



**COUNCIL OF GOVERNORS**

**CATEGORY: COG/PQ/S14**

**TENDER NO: COG/DEV/4/1/2015 -2017**

**FOR**

**PROVISION OF DOCUMENTARY PRODUCTION SERVICES**

**The Council of Governors,  
Delta House, 2<sup>nd</sup> Floor Chiromo Road**

**P. O. Box 40401 -00100,**

**Nairobi Kenya,**

**Tel: +254 (020)2503313/4**

**Email: [info@cog.go.ke](mailto:info@cog.go.ke)**

## **ABBREVIATIONS AND ACRONYMS**

|              |  |
|--------------|--|
| 1. BDS       | Bid Data Sheet                                     |
| 2. CC        | Conditions of Contract                             |
| 4. ICPAK     | Institute of Certified Public Accountants of Kenya |
| 5. JV        | Joint Venture                                      |
| 6. KES       | Kenya Shillings                                    |
| 7. PPDA 2005 | Public Procurement and Disposal Act, 2005          |
| 8. PPDR 2006 | Public Procurement and Disposal Regulations, 2006  |
| 9. PPOA      | Public Procurement and Oversight Authority         |
| 10. CoG      | Council of Governors                               |
| 11. KRA      | Kenya Revenue Authority                            |
| 12. LC       | Letter of Credit                                   |
| 13. TCC      | Tax Compliance Certificate                         |
| 14. SCC      | Special Conditions of Contract                     |
| 15. VAT      | Value Added Tax                                    |
| 16. MR       | Mandatory Requirement                              |

**TABLE OF CONTENTS**

|                    | <b>Page</b>  |
|--------------------|--|
| <b>SECTION I</b>   | <b>INVITATION TO TENDER..... 2</b>                 |
| <b>SECTION II</b>  | <b>INSTRUCTIONS TO TENDERERS..... 3</b>            |
|                    | <b>APPENDIX TO INSTITUTIONS TO TENDER ..... 14</b> |
| <b>SECTION III</b> | <b>GENERAL CONDITIONS OF CONTRACT..... 19</b>      |
| <b>SECTION IV</b>  | <b>SPECIAL CONDITIONS OF CONTRACT..... 24</b>      |
| <b>SECTION V</b>   | <b>SCHEDULE OF REQUIREMENTS..... 25</b>            |
| <b>SECTION VI</b>  | <b>DESCRIPTION OF SERVICES ..... 27</b>            |
| <b>SECTION VII</b> | <b>STANDARD FORMS..... 28</b>                      |

## **SECTION I - INVITATION TO TENDER**

**DATE: 11<sup>th</sup> August, 2016**

**TENDER NO: COG/DEV/4/1/2015 -2017 FOR PROVISION OF DOCUMENTARY PRODUCTION SERVICES**

---

The Council of Governors invites sealed Tenders from interested eligible bidders for the provision of Documentary Production services for the 4<sup>th</sup> Annual Devolution conference to be held at Maasai Mara Narok County in the month of April 2017.

### **Submission of Tender documents**

A complete set of tender documents may be obtained by interested candidates upon payment of non-refundable fees of **Kshs. 1,000.00** in cash or Bankers cheque payable to Council of Governors.

Completed tender documents are to be enclosed in plain sealed envelopes, marked with the tender number and be deposited in the tender box provided at the Council of Governors Secretariat, 2<sup>nd</sup> floor, Delta Corner, off Waiyaki Way during normal working hours or be addressed and posted to:

**The Chief Executive Officer,**

**Council of Governors**

**P.O. Box 40401, 00100**

**Nairobi**

So as to be received on or before **Thursday 25<sup>th</sup> August 2016 at 11.00 A.m.**

Prices quoted should include all relevant taxes, in Kenya Shillings and should remain valid for 120 days after tender opening.

Tenders will be opened immediately in the presence of the Tenderers' representatives who choose to attend at the 11<sup>th</sup> Floor boardroom at Council offices. Tender Documents submitted after the stated deadline shall **NOT** be accepted for evaluation irrespective of circumstances.

Any canvassing or giving false information will lead to automatics disqualification

**Jacqueline Mogeni**

**Chief Executive Officer,**

**Council of Governors**

## SECTION II INSTRUCTIONS TO TENDERERS

| TABLE OF CONTENTS |   | Page |
|-------------------|---|------|
| 2.1               | Eligible Tenderers .....                        | 4    |
| 2.2               | Cost of tendering .....                         | 4    |
| 2.3               | Contents of tender documents .....              | 4    |
| 2.4               | Clarification of Tender documents .....         | 5    |
| 2.5               | Amendment of tender documents .....             | 5    |
| 2.6               | Language of tenders .....                       | 5    |
| 2.7               | Documents comprising the tender .....           | 5    |
| 2.8               | Form of tender .....                            | 6    |
| 2.9               | Tender prices .....                             | 6    |
| 2.10              | Tender currencies .....                         | 6    |
| 2.11              | Tenderers eligibility and qualifications .....  | 6    |
| 2.12              | Tender security .....                           | 6    |
| 2.13              | Validity of tenders .....                       | 7    |
| 2.14              | Format and signing of tenders .....             | 7    |
| 2.15              | Sealing and marking of tenders .....            | 7    |
| 2.16              | Deadline for submission of tenders .....        | 8    |
| 2.17              | Modification and withdrawal of tenders .....    | 8    |
| 2.18              | Opening of tenders .....                        | 9    |
| 2.19              | Clarification of tenders .....                  | 9    |
| 2.20              | Preliminary Examination and Responsiveness..... | 9    |
| 2.21              | Conversion to other currencies .....            | 9    |
| 2.22              | Evaluation and comparison of tenders .....      | 10   |
| 2.23              | Contacting the procuring entity .....           | 11   |
| 2.24              | Award of Contract .....                         | 11   |
| 2.25              | Notification of award .....                     | 12   |
| 2.26              | Signing of Contract .....                       | 12   |
| 2.27              | Performance security .....                      | 13   |
| 2.28              | Corrupt or fraudulent practices .....           | 13   |

