance Security in accordance with the GCC, subject to ITB 34.5, using for that purpose the Performance Security Form included in Section X, Contract Forms, or another Form acceptable to the Purchaser. If the Performance Security furnished by the successful Bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Bidder to be acceptable to the Purchaser. A foreign institution providing a bond shall have a correspondent financial institution located in the Purchaser's Country.
- 42.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security. In that event the Purchaser may award the Contract to the next lowest evaluated Bidder, whose bid is substantially responsive and is determined by the Purchaser to be qualified to perform the Contract satisfactorily.
-

Section II. Bidding Data Sheet (BDS)

The following specific data for the goods to be procured shall complement, supplement, or amend the provisions in the Instructions to Bidders (ITB). Whenever there is a conflict, the provisions herein shall prevail over those in ITB.

| ITB Clause Reference | A. General |
|----------------------|--|
| ITB 1.1 | The reference number of the Invitation for Bids is: ML&SP/SDL/ONT/NHRPD/14/FY 2018-2019 |
| ITB 1.1 | The name of the NCB is: PROCUREMENT OF 2 NO. LOTS OF MOTOR VEHICLES FOR KYEOP-LMIS The identification number of the NCB is: ML&SP/SDL/ONT/NHRPD/14/FY 2018-2019 The number, identification and names of the lots comprising this NCB are: LOT 1: 1 No. 11 Passenger High roof, Wide long body Diesel Propelled Executive Microbus LOT 2: 1 No. Special Duty, Utility Hardtop Vehicle, 4x4, L.W.B., 2800-3000cc, Diesel |
| ITB 2.1 | The Borrower is: Government of the Republic of Kenya |
| ITB 2.1 | The name of the Project is Kenya Youth Employment and Opportunities Project (KYEOP) |
| ITB 4.1 | Maximum number of members in the JV shall be: NOT APPLICABLE |
| ITB 4.3 | A list of firms debarred from participating in World Bank projects is available at http://www.worldbank.org/debarr |
| | B. Contents of Bidding Documents |
| ITB 7.1 | For Clarification of bid purposes only, the Purchaser's address is: To: Principal Secretary Attention: Head /Supply Chain Management Services Address: State Department for Labour, P.O. Box 40326-00100, Nairobi Street Address: NSSF Building, Block A, Bishops Road Floor/ Room number: Eastern Wing, 14th floor City: Nairobi, Kenya ZIP Code: 00100 |

| | |
|--|---|
| | Country: Kenya Telephone: +254-(020- 2729800-819) Electronic mail address: kycop@labour.go.ke and ps@labour.go.ke |
| ITB 7.4 | A Site Visit will not be held |
| | C. Preparation of Bids |
| ITB 10.1 | The language of the bid is: “English” |
| ITB 11.1 (j) | The Bidder shall submit the following additional documents in its bid: One Copy |
| ITB 13.1 | Alternative Bids SHALL NOT BE considered. |
| ITB 14.5 | The prices quoted by the Bidder SHALL NOT be subject to adjustment during the performance of the Contract. |
| ITB 14.6 | Prices quoted for each lot (contract) shall correspond to 100 percent of the items specified for each lot (contract). Prices quoted for each item of a lot shall correspond to 100 percent of the quantities specified for this item of a lot. |
| ITB 14.7 | The Incoterms edition is: Incoterms 2000 |
| ITB 14.8 (b) (i) and (c) (v) | Place of Destination: CIP Ministry of Labour and Social Protection, State Department for Labour, NSSF Building Block A, Bishops Road, Nairobi |
| ITB 14.8 (a) (iii);(b) (ii) and (c) (v) | “Final destination (Project Site)”: Ministry of Labour and Social Protection, State Department for Labour, NSSF Building Block A, Bishops Road, Nairobi |
| ITB 14.8 (c) | Prices quoted shall be inclusive of all Taxes, Levies and or Fees. |
| ITB 15.1 | The prices shall be quoted by the bidder in: Kenya Shillings inclusive of applicable taxes, levies and or fees |
| ITB 16.4 | Period of time the Goods are expected to be functioning (for the purpose of spare parts): One year |
| ITB 17.2 (a) | Manufacturer’s authorization is: Mandatory |
| ITB 17.2 (b) | After sales service is: Mandatory |
| ITB 18.1 | The bid validity period shall be 120 days. |
| ITB 18.3 (a) | The bid price shall be adjusted by the following factor (s): Not Applicable |
| ITB 19.2 | A Bid Security shall be mandatory. Bid shall include a Bank Bid Security (issued by a Bank) included in Section IV Bidding Forms. “Note: The Bid Security should remain valid for a period of 30 days beyond the validity period of the bid, and as extended, if applicable”. |

| | |
|---------------------|--|
| | <p>A Bid-Securing Declaration SHALL NOT BE required. The amount of the Bid Security shall be:</p> <p>Lot 1: Kes. 120,000.00 Lot 2: Kes. 120,000.00</p> <p><i>NB: Each Lot shall be required to have its own bid security</i></p> |
| ITB 19.3 (d) | Other types of acceptable securities: Insurance Companies approved by Public Procurement and Regulatory Authority – Kenya (PPRA) |
| ITB 19.9 | If the Bidder incurs any of the actions prescribed in subparagraphs (a) or (b) of this provision, the Borrower will declare the Bidder ineligible to be awarded contracts by the Purchaser for a period of: One year (1 year) |
| ITB 20.1 | In addition to the Original of the bid, the number of copies is: One (1) Replica copy of the Original |
| ITB 20.2 | Letter of Bid and Price Schedules SHALL be filled in the forms provided and a written confirmation of authorization to sign on behalf of the Bidder shall consist of a Letter of Power of Attorney |
| | D. Submission and Opening of Bids |
| ITB 21.1 | Bidders <i>shall not</i> have the option of submitting their bids electronically. |
| ITB 22.1 | <p>For bid submission purposes only;</p> <p>The packages should be clearly marked: TENDER NO. ML&SP/SDL/ONT/NHRPD/14/FY 2018-2019 PROCUREMENT OF 2 NO. LOTS OF MOTOR VEHICLES FOR KYEOP-LMIS (Specify lot applied for) All pages of the Bid document and bidder's attachments SHALL be serialized/paginated</p> <p>The Purchaser's address is: Attention: Principal Secretary, State Department for Labour, Ministry of Labour and Social Protection, Street Address: NSSF Building Block A, Bishops Road, Nairobi Floor: Tender Box located at NSSF Building, Block A, Eastern wing, 14th Floor, City: Nairobi ZIP/Postal Code: 00100 Country: Kenya</p> <p>The deadline for bid submission is: Date: Friday, 24th May, 2019; Time:10.00a.m. East African Time</p> |
| ITB 25.1 | The bid opening shall take place at: Street Address: NSSF Building Block A, Bishops Road, Nairobi |

| | |
|--------------------|--|
| | <p>Floor/ Room number: 7th Floor, Board Room City: Nairobi Country: Kenya Date: Friday, 24th May, 2019; Time: From 10.00a.m. East African Time</p> |
| ITB 25.3 | The Letter of Bid and Price Schedules shall be initialed by representatives of the Purchaser conducting Bid opening. |
| | E. Evaluation and Comparison of Bids |
| ITB 32.5 | Bidders <i>“shall</i> be allowed to quote separate prices for each lot |
| ITB 32.1 | <p>The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency is: Kenya Shillings The source of exchange rate shall be: Central Bank of Kenya The date for the exchange rate shall be bid submission deadline</p> |
| ITB 33.1 | A margin of domestic preference shall not apply. |
| ITB 34.2(a) | <p>Bids will be evaluated lot by lot. All the items in each lot MUST be priced failure to which the bid will be considered Non Responsive.</p> |
| ITB 34.6 | <p>The adjustments shall be determined using the following criteria, from amongst those set out in Section III, Evaluation and Qualification Criteria:</p> <p>(a) Deviation in Delivery schedule: Not Applicable (b) Deviation in payment schedule: Not Applicable (c) The cost of major replacement components, mandatory spare parts, and service: Not Applicable (d) The availability in the Purchaser’s Country of spare parts and after-sales services for the equipment offered in the bid: Not Applicable (e) The projected operating and maintenance costs during the life of the equipment: Not Applicable (f) The performance and productivity of the equipment offered; Not Applicable</p> |
| | F. Award of Contract |
| | <i>Contract will be awarded per lot.</i> |
| ITB 39.1 | <p>The maximum percentage by which quantities may be increased is: <i>Not Applicable</i> The maximum percentage by which quantities may be decreased is: <i>Not Applicable</i></p> |

Section III. Evaluation and Qualification Criteria

This Section contains all the criteria that the Purchaser shall use to evaluate a bid and qualify the Bidders. in accordance with ITB 34 and ITB 36, no other factors, methods or criteria shall be used.