## **SECTION II - INSTRUCTIONS TO TENDERERS**

### **2.1 Eligible tenderers**

- 2.1.1. This Invitation to tender is open to all tenderers as described in the instructions to tenderers. Successful tenderers shall provide the services for the stipulated duration from the date of commencement (hereinafter referred to as the term) specified in the tender documents. The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender unless where specially allowed under section 131 of the Act.
- 2.1.2. Tenderers shall provide the qualification information statement that the tenderer (including all members, of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring entity to provide consulting services for the preparation of the design, specifications, other documents to be used for the procurement of the services under this Invitation for tenders.
- 2.1.3. Tenderers involved in corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

### **2.2 Cost of tendering**

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

### **2.3 Contents of tender documents**

- 2.3.1. The tender document comprises of the documents listed below and addenda issued in accordance with clause 5 of these instructions to tenders
  - I. Instructions to tenderers
  - II. General Conditions of Contract
  - III. Special Conditions of Contract
  - IV. Schedule of Requirements
  - V. Details of service
  - VI. Form of Tender
  - VII. Price schedules
    - a. Contract form
    - b. Confidential business questionnaire form
- 2.3.2. The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tender documents. Failure to furnish all information required by the tender documents or to submit a tender not substantially responsive to the tender documents in every respect will be at the tenderers risk and may result in the rejection of its tender.

## **2.4 Clarification of Documents**

- 2.4.1. A prospective candidate making inquiries of the tender document may notify the Procuring entity in writing or by post, or email at the entity's address indicated in the Invitation for tenders. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives no later than seven (3) days prior to the deadline for the submission of tenders, prescribed by the procuring entity. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers who have received the tender documents"
- 2.4.2. The procuring entity shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender

## **2.5 Amendment of documents**

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

## **2.6 Language of tender**

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

## **2.7 Documents Comprising the Tender**

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

- (a) A Tender Form and a Price Schedule completed in accordance with paragraph 8, 9,10 below.
- (b) Documentary evidence established in accordance with Clause 2.11 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
- (c) Tender security furnished is in accordance with Clause 2.12
- (d) Confidential business questionnaire

## **2.8 Form of Tender**

- 2.8.1 The tenderers shall complete the Form of Tender and the appropriate Price Schedule furnished in the tender documents, indicating the services to be performed.

## **2.9 Tender Prices**

- 2.9.1 The tenderer shall indicate on the Price schedule the unit prices where applicable and total tender prices of the services it proposes to provide under the contract.
- 2.9.2 Prices indicated on the Price Schedule shall be the cost of the services quoted including all levies, VAT and other taxes payable:
- 2.9.3 Prices quoted by the tenderer shall remain fixed during the term of the contract unless otherwise agreed by the parties. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.22.
- 2.9.4 Contract price variations shall not be allowed for this contract
- 2.9.5 Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price.
- 2.9.6 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.

## **2.10 Tender Currencies**

- 2.10.1 Prices shall be quoted in Kenya Shillings only.

## **2.11 Tenderers Eligibility and Qualifications.**

- 2.11.1 Pursuant to Clause 2.1 the tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.
- 2.11.2 The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall establish to the Procuring entity's satisfaction that the tenderer has the financial and technical capability necessary to perform the contract.

## **2.12. Tender Security**

- 2.12.1 The tenderer shall furnish, as part of its tender, a tender security for the amount and form specified in the Appendix to Instructions to Tenderers.
- 2.12.2 **Kshs 50,000 Tender security to be provided.**
- 2.12.3 The tender security is required to protect the Council of Governors against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 2.12.7



- 2.12.4 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form
- a) Cash.
  - b) A bank guarantee.
  - c) Such insurance guarantee approved by the Authority.
  - d) Letter of credit.
- 2.12.5 Any tender not secured in accordance with paragraph 2.12.1. and 2.12.3 shall be rejected by the Council of Governors as non-responsive, pursuant to paragraph 2.20.5
- 2.12.6 Unsuccessful Tenderer's tender security will be discharged or returned as promptly as possible but not later than thirty (30) days after the expiration of the period of tender validity
- 2.12.7 The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 2.29, and furnishing the performance security, pursuant to paragraph 2.30
- 2.12.8 The tender security may be forfeited:
- (a) if a tenderer withdraws its tender during the period of tender validity.
  - (b) in the case of a successful tenderer, if the tenderer fails:
    - (i) to sign the contract or
    - (ii) to furnish performance security as requested
  - (c) If the tenderer reject correction of an arithmetic error in the tender.

### **2.13 Format and Signing of Tender**

- 2.13.1 The tenderer shall prepare two copies of the tender, clearly / marking each "ORIGINAL TENDER" and "COPY OF TENDER," as appropriate. In the event of any discrepancy between them, the original shall govern.
- 2.13.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. All pages of the tender, except for un-amended printed literature, shall be initialed by the person or persons signing the tender.
- 2.13.3 The tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

### **2.14 Sealing and Marking of Tenders**

- 2.14.1 The tenderer shall seal the original and each copy of the tender in separate envelopes, duly marking the envelopes as "ORIGINAL" and "COPY." The envelopes shall then be sealed in an outer envelope. The inner and outer envelopes shall:
- (a) be addressed to the Procuring entity at the address given in the invitation to tender
  - (b) Bear, tender number and name in the invitation to tender and the words:  
**"DO NOT OPEN BEFORE Thursday 25<sup>th</sup> August 2016 at 11.00 A.m.**
- 2.14.2 The inner envelopes shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared "late".

2.14.3 If the outer envelope is not sealed and marked as required by paragraph 2.14.1, the Procuring entity will assume no responsibility for the tender's misplacement or premature opening.

## **2.15 Deadline for Submission of Tenders**

2.15.1 Tenders must be received by the Procuring entity at the address specified under paragraph 2.14.1 no later than **Thursday 25<sup>th</sup> August 2016 at 11.00 A.m.**

2.15.2 The procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 5, in which case all rights and obligations of the procuring entity and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

2.15.3 Bulky tenders which will not fit in the tender box shall be received by the procuring entity as provided for in the appendix.

## **2.16 Modification and withdrawal of tenders**

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

2.16.2 The Tenderer's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 2.15. A withdrawal notice may also be sent by cable, but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.

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

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

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

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

## **2.17 Opening of Tenders**

2.17.1 The Procuring entity will open all tenders in the presence of tenderers representatives who choose to attend, on **THURSDAY 25<sup>th</sup> August 2016 at 11.00 A.m.**, and in the location specified in the invitation to tender. The tenderers' representatives who are present shall sign a register evidencing their attendance.

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

opening.

- 2.17.4 The procuring entity will prepare minutes of the tender opening which will be submitted to the tenderers that signed the tender opening register and will have made the request.

## **2.18 Clarification of tenders**

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

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

## **2.19.0 Preliminary Examination and Responsiveness**

- 2.19.1 The Procuring entity will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required securities have been furnished whether the documents have been properly signed, and whether the tenders are generally in order.

- 2.19.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security may be forfeited. If there is a discrepancy between words and figures, the amount in words will prevail.

- 2.19.3 The Procuring entity may waive any minor informality or nonconformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any tenderer.

- 2.19.4 Prior to the detailed evaluation, pursuant to paragraph 22, the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one which conforms to all the terms and conditions of the tender documents without material deviations. The Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

- 2.19.5 If a tender is not substantially responsive, it will be rejected by the Procuring entity and may not subsequently be made responsive by the tenderer by correction of the nonconformity.

## **2.20 Evaluation and comparison of tenders.**

- 2.20.1 The procuring entity will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.20

- 2.20.2 The comparison shall be of the price including all costs as well as duties and taxes

payable on all the materials to be used in the provision of the services.

2.20.3 The Procuring entity's evaluation of a tender will take into account, in addition to the tender price, the following factors, in the manner and to the extent indicated in paragraph 2.21.4 and in the technical specifications:

- (a) Operational plan proposed in the tender;
- (b) Deviations in payment schedule from that specified in the Special Conditions of Contract;

2.20.4 Pursuant to paragraph 22.3 the following evaluation methods will be applied:

**(a) Operational Plan.**

The Procuring entity requires that the services under the Invitation for Tenders shall be performed at the time specified in the Schedule of Requirements. Tenderers offering to perform longer than the procuring entity have required delivery time will be treated as non-responsive and rejected.

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

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

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

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

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

**2.23. Contacting the procuring entity**

- 2.23.1 Subject to paragraph 2.19, no tenderer shall contact the procuring entity on any matter relating to its tender, from the time of the tender opening to the time the contract is awarded.
- 2.23.2 Any effort by a tenderer to influence the procuring entity in its decisions on tender evaluation, tender comparison or contract award may result in the rejection of the tenderers tender.

#### **2.24 Award of Contract**

##### **a) Post qualification**

- 2.24.1 In the absence of pre-qualification, the Procuring entity will determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.
- 2.24.2 The determination will take into account the tenderer's financial and technical capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 2.1.2, as well as such other information as the Procuring entity deems necessary and appropriate.
- 2.24.3 An affirmative determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the Tenderer's tender, in which event the Procuring entity will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

##### **b) Award Criteria**

- 2.24.4 Subject to paragraph 2.22 the Procuring entity will award the contract to the successful tenderer whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.
- 2.24.5 The procuring entity reserves the right to accept or reject any tender and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the procuring entity's action. If the procuring entity determines that none of the tenderers is responsive; the procuring entity shall notify each tenderer who submitted a tender.
- 2.24.6 A tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

#### **2.25 Notification of award**

- 2.25.1 Prior to the expiration of the period of tender validity, the Procuring entity will notify the successful tenderer in writing that its tender has been accepted.
- 2.25.2 The notification of award will signify the formation of the Contract subject to the signing of the contract between the tenderer and the procuring entity pursuant to clause 2.26.

Simultaneously the other tenderers shall be notified that their tenders have not been successful.

- 2.25.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 27, the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.12

## **2.26 Signing of Contract**

- 2.26.1 At the same time as the Procuring entity notifies the successful tenderer that its tender has been accepted, the Procuring entity will simultaneously inform the other tenderers that their tenders have not been successful.

- 2.26.2 Within fourteen (7) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Procuring entity.

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

## **2.27 Performance Security**

- 2.27.1 Within thirty (30) days of the receipt of notification of award from the Procuring entity, the successful tenderer shall furnish the performance security in accordance with the Conditions of Contract, in the Performance Security Form provided in the tender documents, or in another form acceptable to the Procuring entity.