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[2. Post Qualification \(ITB 36\)](#)

1. Margin of Preference (ITB 33): NOT APPLICABLE**1.1 Evaluation (ITB 34): No additional criteria will be used to evaluate tenders except those listed in Clause 34****2.2. Multiple Contracts (ITB 34.4)**

The Purchaser shall award multiple contracts to the Bidder that offers the lowest evaluated combination of bids (one contract per lot) and meets the post-qualification criteria (this Section III, Sub-Section ITB 36.1 Post-Qualification Requirements)

The Purchaser shall:

- (a) Evaluate only lots or contracts that include at least the percentages of items per lot and quantity per item as specified in ITB 14.8
- (b) Take into account:
 - 42.2.1.1 the lowest-evaluated bid for each lot

2.3. Alternative Bids (ITB 13.1): Shall not be allowed**3.1 Post Qualification Requirements (ITB 36.1)**

After determining the lowest-evaluated bid in accordance with ITB 35.1, the Purchaser shall carry out the Post Qualification of the Bidder in accordance with ITB 36, using only the requirements specified. Requirements not included in the text below shall not be used in the evaluation of the Bidder's qualifications.

(a) Financial Capability

The Bidder shall furnish documentary evidence that it meets the following financial requirement(s):

- (i) Audited accounts for the last **three (3) years (2018, 2017,2016)**

(b) Experience and Technical Capacity

The Bidder shall furnish documentary evidence to demonstrate that it meets the following experience requirement(s): **undertaken and successfully completed three (3) contracts of a similar nature in each of the last five (5) years 2013, 2014,2015,2016,2017. In addition, one contract of similar nature for year 2017.**

- (c) The Bidder shall furnish documentary evidence to demonstrate that the Goods it offers meet the following usage requirement: **as per the technical specifications.**

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Bidder Information Form

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

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

NCB No.: *[insert number of bidding process]*

Page _____ of _____ pages

| |
|--|
| 1. Bidder's Legal Name <i>[insert Bidder's legal name]</i> |
| 2. In case of JV, legal name of each party: <i>[insert legal name of each party in JV]</i> |
| 3. Bidder's actual or intended Country of Registration: <i>[insert actual or intended Country of Registration]</i> |
| 4. Bidder's Year of Registration: <i>[insert Bidder's year of registration]</i> |
| 5. Bidder's Legal Address in Country of Registration: <i>[insert Bidder's legal address in country of registration]</i> |
| 6. Bidder's Authorized Representative Information Name: <i>[insert Authorized Representative's name]</i> Address: <i>[insert Authorized Representative's Address]</i> Telephone/Fax numbers: <i>[insert Authorized Representative's telephone/fax numbers]</i> Email Address: <i>[insert Authorized Representative's email address]</i> |
| 7. Attached are copies of original documents of: <i>[check the box(es) of the attached original documents]</i> ☐ Articles of Incorporation or Registration of firm named in 1, above, in accordance with ITB Sub-Clauses 4.1 and 4.2. ● In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB Sub-Clause 4.1. ● In case of government owned entity from Iraq, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB Sub-Clause 4.5. |

Bid Submission Form

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

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

NCB No.: ML&SP/SDL/ONT/NHRPD/14/FY 2018-2019

To
**The Principal Secretary,
State Department for Labour
Ministry of Labour and Social Protection**

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda No.: *[insert the number and issuing date of each Addenda]*;
- (b) We offer to supply in conformity with the Bidding Documents and in accordance with the Delivery Schedules specified in the Schedule of Requirements the following Goods and Related Services *[insert a brief description of the Goods and Related Services]*;
- (c) The total price of our Bid, excluding any discounts offered in item (d) below, is: *[insert the total bid price in words and figures]*;
- (d) The discounts offered and the methodology for their application are:

Discounts. If our bid is accepted, the following discounts shall apply.*[Specify in detail each discount offered and the specific item of the Schedule of Requirements to which it applies.]*

Methodology of Application of the Discounts. The discounts shall be applied using the following method: *[Specify in detail the method that shall be used to apply the discounts]*;

- (e) Our bid shall be valid for the period of time specified in ITB Sub-Clause 18.1, from the date fixed for the bid submission deadline in accordance with ITB Sub-Clause 22.1, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (f) If our bid is accepted, we commit to obtain a performance security in accordance with ITB Clause 40 and GCC Clause 16 for the due performance of the Contract;
- (g) We have no conflict of interest in accordance with ITB Sub-Clause 4.2;

- (h) Our firm, its affiliates or subsidiaries—including any subcontractors or suppliers for any part of the contract—has not been declared ineligible by the Bank, under Iraq laws or official regulations, in accordance with ITB Sub-Clause 4.3;
- (i) The following commissions, gratuities, or fees have been paid or are to be paid with respect to the bidding process or execution of the Contract: *[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity]*

| Name of Recipient | Address | Reason | Amount |
|-------------------|---------|--------|--------|
| _____ | _____ | _____ | |
| _____ | _____ | _____ | |
| _____ | _____ | _____ | |
| _____ | _____ | _____ | |

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

- (j) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed.
- (k) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive.

Signed: *[insert signature of person whose name and capacity are shown]*
 In the capacity of *[insert legal capacity of person signing the Bid Submission Form]*

Name: *[insert complete name of person signing the Bid Submission Form]*

Duly authorized to sign the bid for and on behalf of: *[insert complete name of Bidder]*

Dated on _____ day of _____, _____ *[insert date of signing]*

Price Schedule Forms

*[The Bidder shall fill in these Price Schedule Forms in accordance with the instructions indicated. The list of line items in column 1 of the **Price Schedules** shall coincide with the List of Goods and Related Services specified by the Purchaser in the Schedule of Requirements.]*

LOT 1: Price Schedule: Goods

Date: _____

NCB No: _____

Alternative No: NOT APPLICABLE

Page N^o _____ of _____

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|--------------------------------|---|---------------|-------------------------------|----------------|--|-------------------|
| Line Item N ^o | Description of Goods | Delivery Date | Quantity and physical unit | Unit price CIP | Total price per line item (Col. 4 x 5) | Country of Origin |
| Item No. (i) | 11 Passenger High roof, Wide long body Diesel Propelled Executive Microbus | | 1 | | | |
| Total Price for the lot | | | | | | |

LOT 2: Price Schedule: Goods

| | | | | Date: _____ NCB No: _____ Alternative No: _____ Page No. _____ of _____ | | |
|--------------------------------|--|------------------|-------------------------------------|--|--|-------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Line Item No. | Description of Goods | Delivery Date | Quantity and physical unit | Unit price CIP | Total price per line item (Col. 4 x 5) | Country of Origin |
| Item No. (i) | Special Duty, Utility Hardtop Vehicle, 4x4, L.W.B., 2800-3000cc, Diesel | | 1 | | | |
| Total Price for the lot | | | | | | |

Bid Security (Bank Guarantee)

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

[insert Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: *[insert name and address of Purchaser]*

Date: *[insert date]*

BID GUARANTEE No.: *[insert bid Guarantee number]*

We have been informed that *[insert name of the Bidder]* (hereinafter called "the Bidder") has submitted to you its bid dated *[insert date]* (hereinafter called "the Bid") for the execution of *[insert name of Contract]*.