- 2.27.2 Failure of the successful tenderer to comply with the requirement of paragraph 2.26 or paragraph 2.27.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Procuring entity may make the award to the next lowest evaluated or call for new tenders.

## **2.28 Corrupt or Fraudulent Practices**

- 2.28.1 The Procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts. A tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.

- 2.28.2 The procuring entity will reject a proposal for award if it determines that the tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;

- 2.28.3 Further, a tenderer who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in Public Procurement in Kenya.

## APPENDIX TO INSTRUCTIONS TO THE TENDERERS

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

| Instructions to tenderers | Particulars of appendix to instructions to tenderers  |
|---------------------------|---|
| 2.2.2                     | Price to be charged for tender documents. <b>Kshs 1,000</b>   |
| 2.10                      | Particulars of other currencies allowed. <b>None</b>  |
| 2.11                      | Particulars of eligibility and qualifications documents of evidence required. <b>Copies of:</b><br><b>i) Certificate of Registration/Incorporation</b><br><b>ii) Certificate of valid tax compliance</b><br><b>iii) VAT Certificate</b> |
| 2.12.2                    | Particulars of tender security if applicable. <b>Kshs 50,000</b>  |
| 2.12.3                    | Form of Tender Security:<br>A tender security in the form of a Bank Guarantee of <b>Kshs.50,000</b> is required   |
| 2.13                      | Validity of Tenders: <b>Tenders Shall remain valid for 120 days.</b>  |
| 2.24                      | Particulars of post – qualification if applicable. <b>CoG may inspect the premises and interview management to confirm information given</b>  |
| 2.24.4                    | Award Criteria:<br><br><b>Award will be made to the best evaluated bid.</b>   |
| 20                        | Particulars of performance security if applicable. <b>Kshs.100,000</b> will be executed upon signing the contract   |

2.22

**Evaluation Criteria**

The following requirements must be met by the tenderer notwithstanding other requirements in the tender documents:-

**a) Mandatory Requirements (MR)**

**At this stage, the tenderer's submission will either be responsive or non-responsive. The non-responsive submissions will be eliminated from the entire evaluation process and will not be considered further.**

| No  | Requirement  | Responsive or Not Responsive |
|-----|--|------------------------------|
| MR1 | Must submit a copy of Certificate of Registration/ Corporation                                   |                              |
| MR2 | Must submit a copy of valid Tax Compliant Certificate  |                              |
| MR3 | Must submit original bid bond of ksh.50,000  |                              |
| MR4 | Must submit a copy of PIN Certificate  |                              |
| MR5 | Must fill the Price Schedule in the format provided  |                              |
| MR6 | Must fill the form of Tender in the format provided  |                              |
| MR7 | Must submit a duly up filled Confidential Business Questionnaire                                 |                              |
| MR7 | Kshs 1,000 COG receipt for the purchase of the bid document/Bank cheque equal to the same amount |                              |
| Mr8 | Recently issued Bank Statement (issued for the last 6 months)                                    |                              |
|     | Full and accurate physical, postal, telephone and email address of the firm(Lease or ownership   |                              |

The applicant's team should have the following qualifications:

- Experience of handling public sector organizations
- The firm must have adequate size, structure, staffing, facilities and financial standing to provide comprehensive services related to development and execution of media campaigns.
- Capability and proven experience in developing and executing public awareness strategies
- Excellent media contacts both in print and electronic media

| Sn | Evaluation Attribute   | Points | Total Points that can be earned |
|----|--|--------|---------------------------------|
| 1  | Physical Facilities<br>Provide details of physical address and contacts –<br><br>attach evidence-utility bill, lease agreement and ownership certificate | 5      | 5                               |



|   |   |              |                |
|---|---|--------------|----------------|
|   |   |              |                |
| 2 | <b>Reputation:</b> Proof of satisfactory service (recommendations from at least five clients MAX- 20 others appropriated as (no clients/maximum required)20 | 20           | 20             |
| 3 | Quasi Proposal attached as per our TORs   | 20           | 20             |
| 4 | Implementation Methodology – maximum 10 points  | 10           | 10             |
| 5 | Experience -Number of relevant or similar projects done (LSO/contract and letter)   | 15           | 15<br>=        |
| 6 |   | <b>Total</b> | <b>70</b><br>= |

**Tenderers should note that only tenders that score 70 % and above of the technical score will qualify to have their proposed financial evaluation analysed. Those scoring below 70% will be disqualified at this stage. In the event no firm qualifies in the technical evaluation, COG at its own discretion may consider the first three bids depending of the highest scores.**

### **Financial Evaluation**

Financial proposals of all technically responsive bidders shall be opened upon invitation and in presence of bidders/ representatives of bidders. Financial bids of Non- responsive technical bidders shall be returned un-opened to the respective bidders.

The total amount of points allocated for the financial component is 30. The maximum number of points (30 points) **will be allotted to the lowest Financial Bid** that is opened and compared among those invited Firms which obtain the qualifying points in the evaluation of the technical component. All other price Bids will receive points in inverse proportion to the lowest price; e.g.

Price score =  $\frac{\text{Total Price Score i.e. } 20 \times \text{Lowest Bid}}{\text{Price}}$

Bid Price of the Bidder

#### **Example:**

1st Lowest Bid Price = Kes. 1,000

2nd Lowest Bid Price = Kes. 1,050

3rd Lowest Bid Price = Kes. 1,200

Price Score of 1st Lowest Bidder =  $(30 * 1,000)/1000 = 20$  points

Price Score of 2nd Lowest Bidder =  $(30 * 1000)/1050 = 19.05$  points

Price Score of 3rd Lowest Bidder =  $(30 * 1000)/1200 = 16.67$  points

**Total Score = Technical score + Price Score**

**SECTION III - GENERAL CONDITIONS OF CONTRACT**

| <b>TABLE OF CONTENTS</b> |                                   | <b>Page</b> |
|--------------------------|-----------------------------------|-------------|
| 3.1                      | Definitions .....                 | 19          |
| 3.2                      | Application .....                 | 19          |
| 3.3                      | Standards .....                   | 19          |
| 3.4                      | Patent Rights .....               | 19          |
| 3.5                      | Performance security .....        | 19          |
| 3.6                      | Inspections and tests .....       | 20          |
| 3.7                      | Payment .....                     | 20          |
| 3.8                      | Prices .....                      | 20          |
| 3.9                      | Assignment .....                  | 20          |
| 3.10                     | Termination for default .....     | 20          |
| 3.11                     | Termination for insolvency .....  | 21          |
| 3.12                     | Termination for convenience ..... | 21          |
| 3.13                     | Resolution of disputes .....      | 21          |
| 3.14                     | Governing language .....          | 21          |
| 3.15                     | Force majeure .....               | 21          |
| 3.16                     | Applicable law .....              | 21          |
| 3.17                     | Notices .....                     | 21          |

## SECTION III - GENERAL CONDITIONS OF CONTRACT

### 3.1 Definitions

In this contract the following terms shall be interpreted as indicated:

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

### 3.2 Application

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

### 3.3 Standards

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

### 3.4 Patent Right's

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

### 3.5 Performance Security

- 3.5.1 Within twenty eight (28) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the performance security where applicable in the amount specified in Special Conditions of Contract.
- 3.5.2 The proceeds of the performance security shall be payable to the Procuring entity as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.

- 3.5.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Procuring entity and shall be in the form of :
- a) Cash.
  - b) A bank guarantee.
  - c) Letter of credit.
- 3.5.4 The performance security will be discharged by the procuring entity and returned to the candidate not later than thirty (30) days following the date of completion of the tenderer's performance of obligations under the contract, including any warranty obligations under the contract.

### **3.6 Inspections and Tests**

- 3.6.1 The Procuring entity or its representative shall have the right to inspect and/or to test the services to confirm their conformity to the Contract specifications. The Procuring entity shall notify the tenderer in writing, in a timely manner, of the identity of any representatives retained for these purposes.
- 3.6.2 The inspections and tests may be conducted on the premises of the tenderer or its subcontractor(s). If conducted on the premises of the tenderer or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring entity.
- 3.6.3 Should any inspected or tested services fail to conform to the Specifications, the Procuring entity may reject the services, and the tenderer shall either replace the rejected services or make alterations necessary to meet specification requirements free of cost to the Procuring entity.
- 3.6.4 Nothing in paragraph 3.7 shall in any way release the tenderer from any warranty or other obligations under this Contract.

### **3.7 Payment**

- 3.7.1 The method and conditions of payment to be made to the tenderer under this Contract shall be specified in SCC

### **3.8 Prices**

- 3.8.1 Prices charged by the Supplier for services performed under the Contract shall not, with the exception of any Price adjustments authorized in SCC , vary from the prices by the tenderer in its tender or in the procuring entity's request for tender validity extension as the case may be. No variation in or modification to the terms of the contract shall be made except by written amendment signed by the parties.

### **3.9 Assignment**

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

### **3.10 Termination for Default**

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

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

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

### **3.11 Termination of insolvency**

3.11.1 The procuring entity may at the anytime terminate the contract by giving written notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the Supplier provided that such termination will not produce or affect any right of action or remedy, which has accrued or will accrue thereafter to the procuring entity.

### **3.12 Termination for convenience**

3.13.1 The procuring entity by written 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 the termination is for the procuring entity convenience, the extent to which performance of the Supplier of the contract is terminated and the date on which such termination becomes effective.

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

### **3.13 Resolution of disputes**

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

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

### **3.14 Governing Language**

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

### **3.15 Force Majeure**

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

### **3.16 Applicable Law.**

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

### **3.17 Notices**

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

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

**SECTION IV            SPECIAL CONDITIONS OF CONTRACT  
TERMS OF REFERENCE**

**4.0    Services Required**

April 2017 marks Four years of implementation of devolved government as envisaged in the Kenyan Constitution, 2010. To mark this fourth anniversary of Devolution, the Council of Governors (COG) will hold the 4<sup>th</sup> Annual Devolution Conference in Narok, in April 2017. The continuing Overall Conference Theme is “**Celebrating Devolution**”. The Guiding Theme of the Conference is “**Changing Perspectives, Changing the Narrative; Entrenching Devolution**”.

The conference will bring together stakeholders including Governors, Senators, Members of County Assemblies (MCAs), Women Representatives of national government institutions, civil society organizations, media, religious institutions, subnational governments from Africa and other regions, development partners, academia, private sector practitioners and other governments around the world with experience in a devolved system similar to Kenya.

For the past four years there have been concerted efforts to educate the public through word and deed of what devolution is and what it has achieved. The County Governments have put in place mechanisms to address the concerns that have accompanied the change of governance and continuously sought to reassure the public that devolution is indeed working. That is why at this 4<sup>th</sup> and final pioneer devolution conference it is important to note that the verdict out there is that “**the perspectives have changed, the narrative favours devolution 100% as the style of governance in Kenya and the incoming governments have only one choice – to entrench devolution**” as the way of political, social and economic inclusiveness for Kenyans.