Furthermore, we understand that, according to your conditions, bids must be supported by a Bid Guarantee.

At the request of the Bidder, we *[insert name of Bank]* hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of *[insert amount in figures expressed in Iraqi Dinars],[insert amount in words]* upon receipt by us of your first demand in writing accompanied by a written statement stating that the Bidder is in breach of its obligation(s) under the bid conditions, because the Bidder:

- (a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Bid Submission Form; or
- (b) having been notified of the acceptance of its Bid by the Purchaser during the period of bid validity as stated in the Bid Submission Form or extended by the Employer at any time prior to expiration of this period, (i) fails or refuses to execute the Contract, if required, or (ii) fails or refuses to furnish the Performance Security, in accordance with the ITB.

This Guarantee will expire: (a) if the Bidder is the successful Bidder, upon our receipt of copies of the Contract signed by the Bidder and the Performance Security issued to you upon the instruction of the Bidder; or (b) if the Bidder is not the successful Bidder, upon the earlier of (i) our receipt of a copy of your notification to the Bidder that the Bidder was unsuccessful; or (ii) twenty-eight days after the expiration of the Bidder's Bid.

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

This Guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

[Signature(s) of authorized bank's representative(s)]

Section V: Eligible Countries

Eligibility for the Provision of Goods, Works and Services in Bank-Financed Procurement

1. In accordance with Para 1.8 of the Guidelines: Procurement under IBRD Loans and IDA Credits, dated May 2004, the Bank permits firms and individuals from all countries to offer goods, works and services for Bank-financed projects. As an exception, firms of a Country or goods manufactured in a Country may be excluded if:
 - Para 1.8 (a) (i): as a matter of law or official regulation, the Borrower's Country prohibits commercial relations with that Country, provided that the Bank is satisfied that such exclusion does not preclude effective competition for the supply of the Goods or Works required, or
 - Para 1.8 (a) (ii): by an Act of Compliance with a Decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's Country prohibits any import of goods from that Country or any payments to persons or entities in that Country.
2. For the information of borrowers and bidders, at the present time firms, goods and services from the following countries are excluded from this bidding:
 - (a) With reference to paragraph 1.8 (a) (i) of the Guidelines:

 - (b) With reference to paragraph 1.8 (a) (ii) of the Guidelines:

PART 2 – SUPPLY REQUIREMENTS

Section VI. Schedule of Requirements

Contents

| | | |
|----|---|----|
| 1. | List of Goods and Delivery Schedule..... | 48 |
| 2. | List of Related Services and Completion Schedule..... | 49 |
| 3. | Technical Specifications..... | 50 |

1. List of Goods and Delivery Schedule

| Line Item N ^o | Description of Goods | Quantity | Physical unit | Final (Project Site) Destination | Delivery Date | | |
|-----------------------------|---|----------|------------------|--|---------------------------|-------------------------|---|
| | | | | | Earliest Delivery Date | Latest Delivery Date | Bidder's offered Delivery date [to be provided by the bidder] |
| <i>A</i> | <i>B</i> | <i>C</i> | <i>D</i> | <i>E</i> | <i>F</i> | <i>G</i> | <i>H</i> |
| LOT 1 | | | | | | | |
| Item (j) | 11 Passenger High roof, Wide long body Diesel Propelled Executive Microbus | 1 | 1 | NSSF Building, Block A, Bishops Road, Nairobi | As soon as possible | Within 6 weeks | |
| LOT 2 | | | | | | | |
| Item. (i) | Special Duty, Utility Hardtop Vehicle, 4x4, L.W.B., 2800-3000cc, Diesel | 1 | 1 | NSSF Building, Block A, Bishops Road, Nairobi | As soon as possible | Within 6 weeks | |

3. Technical Specifications

NB: Indicative MINIMUM Specifications only. Bidders MUST MEET OR EXCEED these specifications.

LOT 1

| | |
|---|---|
| SPECIFICATION NO. <u>MTD-2084-046-19</u> | Page 46 of 79 |
| TENDERER'S NAME _____ | NO: _____ |
| TENDER NO: _____ | ITEM NO: _____ QTY: _____ |
| DESCRIPTION: <u>HIGH ROOF, WIDE LONG BODY, EXECUTIVE MICROBUS, DIESEL, 11 PASSENGERS</u> | |

TENDERER'S Column to be completed by ALL TENDERER'S

| SPECIFICATION | REQUIREMENT | TENDERER'S |
|--|---------------------------|-------------|
| MAKE | - | |
| MODEL | - | |
| COUNTRY OF ORIGIN | - | |
| MANUFACTURER'S LITERATURE, SPECIFICATIONS AND AUTHORITY SUPPLIED (To be attached to this specification form.) | Yes (Mandatory) | _____ (Y/N) |

1. GENERAL

| | | |
|---|---------------------|-------------|
| a) A high roof, wide long body micro bus of latest design in current production. | Yes, Yes, Yes | _____ (Y/N) |
| b) Supplied new. | Yes | _____ (Y/N) |
| c) Designed to heavy duty export specifications, suitable of operating in tropical conditions | Yes, Yes | _____ (Y/N) |
| d) Suitable for passenger transportation over paved and un-paved (rough) roads. | Yes | _____ (Y/N) |
| e) To seat a minimum of 11 adult passengers comfortably. | Yes | _____ (Y/N) |
| f) High roof , wide long body type for extra comfort | Yes mandatory | _____ (Y/N) |
| Tenderer's Signature _____ | Official Stamp _ | |

TENDERER'S Column to be completed by ALL TENDERER'S**2. DIMENSIONS AND WEIGHTS**

| | | | |
|----|--------------------------------|---------|----------|
| a) | Overall length, approx. | 5,200mm | ----- mm |
| b) | Overall width, approx. | 1,900mm | ----- mm |
| c) | Overall height, approx. | 2,300mm | ----- mm |
| d) | Wheelbase, approx. | 3,000mm | ----- mm |
| e) | Max. G.V.W, approx. | 3,200Kg | ----- kg |
| f) | Kerb weight, approx. | 1,800Kg | -----kg |
| g) | Passenger room height, approx. | 1,600mm | -----mm |

3. ENGINE

| | | | |
|----|---|------------------|-----------------|
| a) | Make | - | |
| b) | Model | - | |
| c) | Country of origin | - | |
| d) | Engine performance curves supplied. | Yes | _____ (Y/N) |
| e) | Engine type, Diesel, turbo | Yes mandatory | _____ (Y/N) |
| f) | 4 Stroke, water cooled. | Yes, Yes | _____ (Y/N) |
| g) | Piston displacement , approx. | 2400-3000cc | ----- cc |
| h) | Number of cylinders | 4 | ----- no. |
| i) | Maximum power output,(Kw /rpm), min. | 90 Kw/ 4800rpm | ----- Kw rpm |
| j) | Maximum torque developed,(NM/rpm), min. | 300Nm/2,800rpm | -----Nm rpm |
| k) | Air filter, disposable/oil bath | specify | ----- |
| l) | Oil and fuel filter type | Disposable | ----- |