Despite these successes devolution has faced challenges informed by a variety of structural, administrative and policy issues, as well as political and legislative concerns.

**4.1. Overall objective**

To make a 30 minute documentary that will showcase the journey travelled so far. The documentary should capture aspects of county governments to show what they have done to “change perspective, change narrative and entrench devolution” as stated in the theme.

**4.2. Specific tasks**

The firm will be required to;

- i.    Develop the documentary’s overall concept, scenario, script, and storyboard to guide production.



- ii. Interview selected interviewees for the film who will include actual beneficiaries, county officials, key stakeholders who have played their part in ensuring the theme specified above is achieved.
- iii. Visit the project sites and interact with the local communities who've been impacted by devolution and capture their personal strides in ensuring the theme is realized in their counties.
- iv. Present a draft documentary to CoG for comments on content by 5<sup>th</sup> of December, 2016.
- v. Produce two FINAL documentaries one (30 minutes) long documentary films in DVD as well as a summary promotional DVD version of 15 minutes long.

#### **4.3 DELIVERABLES**

1. Show tangible benefits in implementation of county devolved functions as listed in Schedule 4 of the Kenyan Constitution.
2. Capture implementation of the Constitution so far, the gains, challenges and opportunities ahead.
3. Show how marginalization and poor service delivery has improved
4. Demonstrate the role of the key stakeholders in ensuring change of perspective, change of narrative and entrenchment of devolution.
5. Highlight the progress counties have made when it comes to youth empowerment, women and persons with disabilities.
6. Appreciate the redistribution of professionals back to counties.
7. Highlight the growth of entrepreneurial opportunities and job creation in counties.
8. The documentary should demonstrate intergovernmental achievements on how national and county governments are working to implement devolution and the successes so far.
9. The documentary shall address the bringing of governments closer to the people and upcoming preparation for the second election cycle under the devolved system of governance.
10. Public participation in county affairs as an indication of transparency and accountability in addition to being a constitutional requirement.
11. Peace building activities in the counties especially in bridging cultural differences in clash prone areas, devolution torch and preparation for elections.
12. The documentary should address corruption and interview various people on their suggestions of weeding out perpetrators (solutions for the people by the people).
13. 3 minutes cuts/highlights that can be used for news/adverts/infomercials for TV audience
14. Catalogued photos from the 47 counties on different projects highlighted.
15. A snugly edited production with smooth transitions, powerful continuity with approved narrators, professional images and technical control to be submitted.
16. The documentary must highlight progress in all the 47 counties

#### **4.4. Duration of the Assignment**

The assignment is expected to take 45 working days from the date of signing the contract.

#### **4.5. Intellectual Property**

All information pertaining to this conference (documentary, audio, digital, and conference documents) belonging to the client, which the firm may come into contact with in the performance of his/her, duties under this conference shall remain the property of the client who shall have exclusive rights over their use. Except for purposes of this assignment, the information shall not be disclosed to the public nor used in whatever without written permission of the client in line with the national and international Copyright Laws applicable.

#### **4.6. Contractual arrangements and supervision**

The firm will be hired under COG terms of contract and supervised by the consumer unit solely for the purpose of delivering the above outputs, within the agreed time frame.

COG as the Client shall provide necessary support to the firm in order to execute the assignment during the duration of the contract. These shall include:

- I. Access to relevant documents necessary for execution of the duties under this contract ;

#### **4.7 Application Procedure**

Applicants are required to submit the following:

- A Technical Proposal: Letter of Interest, stating why you consider your firm suitable for the assignment;
- Brief methodology on the approach and implementation of the assignment;
- Personal CVs of technical personnel proposed for this project highlighting qualifications and experience in similar projects; and
- Work references - contact details (e-mail addresses) of referees (firms for whom you've produced similar assignments).
- Financial proposal indicating the fee and a breakdown of expenses (unit price together with any other expenses) related to the assignment.
- The proposals must be submitted in separate sealed envelopes (the technical proposal in one envelope and the financial proposal in another envelope) but both envelopes placed in one large envelope.

- 4.8 Special conditions of contract with reference to the general conditions of contract.

| General conditions of contract reference | Special conditions of contract  |
|--|---|
| 3.5                                      | Specify performance security if applicable: <b>N/A</b>  |
| 3.7                                      | Specify method of Payments. <b>The successful bidder who accepts the offer tender shall receive an Local Service Order as a commitment and payments shall be made at the end of Service provision upon receipt of Invoice(s).</b> |
| 3.8                                      | Specify price adjustments allowed. <b>None</b>  |
| 3.14                                     | Specify resolution of disputes. <b>Disputes to be settled as per the Arbitration Laws of Kenya</b>  |
| 3.16                                     | Specify applicable law. <b>Laws of Kenya</b>  |
| 3.17                                     | Indicate addresses of both parties.<br><br>Client: <b>Council of Governors,</b><br><b>2<sup>nd</sup> Floor, Delta Corner, Off Waiyaki way</b><br><b>P.O. Box 40401, 00100,</b><br><b>Nairobi</b>                                  |
| Other's as necessary                     | Complete as necessary   |

**SECTION V - SCHEDULE OF REQUIREMENTS**

**5.1 Bidder’s Experience Requirements**

Potential suppliers are required to submit details of at least five (5 No.) organizations where they have undertaken similar services in the format given below. This is so that references may be obtained. Ensure you have provided reference letters from the organizations duly signed and stamped by the relevant officer. The reference letters must be in the organizations letterheads.