Tenderer's

Official

Signature _____

Stamp _

TENDERER'S Column to be completed by ALL TENDERER'S

| | | | |
|----|---|---------|-----------|
| m) | Average fuel consumption (on full load) at | | |
| | a) <u>Urban driving</u> | specify | -----Km/l |
| | b) <u>Steady 50Km/h</u> | specify | Km/l |
| | c) <u>Steady 80Km/h</u> | specify | Km/l |
| n) | Fuel tank capacity minimum. | 60Lt | Lt |

CLUTCH AND TRANSMISSION

4.

| | | | |
|----|---|---------|-------|
| a) | Clutch, coil spring type, dry single plate, | specify | |
| b) | All synchromesh gearbox. | Yes | (Y/N) |
| c) | Gear speeds, min | 5F,1R | |

5. BRAKES AND TYRES

| | | | |
|----|---|----------|-------|
| a) | Brakes, hydraulic - internal expanding drum | Yes, Yes | (Y/N) |
| b) | Mechanical parking brake, to act on rear wheels | Yes | (Y/N) |
| c) | Locally available single purpose tires | Yes | (Y/N) |
| d) | Optimum tire size | specify | |

6. SUSPENSION AND STEERING

| | | | |
|----|---|---------------|-------|
| a) | Independent, heavy duty front and rear suspension | Yes, Yes | (Y/N) |
| b) | Heavy duty leaf at rear and coil springs with hydraulic (telescopic) shock absorbers at front . | Yes mandatory | (Y/N) |
| c) | Adjustable wheel, assisted steering | Yes | (Y/N) |
| d) | Right Hand drive steering | Yes | (Y/N) |

7. ELECTRICAL SYSTEM AND INSTRUMENTS

| | | | |
|----|--|---------------|-------|
| a) | System voltage, negative earth, with alternator charging | 12V, Yes, Yes | |
| b) | Battery capacity, approx. | 1x12V, 70Ah | |
| c) | Full lighting to conform to Cap 403 Subs.23-Kenya Traffic Act. | Yes | (Y/N) |

Tenderer's

Official

TENDERER'S Column to be completed by ALL TENDERER'S

| | | | |
|-----------------|--|-------------|-------------|
| Signature _____ | | Stamp _____ | |
| d) | Standard instruments, gauges and warning lights for charging circuit, oil pressure, coolant temperature etc. | Yes | _____ (Y/N) |

8. BODY, SEATS AND FINISH

| | | | |
|----|--|-------------------|-------------|
| a) | All body work to be protected against corrosion for seaside operation. | Yes | _____ (Y/N) |
| b) | Long lasting upholstery. | Specify material. | |
| c) | High gloss body finish, colour to be specified by the user. | Yes | _____ (Y/N) |
| d) | High back rest seats, seating capacity (12) seats including driver | Specify No. | _____ (Y/N) |
| e) | Seating configuration, with adequate space | specify | |
| f) | All seats to have safety belts that conform to the KEBS standard No. 06-664 of 1985. | Mandatory | _____ (Y/N) |

9. EQUIPMENT (ACCESSORIES) ETC

| | | | |
|----|---|------------------|-------------|
| a) | Vehicle to be fitted with electronic speed Governor with recorder . | Mandatory | _____ (Y/N) |
| b) | Governor to limit maximum speed to 80km/hr | Mandatory | _____ (Y/N) |
| c) | Governor to be tamper proof | Mandatory | _____ (Y/N) |
| d) | Governor to be inspected by CM&TE before Delivery to establish whether it's a gazetted speed limiter. | Mandatory | _____ (Y/N) |
| e) | Heavy duty front fender, fitted | Yes | _____ (Y/N) |
| f) | Jack, wheel brace and manufacturer's standard tools, supplied. | Yes | _____ (Y/N) |
| g) | Sunvisors supplied, 2no. | Yes | _____ (Y/N) |

| | | | |
|----------------------------|--|----------------------|--|
| Tenderer's Signature _____ | | Official Stamp _____ | |
|----------------------------|--|----------------------|--|

TENDERER'S Column to be completed by ALL TENDERER'S

| | | | |
|----|---|------------------|-------------|
| h) | Rear view mirrors supplied, 2no. external, 1no. internal. | Yes | _____ (Y/N) |
| i) | FM, MW, SW radio fitted. | Yes | _____ (Y/N) |
| j) | CD player fitted. | Yes | _____ (Y/N) |
| k) | Air condition | Yes Mandatory | _____ (Y/N) |
| l) | Front airbags | Yes Mandatory | _____ (Y/N) |
| m) | ABS system | Yes Mandatory | _____ (Y/N) |
| n) | Central locking | Yes Mandatory | _____ (Y/N) |
| o) | Heavy duty sump and fuel tank protection | Yes Mandatory | _____ (Y/N) |
| p) | Any other equipment supplied. | specify | |

10. WARRANTY

| | | | |
|----|---|---------|--------------|
| a) | Each vehicle supplied should carry a statement of warranty. | Yes | _____ (Y/N) |
| b) | Vehicle warranty min., 40,000 Km or 12 Months whichever occurs first. | specify | Km Months |

11. MANUALS

| | | | |
|----|---|---------------|-------------|
| a) | All literature in English language | Yes | _____ (Y/N) |
| b) | Repair Manual/ CD supplied. | 1 per Vehicle | _____ (Y/N) |
| c) | Parts catalogue/CD supplied | 1 per Vehicle | _____ (Y/N) |
| d) | Drivers handbook and service schedule supplied. | 1 per Vehicle | _____ (Y/N) |

12. OTHER REQUIREMENT

| | |
|-----------------|-------------|
| Tenderer's | Official |
| Signature _____ | Stamp _____ |

TENDERER'S Column to be completed by ALL TENDERER'S

| | | | |
|-------------------------------|---|---|------------|
| b) | Vehicle to be inspected by the Chief Mechanical and Transport Engineer for compliance with the specification prior to delivery to the user. | Yes | _____(Y/N) |
| c) | Firm's Status: (Franchise holder/ Dealer/Agent) | Specify | |
| d) | Availability of spare parts | Indicate motor vehicle dealers who stock spare parts. | |
| e) | Indicate names and physical addresses of dealers/agents where back-up service can be obtained. | Specify | |
| f) | Body construction and all fitments to conform to CAP 403 Kenya Traffic Act and to have a certificate from the vehicle inspection Unit. | Yes (Mandatory) | _____(Y/N) |
| Tenderer's Signature _____ | | Official Stamp _____ | |

LOT 2

| | |
|--|----------------------|
| SPECIFICATION NO. MTD-2360-048-19 | Page 52 of 79 |
| TENDERER'S NAME: | NO: |
| TENDER NO: | ITEM NO: QTY: |
| DESCRIPTION: SPECIAL DUTY, UTILITY HARDTOP/CARAVAN VEHICLE, 4x4, L.W.B., 2800 – 3000cc, DIESEL FOR ROUGH TERRAINS | |

TENDERER'S Column to be completed by tenderer

| SPECIFICATION | REQUIRED | TENDERER'S |
|---|---------------|-------------|
| Make | - | |
| Model | - | |
| Country of origin | - | |
| Manufacturer's literature, authority and specifications supplied. | Yes mandatory | ------(Y/N) |

1. GENERAL

| | | | |
|----|---|-------------------------|-------------|
| a) | A standard production, special duty, 2800-3000cc, 4x4, diesel Utility hardtop / caravan of latest design in class, robust construction, in current production and of proven performance in very rough terrains. | Yes, Yes, Yes mandatory | ------(Y/N) |
| b) | Supplied new. | Yes | ------(Y/N) |
| c) | Designed to heavy duty specifications, capable of operating in tropical conditions in extremes of dust, sand, rocky, heat and mud. | Yes, Yes | ------(Y/N) |
| d) | Most suitable for operating on both "on and off" road conditions and in rough, desert, semi-desert, remote, rough terrains and vehicle body able to withstand these conditions without damage. | Yes mandatory | ------(Y/N) |
| e) | Most suitable for personnel transportation not luxury type but for operational duties. | Yes | ------(Y/N) |

2. DIMENSIONS, WEIGHTS AND PERFORMANCE

| | | | |
|----|------------------------|----------|---------|
| a) | Overall length approx. | 5,000 mm | -----mm |
| b) | Overall width approx. | 1,900mm | -----mm |

Tenderer's
Signature _____Official
Stamp _____

TENDERER'S Column to be completed by tenderer

| SPECIFICATION | REQUIRED | TENDERER'S |
|---------------------------|----------|------------|
| c) Overall height, min. | 1850 mm | -----mm |
| d) Wheelbase approx. | 2,900 mm | -----mm |
| e) Ground clearance, min. | 200 mm | -----mm |
| f) Max. G.V.W. min. | 3,000 kg | -----Kg |
| g) Kerb weight min. | 2,300kg | -----Kg |
| h) Payload approx | 700 kg | -----Kg |
| i) Max. gradient, min. | 0.6 | ----- |
| j) Wading depth, min. | 400mm | -----mm |

3. ENGINE

| | | |
|---|-------------------------|-------------|
| a) Make | - | |
| b) Model | - | |
| c) Country of origin | - | |
| d) Engine performance curves supplied. | Yes | ------(Y/N) |
| e) Engine type Diesel, 4 Stroke. | Yes, Yes | ------(Y/N) |
| f) Engine cooling system, water. | Yes | ------(Y/N) |
| g) Piston displacement range. | 2800-3000cc | -----cc |
| h) Number of cylinders. | specify | |
| i) Maximum power output, (Kw/ rpm), min. | 80Kw/3800rpm | -----KW/rpm |
| j) Maximum torque developed, (NM/ rpm), min. | 260NM/3400rpm | -----NM/rpm |
| k) Air filter, disposable/oil bath | specify | |
| l) Oil and fuel filter type. | disposable | |
| m) Average fuel consumption (on full load) at | | |
| a) Urban driving, min. | specify | -----Km/l |
| b) Steady 50 Km/h, min. | specify | -----Km/l |
| c) Steady 80 Km/h, min. | specify | -----Km/l |
| Tenderer's Signature _____ | Official Stamp _____ | |

TENDERER'S Column to be completed by tenderer

| SPECIFICATION | REQUIRED | TENDERER'S |
|-----------------------------|----------|------------|
| n) Fuel tank capacity, min. | 90 Lt | -----Lt |

4. CLUTCH AND TRANSMISSION

| | | |
|--|----------------|----------------------|
| a) Manual transmission. | Yes, mandatory | ------(Y/N) |
| b) Hydraulic, clutch actuation. | Yes | ------(Y/N) |
| c) All synchromesh gearbox, with 2 speed reduction transfer gearbox. | Yes, Yes | ------(Y/N) |
| d) Transmission speeds | 5 speed | speed |
| e) Permanent 4WD or with selector from 2WD to 4WD. | specify | ----- |
| f) Differential lock/ Freewheeling hubs provided. | Yes specify | ------(Y/N) |

5. BRAKES AND TYRES

| | | |
|--|----------------|-------------|
| a) Assisted hydraulic, dual brake system. | Yes, Yes | ------(Y/N) |
| b) Brakes, disc at front or all round | specify front | |
| | Rear | |
| c) Mechanical Parking brake, to act on transmission or rear wheels | Yes specify | ------(Y/N) |
| d) Tyre locally available. | Yes | ------(Y/N) |
| e) Optimum tyre size. | Specify size | |

6. SUSPENSION AND STEERING

| | | |
|---|-------------------------|-------------|
| a) Independent Heavy duty front and rear suspension. | Yes | ------(Y/N) |
| b) Heavy duty leaf or coil springs with telescopic dampers. | specify front | |
| | rear | |
| c) Assisted steering. | Yes | ------(Y/N) |
| d) Right hand drive steering. | Yes | ------(Y/N) |
| Tenderer's Signature _____ | Official Stamp _____ | |

TENDERER'S Column to be completed by tenderer

| SPECIFICATION | REQUIRED | TENDERER'S |
|---------------|----------|------------|
|---------------|----------|------------|

7. STATION WAGON

| | | |
|---|----------------|-------------|
| a) 4 No. side doors and rear side-swing door station wagon caravan /hardtop with 5doors. | Yes | ------(Y/N) |
| b) To seat at 7 adults (including driver) comfortably and all front facing. | Yes(Mandatory) | ------(Y/N) |
| c) To be fitted with adequate winding/sliding windows for good ventilation and wide view. | Yes | ------(Y/N) |

8. BODY AND FINISH

| | | |
|--|-------------------------|-------------|
| a) All exterior body panels made non-corrosive and all external steel fitting to be galvanized or painted. | Yes, Yes | ------(Y/N) |
| b) Anti-rust compound applied to underbody for sea side operation. | Yes specify compound | ------(Y/N) |
| c) Body finish, high gloss colour (to be specified by user) | Yes(Mandatory) | ----- (Y/N) |
| d) Fitted with reclining and adjustable driver and passenger seats . | Yes | ------(Y/N) |
| e) Upholstery, reinforced PVC | Yes | ------(Y/N) |

9. ELECTRICAL SYSTEM AND INSTRUMENTS

| | | |
|---|---------------|-------------|
| a) System voltage, negative earth, with alternator charging. | 12V, Yes | ------(Y/N) |
| b) Battery capacity. | 1x12V,70AH | AH |
| c) Full lighting to conform to Cap.403 Subs.23 Kenya Traffic Act. | Yes | ----- (Y/N) |
| d) Standard instruments and gauges , warning lights for charging circuit, oil pressure, coolant temperature etc | Yes, Yes, Yes | ----- (Y/N) |

10 EQUIPMENT

| | | |
|---|----------|-------------|
| a) Heavy duty front fender fitted. | Yes | ------(Y/N) |
| b) Heavy duty hooks at rear and front. | Yes | ------(Y/N) |
| c) Sunvisors supplied. | Yes | ------(Y/N) |
| d) Rear view mirrors, external 2 No. and inside 1 No. supplied. | Yes, Yes | ------(Y/N) |

Tenderer's

Official

Signature

Stamp

TENDERER'S Column to be completed by tenderer

| SPECIFICATION | REQUIRED | TENDERER'S |
|---|---------------------------|-------------------------|
| e) Spare wheel supplied. | Yes | ------(Y/N) |
| f) Hydraulic jack and wheel brace supplied. | Yes, Yes | ------(Y/N) |
| g) Safety belts provided for all seats belts conforming to KEBS 06-664: 1985 standard. | Yes | ------(Y/N) |
| h) Extra heavy duty suspension - i.e. 2 double action shock absorbers at rear and front respectively. | front 2 rear 2 | |
| i) 4 speaker FM, AM, SW radio & CD/ flashdisc player with appropriate aerial. | Specify make and model | ----- ----- |
| j) Security alarm and immobilizer fitted. | Yes | ----- (Y/N) |
| k) Manufacturer's standard tool kit supplied. | 1 per vehicle | _____(Y/N) |
| l) Any other extras supplied/fitted as standard. | Specify | ----- ----- ----- |