| No. | Contact Information    | Details |
|-----|------------------------|---------|
| 1   | Name of company        |         |
|     | Name of contact person |         |
|     | Designation            |         |
|     | Telephone number       |         |
|     | e-mail address         |         |
| 2   | Name of company        |         |
|     | Name of contact person |         |
|     | Designation            |         |
|     | Telephone number       |         |
|     | e-mail address         |         |
| 3   | Name of company        |         |
|     | Name of contact person |         |
|     | Designation            |         |
|     | Telephone number       |         |
|     | e-mail address         |         |
| 4   | Name of company        |         |
|     | Name of contact person |         |
|     | Designation            |         |
|     | Telephone number       |         |
|     | e-mail address         |         |
| 5   | Name of company        |         |
|     | Name of contact person |         |
|     | Designation            |         |
|     | Telephone number       |         |
|     | e-mail address         |         |

Ensure you have provided reference letters for **ALL** the above organizations, duly **signed** and **stamped** by the relevant officer.

The reference letter **MUST** be on the organization’s letterhead.

## SECTION VI - STANDARD FORMS

### Notes on the standard Forms

1. **Form of Tender** - The form of Tender must be completed by the tenderer and submitted with the tender documents. It must also be duly signed by duly authorized representatives of the tenderer.
2. **Price Schedule Form** - The price schedule form must similarly be completed and submitted with the tender.
3. **Contract Form** - The contract form shall not be completed by the tenderer at the time of submitting the tender. The contract form shall be completed after contract award and should incorporate the accepted contract price.
4. **Confidential Business Questionnaire Form** - This form must be completed by the tenderer and submitted with the tender documents.

**TABLE OF CONTENTS**

**Page**

1. FORM OF TENDER.....30

2. CONFIDENTIAL BUSINESS QUESTIONNAIRE... .....32

3. DECLARATION FORM.....35

4. DRAFT LETTER OF NOTIFICATION OF AWARD.....36

5. CONTRACT AGREEMENT.....37

6. LETTER OF ACCEPTANCE.....41

**1 FORM OF TENDER**

Date:.....

Tender No.....

**To:**

Council Of Governors  
Delta Corner 2nd Floor,  
P.O Box 40401-00100  
Nairobi,

Ladies and Gentlemen,

1. Having read, examined and understood the Tender Document including all Addenda, the receipt of which is hereby duly acknowledged, we, the undersigned Tenderer, offer to .....  
.....  
.....  
..... (insert items description) in accordance and conformity with the said tender document for the sum of .....(total tender amount inclusive of all taxes in words and figures) or such sums as may be ascertained in accordance with the Price Schedule attached herewith and made part of this Tender.
2. We undertake, if our Tender is accepted, to supply, deliver and setup conference items in accordance with the delivery schedule specified in the Schedule of Requirements.
4. We agree to abide by this Tender for a **period of.....days (Tenderer please indicate validity of your tender)** from the date fixed for tender opening as per the Tender Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
5. This Tender, together with your written acceptance thereof and your notification of award, shall not constitute a contract, between us. The contract shall be formed between us when both parties duly sign the written contract.
6. We understand that you are not bound to accept any Tender you may receive.

Yours sincerely,

---

Name of Tenderer

---

Signature of duly authorized person signing the Tender

---

Name and Capacity of duly authorized person signing the Tender

---

Stamp or Seal of Tenderer

**NOTES:**

1. CoG requires a validity period of at least one twenty (120) days.
  2. This form must be duly completed, signed, stamped and/or sealed.
-



**2 – CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM**

You are requested to give the particular indicated in Part 1 and either Part 2(a), 2(b), or 2( c)

Whichever applies to your type of business;

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

**Part 1. General:**

Business Name .....  
Location of business premises .....  
Plot No. .... Street/Road .....  
Postal Address ..... Tel. No. ....Fax ..... Email .....  
Nature of business .....  
Registration Certificate No. ....

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

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

**Part 2(a) – Sole Proprietor:**

Your name in full ..... Age .....  
Nationality ..... Country of origin .....  
Citizenship details.....

**Party 2(b) – Partnership**

Give details of partners as follows

|    | Name  | Nationality | Citizenship Details | Shares |
|----|-------|-------------|---------------------|--------|
| 1. | ..... | .....       | .....               | .....  |

2. ....
3. ....
4. ....
5. ....

**Part 2( c) – Registered Company:**

Private or public .....

State the nominal and issued capital of the company –

Nominal Kshs.. .....

Issued Kshs.....

Give details of all directors as follows

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

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

**THE TENDERERS ON THE QUESTIONNAIRE**

1. *The address and contact person of the Tenderer provided above shall at all times be used for purposes of this tender.*
2. *The details on this Form are essential and compulsory for all Tenderers. **Failure to provide all the information requested shall lead to the Tenderer’s disqualification.***
3. *For foreign Tenderers please give the details of nominal and issued share capital in the currency of the country of origin of the Tenderer.*

## **NOTES TO SUPPLIERS AND INSTITUTIONS**

1. *Please note that no material additions, deletions or alterations regarding the contents of this Form shall be made to the Tender Security to be furnished by the Tenderer. If any are made, the Tender Security shall not be accepted and shall be rejected by CoG.*
  