11 OTHER ITEMS/EQUIPMENT - QUOTE SEPARATELY IF FITTED AS OPTION

| | | |
|--|---|------------------|
| a) Extra fuel tank fitted. | specify Standard/Option | ----- |
| Capacity. | specify | -----Lt |
| b) Roof rack fitted. | specify Standard/Option Specify the rack size | ----- -----mm |
| c) High raise jack and jacking points. | specify Standard/Option | ----- |
| d) Extended front Kangaroo Bar. | Yes Mandatory | ------(Y/N) |
| e) Front and rear light guard | Yes Mandatory | ------(Y/N) |
| f) Air conditioner | Yes Mandatory | ------(Y/N) |
| Tenderer's Signature _____ | Official Stamp _ | |

TENDERER'S Column to be completed by tenderer

| SPECIFICATION | REQUIRED | TENDERER'S |
|--|----------|--------------|
| g) Air bags | specify | ----- |
| h) Winch with wire rope. | Yes | ------(Y/N) |
| Capacity 3 tons | specify | -----tons |
| Wire rope diameter x length approx. 8 x 30 | specify | ---x -----mm |

12 WARRANTY

| | | |
|---|------------------|-------------------------|
| a) Specimen of vehicle warranty to be submitted when tendering. | Yes | ------(Y/N) |
| b) Each vehicle supplied to carry a statement of warranty. | Yes Mandatory | ------(Y/N) |
| c) Warranty duration min., 12 Months or 40,000 Km whichever occurs first. | specify | ----- Months -----Km |

13 MANUALS

| | | |
|---|--|----------------------|
| a) All literature in English language. | Yes | ------(Y/N) |
| b) Repair manuals/CD supplied. | Specify which available 1 per vehicle | ----- ------(Y/N) |
| c) Parts catalogue/CD supplied. | Specify which available 1 per vehicle | ----- ------(Y/N) |
| d) Driver's handbook and service schedule supplied. | 1 per vehicle Mandatory | ------(Y/N) |

14 OTHER REQUIREMENT

| | | |
|--|-------------------|----------------|
| a) Body construction and all fitments to conform to CAP 403 Kenya Traffic Act. | Yes Mandatory | _____(Y/N) |
| b) Vehicle to be registered with the Registrar of Motor Vehicles. | Yes | ------(Yes/No) |
| c) Vehicle to be inspected by the Chief Mechanical and Transport Engineer for compliance with the specification prior to delivery to the user. | Yes | _____(Y/N) |
| Tenderer's Signature | Official Stamp | |

TENDERER'S Column to be completed by tenderer

| SPECIFICATION | REQUIRED | TENDERER'S |
|--|---|-------------------------|
| d) Franchise holder (representative in Kenya) If not, specify relationship with the Franchise holder | Yes Specify whether agent/dealer | _____(Y/N) ----- |
| e) Availability of spare parts. | Indicate motor vehicle dealers who stock spare parts. | ----- ----- ----- |
| f) Names and addresses of dealers/agents where back-up service can be obtained indicating the location of the workshop facilities. | Specify | ----- ----- ----- |
| g) Firm to offer local training services for the drivers on daily maintenance checks and operation of the vehicle. | Yes specify number of days. | _____(Y/N) -----days |
| Tenderer's Signature _____ | Official Stamp | |

PART 3 - CONTRACT

Section VII. General Conditions of Contract

1 Definitions

1.1 The following words and expressions shall have the meanings hereby assigned to them:

- (a) “Bank” means the World Bank and refers to the International Bank for Reconstruction and Development (IBRD) or the International Development Association (IDA).
- (b) “Contract” means the Contract Agreement entered into between the Purchaser and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
- (c) “Contract Documents” means the documents listed in the Contract Agreement, including any amendments thereto.
- (d) “Contract Price” means the price payable to the Supplier as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
- (e) “Day” means calendar day.
- (f) “Completion” means the fulfillment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.
- (g) “GCC” means the General Conditions of Contract.
- (h) “Goods” means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Purchaser under the Contract.
- (i) “Purchaser” means the entity purchasing the Goods and Related Services, as specified in the SCC.
- (j) “Related Services” means the services incidental to the supply of the goods, such as insurance, installation, training and initial maintenance and other such obligations of the Supplier under the Contract.
- (k) “SCC” means the Special Conditions of Contract.
- (l) “Subcontractor” means any natural person, private or government entity, or a combination of the above, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier.
- (m) “Supplier” means the natural person, private or government entity, or a combination of the above, whose bid to perform the Contract has been accepted by the Purchaser and is named as such in the Contract Agreement.
- (n) “The Project Site,” where applicable, means the place named in the SCC.

2 Contract Documents

2.1 Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

3 Fraud and Corruption

3.1 The Bank requires that Borrowers (including beneficiaries of Bank loans), as well as

Bidders, Suppliers, Contractors, and Consultants under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuit of this policy, the Bank:

- (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, directly or indirectly, of anything 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 or omission of facts in order to influence a procurement process or the execution of a contract;
 - (iii) “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of the Borrower, designed to establish bid prices at artificial, non-competitive levels; and;
 - (iv) “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of a contract;
- (b) will sanction a firm or individual, including declaring them ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed contract if it at any time determines that they have, directly or through an agent, engaged, in corrupt, fraudulent, collusive or coercive practices in competing for, or in executing, a Bank-financed contract; and
- (c) will have the right to require that Suppliers to permit the Bank to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by the Bank.

4 Interpretation

4.1 If the context so requires it, singular means plural and vice versa.

4.2 Entire Agreement:

The Contract constitutes the entire agreement between the Purchaser and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of the parties with respect thereto made prior to the date of Contract.

4.3 Amendment:

No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.

4.4 Nonwaiver:

- (a) Subject to GCC Sub-Clause 4.4(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
- (b) Any waiver of a party’s rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such

waiver, and must specify the right and the extent to which it is being waived.

4.5 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

5 Language

5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Supplier and the Purchaser, shall be written in the language specified in the SCC. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified, in which case, for purposes of interpretation of the Contract, this translation shall govern.

5.2 The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Supplier.

6 Joint Venture, Consortium or Association

6.1 If the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Purchaser.

7 Notices

7.1 Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the SCC. The term “in writing” means communicated in written form with proof of receipt.

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

8 Governing Law

8.1 The Contract shall be governed by and interpreted in accordance with the laws of Iraq.

9 Settlement of Disputes

9.1 The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.

9.2 Disputes will be settled in accordance with the Laws of Iraq.

10 Scope of Supply

10.1 The Goods and Related Services to be supplied shall be as specified in the Schedule of Requirements.

11 Delivery and Documents

- 11.1 Subject to GCC Sub-Clause 29.1, the Delivery of the Goods and Completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in the Schedule of Requirements. The details of shipping and other documents to be furnished by the Supplier are specified in the SCC.

12 Supplier's Responsibilities

- 12.1 The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GCC Clause 10, and the Delivery and Completion Schedule, as per GCC Clause 11.

13 Contract Price

- 13.1 Prices charged by the Supplier for the Goods supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its bid.

14 Terms of Payment

- 14.1 The Contract Price, including any Advance Payments, if applicable, shall be paid as specified in the SCC.
- 14.2 The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GCC Clause 11 and upon fulfillment of all other obligations stipulated in the Contract.
- 14.3 Payments shall be made promptly by the Purchaser, but in no case later than sixty (60) days after submission of an invoice or request for payment by the Supplier, and after the Purchaser has accepted it.
- 14.4 In the event that the Purchaser fails to pay the Supplier any payment by its due date or within the period set forth in the SCC, the Purchaser shall pay to the Supplier interest on the amount of such delayed payment at the rate shown in the SCC, for the period of delay until payment has been made in full, whether before or after judgment or arbitrage award.

15 Taxes and Duties

- 15.1 All price are inclusive of applicable taxes and duties.

16 Performance Security

- 16.1 If required as specified in the SCC, the Supplier shall, within twenty-eight (28) days of the notification of contract award, provide a performance security for the performance of the Contract in the amount specified in the SCC.
- 16.2 The proceeds of the Performance Security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.
- 16.3 As specified in the SCC, the Performance Security, if required, shall be in one of the format stipulated by the Purchaser in the SCC, or in another format acceptable to the

Purchaser.

- 16.4 The Performance Security shall be discharged by the Purchaser and returned to the Supplier not later than twenty-eight (28) days following the date of Completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the SCC.

17 Copyright

- 17.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Purchaser by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to the Purchaser directly or through the Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party

18 Confidential Information

- 18.1 The Purchaser and the Supplier shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Supplier may furnish to its Subcontractor such documents, data, and other information it receives from the Purchaser to the extent required for the Subcontractor to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Supplier under GCC Clause 18.
- 18.2 The Purchaser shall not use such documents, data, and other information received from the Supplier for any purposes unrelated to the contract. Similarly, the Supplier shall not use such documents, data, and other information received from the Purchaser for any purpose other than the performance of the Contract.
- 18.3 The obligation of a party under GCC Sub-Clauses 18.1 and 18.2 above, however, shall not apply to information that:
- (a) the Purchaser or Supplier need to share with the Bank or other institutions participating in the financing of the Contract;
 - (b) now or hereafter enters the public domain through no fault of that party;
 - (c) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
 - (d) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
- 18.4 The above provisions of GCC Clause 18 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.
- 18.5 The provisions of GCC Clause 18 shall survive completion or termination, for whatever reason, of the Contract.

19 Subcontracting

19.1 The Supplier shall notify the Purchaser in writing of all subcontracts awarded under the Contract if not already specified in the bid. Such notification, in the original bid or later shall not relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.

19.2 Subcontracts shall comply with the provisions of GCC Clause 3.

20 Specifications and Standards

20.1 Technical Specifications and Drawings

- (a) The Goods and Related Services supplied under this Contract shall conform to the technical specifications and standards mentioned in Section VI, Schedule of Requirements and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the Goods' country of origin.
- (b) The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Purchaser.
- (c) Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Schedule of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Purchaser and shall be treated in accordance with GCC Clause 29.

21 Packing and Documents

21.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

21.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the SCC, and in any other instructions ordered by the Purchaser.

22 Insurance

22.1 The Goods supplied under the Contract shall be fully insured against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery.

23 Inspections and Tests

23.1 The Supplier shall at its own expense and at no cost to the Purchaser carry out all such tests and/or inspections of the Goods and Related Services as are specified in the SCC.

- 23.2 The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the Goods' final destination, or in another place in the Iraq as specified in the SCC. Subject to GCC Sub-Clause 23.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.
- 23.3 The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 23.2, provided that the Purchaser bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.
- 23.4 Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Purchaser. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Purchaser or its designated representative to attend the test and/or inspection.
- 23.5 The Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.
- 23.6 The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.
- 23.7 The Purchaser may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a notice pursuant to GCC Sub-Clause 23.4.
- 23.8 The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report pursuant to GCC Sub-Clause 23.6, shall release the Supplier from any warranties or other obligations under the Contract.

24 Liquidated Damages

- 24.1 Except as provided under GCC Clause 28, if the Supplier fails to deliver any or all of the Goods by the Date(s) of delivery or perform the Related Services within the period specified in the Contract, the Purchaser may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the SCC of the delivered price of the delayed

Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those SCC. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to GCC Clause 31.

25 Warranty

- 25.1 The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.
- 25.2 Subject to GCC Sub-Clause 20.1(b), the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.
- 25.3 Unless otherwise specified in the SCC, the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the SCC, or for eighteen (18) months after the date of shipment from the port or place of loading in the country of origin, whichever period concludes earlier.
- 25.4 The Purchaser shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Supplier to inspect such defects.
- 25.5 Upon receipt of such notice, the Supplier shall, within the period specified in the SCC, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.
- 25.6 If having been notified, the Supplier fails to remedy the defect within the period specified in the SCC, the Purchaser may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.

26 Patent Indemnity

- 26.1 The Supplier shall, subject to the Purchaser's compliance with GCC Sub-Clause 26.2, indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:
- (a) the installation of the Goods by the Supplier or the use of the Goods in the country where the Site is located; and
 - (b) the sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any

infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Contract.

- 26.2 If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in GCC Sub-Clause 26.1, the Purchaser shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.
- 26.3 If the Supplier fails to notify the Purchaser within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf.
- 26.4 The Purchaser shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.
- 26.5 The Purchaser shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Purchaser.

27 Change in Laws and Regulations

- 27.1 Unless otherwise specified in the Contract, if after the date of 28 days prior to date of Bid submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in Iraq (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract.

28 Force Majeure

- 28.1 The Supplier shall not be liable for forfeiture of its Performance Security, liquidated damages, 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.
- 28.2 For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

- 28.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

29 Change Orders and Contract Amendments

- 29.1 The Purchaser may at any time order the Supplier through notice in accordance GCC Clause 7, to make changes within the general scope of the Contract in any one or more of the following:
- (a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
 - (b) the method of shipment or packing;
 - (c) the place of delivery; and
 - (d) the Related Services to be provided by the Supplier.
- 29.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier's receipt of the Purchaser's change order.
- 29.3 Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.
- 29.4 Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

30 Extensions of Time

- 30.1 If at any time during performance of the Contract, the Supplier or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 11, the Supplier shall promptly notify the Purchaser in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.
- 30.2 Except in case of Force Majeure, as provided under GCC Clause 28, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 24, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 30.1.

31 Termination

31.1 Termination for Default

- (a)** The Purchaser, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate the Contract in whole or in part:
 - (i) if the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GCC Clause 30;
 - (ii) if the Supplier fails to perform any other obligation under the Contract; or
 - (iii) if the Supplier, in the judgment of the Purchaser has engaged in fraud and corruption, as defined in GCC Clause 3, in competing for or in executing the Contract.
- (b)** In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC Clause 31.1(a), the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

31.2 Termination for Insolvency.

- (a)** The Purchaser may at any time terminate the Contract by giving notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Purchaser

31.3 Termination for Convenience.

- (a)** The Purchaser, by notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.
- (b)** The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:
 - (i) to have any portion completed and delivered at the Contract terms and prices; and/or
 - (ii) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

32 Assignment

- 32.1 Neither the Purchaser nor the Supplier shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

Section VIII. Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement and / or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

| | |
|--------------------|---|
| GCC 1.1(i) | The Purchaser is: The Republic of Kenya |
| GCC 1.1(j) | The Purchaser is: State Department for Labour, Ministry of Labour and Social Protection, |
| GCC 1.1 (n) | The Project Site/Final Destination(s) is: State Department for Labour Ministry of Labour and Social Protection NSSF Building, Block A, Bishops Road, Nairobi. |
| GCC 5.1 | The language shall be English |
| GCC 7.1 | For notices , the Purchaser's address shall be: Attention: The Principal Secretary, State Department of Labour Ministry of Labour and Social Protection, P.O. Box 40326-00100 Street Address: NSSF Building, Block A, Bishops Road, Nairobi. Floor/ Room number: 14th Floor City: Nairobi ZIP Code: 00100 Country: Kenya Telephone: 254-(020- 2729800-19) Electronic mail address: kyeop@labour.go.ke and ps@labour.go.ke |
| GCC 9.1 | The governing law shall be the law of the Republic of Kenya |
| GCC 10.2 | The rules of procedure for arbitration proceedings pursuant to GCC Clause 10.2 shall be as follows: (a) Contract with foreign Supplier: GCC 10.2 (a)—Any dispute, controversy or claim arising out of or relating to this Contract, or breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force. (b) Contracts with Supplier national of the Purchaser's country: In the case of a dispute between the Purchaser and a Supplier who is a national of the Purchaser's country, the dispute shall be referred to adjudication or arbitration in accordance with the laws of Republic of Kenya . |
| GCC 13.1 | Details of Shipping and other Documents to be furnished by the Supplier are For Goods Supplied from abroad: Upon shipment, the supplier shall notify the Purchaser and the Insurance Company |

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|-----------------|--|
| | <p>by cable the full details of the shipment, including Contract number, description of Goods, quantity, the vessel, the bill of lading number and date, port of loading, date of shipment, port of discharge, etc. the Supplier shall mail the following documents to the Purchaser, with a copy to the Insurance Company:</p> <ul style="list-style-type: none"> (i) Copies of the Supplier's invoice showing Goods description, quantity, unit price and total amount; (ii) Original and three copies of the negotiable, clean, on-board bill of lading marked "freight prepaid" and 3 (three) copies of non-negotiable bill of lading; (iii) Copies of the packing list identifying contents of each package; (iv) Insurance certificate (v) Manufacturers of Supplier's warranty certificate (vi) Inspection certificate, issued by the nominated inspection agency, and the Supplier's factory inspection report; and (vii) Certificate of origin <p>The above documents shall be received by the Purchaser before arrival of the Goods and, if not received, the Supplier will be responsible for any consequent expenses.</p> <p style="text-align: center;">For Goods from within the Purchaser's country:</p> <p>The Supplier shall deliver the goods to the purchaser's depot specified in the schedule of requirements and the supplier shall be solely responsible for all arrangements, insurance, documentation and all matters in connection therewith. When delivering the goods, the following documents shall be presented:</p> <ul style="list-style-type: none"> (i) Copies of the Supplier's invoice showing goods description, quantity, unit price and total amount; (ii) Delivery note, railway receipt, or truck receipt; (iii) Manufacturer's or Supplier's warranty certificate; (iv) Inspection certificate issued by the nominated inspection agency and the Supplier's factory inspection report (v) Certificate of origin (vi) Chief Mechanical and Transport Engineer quality inspection certificate and mark of quality <p>The above documents shall be received by the Purchaser before arrival of the Goods and if not received, the Supplier will be responsible for any consequent expenses.</p> |
| GCC 14.1 | <p>The method and conditions of payment to be made to the Supplier under this Contract shall be as follows:</p> <p>100% Payment for Goods upon satisfactory delivery.</p> |
| GCC 16.1 | <p>A Performance Bank Security "shall" be required. <i>The amount of the Performance Bank Security shall be: 10% percent of the Contract Price per each lot.</i></p> |
| GCC 16.3 | <p>If required, the Performance Security shall be in the form of: Bank Guarantee. The Performance Security shall be denominated in Kenya Shillings</p> |
| GCC 16.4 | <p>Discharge of the Performance Security shall take place: As indicated in Sub Clause GCC 16.4]</p> |
| GCC 21.2 | <p>The packing, marking and documentation within and outside the packages shall be</p> |

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| | As per specifications |
| GCC 25.3 | The period of validity of the Warranty shall be: <i>as indicated for each item in the technical specifications.</i> For purposes of the Warranty, the place(s) of final destination(s) shall be: State Department for Labour, NSSF Building, Block A, 14th Floor Bishops Road. |
| GCC 25.5 | The period for repair or replacement shall be: 14 days. |

Section IX. Contract Forms

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1. Contract Agreement

[The successful Bidder shall fill in this form in accordance with the instructions indicated]

THIS CONTRACT AGREEMENT is made

the *[insert: **number**]* day of *[insert: **month**]*, *[insert: **year**]*.

BETWEEN

- (1) *[insert complete name of Purchaser]*, a *[insert description of type of legal entity, for example, an agency of the Ministry of of the Government of { insert name of Country of Purchaser }, or corporation incorporated under the laws of { insert name of Country of Purchaser }]* and having its principal place of business at *[insert address of Purchaser]* (hereinafter called “the Purchaser”), and
- (2) *[insert name of Supplier]*, a corporation incorporated under the laws of *[insert: country of Supplier]* and having its principal place of business at *[insert: address of Supplier]* (hereinafter called “the Supplier”).

WHEREAS the Purchaser invited bids for certain Goods and ancillary services, viz., *[insert brief description of Goods and Services]* and has accepted a Bid by the Supplier for the supply of those Goods and Services in the sum of *[insert Contract Price in words and figures]* (hereinafter called “the Contract Price”).

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 constitute the Contract between the Purchaser and the Supplier, and each shall be read and construed as an integral part of the Contract:
 - (a) This Contract Agreement
 - (b) Special Conditions of Contract
 - (c) General Conditions of Contract
 - (d) Technical Requirements (including Schedule of Requirements and Technical Specifications)
 - (e) The Supplier’s Bid and original Price Schedules
 - (f) The Purchaser’s Notification of Award
 - (g) *[Add here any other document(s)]*
3. This Contract shall prevail over all other Contract documents. In the event of any discrepancy or inconsistency within the Contract documents, then the documents shall prevail in the order listed above.

4. In consideration of the payments to be made by the Purchaser to the Supplier as hereinafter mentioned, the Supplier hereby covenants with the Purchaser to provide the Goods and Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
5. The Purchaser hereby covenants to pay the Supplier in consideration of the provision of the Goods and Services 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 the laws of *Iraq* on the day, month and year indicated above.

For and on behalf of the Purchaser

Signed: *[insert signature]*
in the capacity of *[insert title or other appropriate designation]*
in the presence of *[insert identification of official witness]*

For and on behalf of the Supplier

Signed: *[insert signature of authorized representative(s) of the Supplier]*
in the capacity of *[insert title or other appropriate designation]*
in the presence of *[insert identification of official witness]*

2. Performance Security

[The bank, as requested by the successful Bidder, shall fill in this form in accordance with the instructions indicated]

Date: *[insert date (as day, month, and year) of Bid Submission]*
NCB No. and title: *[insert no. and title of bidding process]*

Bank's Branch or Office: *[insert complete name of Guarantor]*

Beneficiary: *[insert complete name of Purchaser]*

PERFORMANCE GUARANTEE No.: *[insert Performance Guarantee number]*

We have been informed that *[insert complete name of Supplier]* (hereinafter called "the Supplier") has entered into Contract No. *[insert number]* dated *[insert day and month]*, *[insert year]* with you, for the supply of *[description of Goods and related Services]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a Performance Guarantee is required.

At the request of the Supplier, we hereby irrevocably undertake to pay you any sum(s) not exceeding *[insert amount(s)¹ in figures and words]* upon receipt by us of your first demand in writing declaring the Supplier to be in default under the Contract, without cavil or argument, or your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This Guarantee shall expire no later than the *[insert number]* day of *[insert month]**[insert year]*,² and any demand for payment under it must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.

[signatures of authorized representatives of the bank and the Supplier]

1 *The Bank shall insert the amount(s) specified in the SCC and denominated, as specified in the SCC.*

2 *Dates established in accordance with Clause 17.4 of the General Conditions of Contract ("GCC"), taking into account any warranty obligations of the Supplier under Clause 15.2 of the GCC intended to be secured by a partial Performance Guarantee. The Purchaser should note that in the event of an extension of the time to perform the Contract, the Purchaser would need to request an extension of this Guarantee from the Bank. Such request must be in writing and must be made prior to the expiration date established in the Guarantee. In preparing this Guarantee, the Purchaser might consider adding the following text to the Form, at the end of the penultimate paragraph: " We agree to a one-time extension of this Guarantee for a period not to exceed [six months] [one year], in response to the Purchaser's written request for such extension, such request to be presented to us before the expiry of the Guarantee."*