2. *It is the responsibility of the Tenderer to sensitize its issuing institution on the need to respond directly and expeditiously to queries from CoG. The period for response shall not exceed three (3) days from the date of CoG's query. Should there be no conclusive response by the institution within this period, such Tenderer's Tender shall be deemed as invalid and the bid rejected.*
  
4. *The Tender validity period is one twenty (120) days as set out in the Invitation to Tender (at Section I of the Tender document) or as otherwise may be extended by CoG. Therefore the Tender Security must at all times be valid for at least 30 days beyond the tender validity period.*

**3 - DECLARATION FORM**

Date \_\_\_\_\_

**To:**

Council of Governors  
Delta Corner 2nd Floor,  
P.O Box 40401-00100  
Nairobi, Kenya

Ladies and Gentlemen,

The Tenderer i.e. (full name and complete physical and postal address)

\_\_\_\_\_ declare the following: -

- a) That I/ We have not been debarred from participating in public procurement by anybody, institution or person.
- b) That I/ We have not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement anywhere.
- c) That I/We or any director of the firm or company is not a person within the meaning of paragraph 2.1 of ITT (Eligible Tenderers) of the Instruction to Tenderers.
- d) That I/ We are not insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
- e) That I/ We are **not** associated with any other Tenderer participating in this Tender. f)

That I/We do hereby confirm that all the information given in this tender is accurate, factual and true to the best of our knowledge.

Yours sincerely,

\_\_\_\_\_  
Name of Tenderer

\_\_\_\_\_  
Signature of duly authorized person signing the Tender

\_\_\_\_\_  
Name and Capacity of duly authorized person signing the Tender

\_\_\_\_\_  
Stamp or Seal of Tenderer

**4 – DRAFT LETTER OF NOTIFICATION OF AWARD**

**To:** (Name and full address of the Successful Tenderer).....

**Date:**.....

Dear Sirs/ Madams,

**RE: NOTIFICATION OF AWARD OF TENDER NO. ....**

We refer to your Tender dated..... and are pleased to inform you that following evaluation, your Tender has been accepted as follows: -

.....  
.....  
.....  
.....

This notification does not constitute a contract. The formal Contract Agreement, which is enclosed herewith shall be entered into upon expiry of seven (7) days from the date hereof but not later than thirty (30) days after expiry of tender validity pursuant to the provisions of the Public Procurement and Disposal Act, 2005 (or as may be amended from time to time or replaced).

Kindly sign, and seal the Contract Agreement. Further, initial and stamp on all pages of the documents forming the Contract that are forwarded to you with this letter. Thereafter return the signed and sealed Contract together with the documents to us within seven (7) days of the date hereof for our further action.

We look forward to a cordial and mutually beneficial business relationship. Yours faithfully,

**FOR: Council of Governors**

**Chief Executive Officer**

## 5 - CONTRACT AGREEMENT FORM

**THIS AGREEMENT** made this.....day of.....20.... **BETWEEN THE Council of Governors**, a state agency, enacted under the Intergovernmental Relations Act, 2013, of the Laws of Kenya, with its registered office situated at Delta Corner 2nd Floor, , 00100 Nairobi in the Republic of Kenya and of Post Office Box P.O Box 40401, Nairobi in the Republic aforesaid (*hereinafter referred to as the “CoG”*) of the one part,

**AND**..... (*Supplier’s full name and principal place of business*) a duly registered entity according to the laws of..... (*state country*) and of Post Office Box Number.....(*full address physical and postal of Supplier*) in the Republic aforesaid, (*hereinafter referred to as the “Supplier”* of the other part;

**WHEREAS** CoG invited tenders for certain Services that is to say for .....(*CoG insert description of services*) under Tender Number..... (*CoG insert tender number*)

**AND WHEREAS** COG has accepted the Tender by the Supplier for the services in the sum of .....(*CoG specify the total amount in words which should include any payable taxes, duties and insurance where applicable e.g. Value Added Tax*) (*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 and the Tender Document.
2. Unless the context or express provision otherwise requires: -
  - a) reference to “this Agreement” includes its recitals, any schedules and documents mentioned hereunder and any reference to this Agreement or to any other document includes a reference to the other document as varied supplemented and or replaced in any manner from time to time.
  - b) any reference to any Act shall include any statutory extension, amendment, modification, re-amendment or replacement of such Act and any rule, regulation or order made thereunder.
  - c) the Official Local Service Order shall also mean the Official Order or Local Service Order
  - d) words importing the masculine gender only, include the feminine gender or (as the case may be) the neutral gender.
  - e) words importing the singular number only include the plural number and vice-versa and where there are two or more persons included in the expression the “Supplier” the covenants, agreements obligations expressed to be

made or performed by the Supplier shall be deemed to be made or performed by such persons jointly and severally.

- f) where there are two or more persons included in the expression the “Supplier” any act default or omission by the Supplier shall be deemed to be an act default or omission by any one or more of such persons.
3. In consideration of the payment to be made by CoG to the Supplier as hereinbefore mentioned, the Supplier hereby covenants with CoG to perform and Supplier in consideration of the execution, completion, and maintenance of the services by the supplier as prescribed by the Contract provide the services and remedy any defects thereon in conformity in all respects with the provisions of the Contract.
  4. CoG hereby covenants to pay the supplier in consideration of the proper performance and provision of the 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.
  5. The following documents shall constitute the Contract between CoG and the Supplier and each shall be read and construed as an integral part of the Contract: -
    - a) This Contract Agreement
    - b) Letter of Acceptance dated .....
    - a) Conditions of Contract
    - b) Special Conditions of Contract
    - c) Official Local Service Order where applicable.
    - d) Specifications
    - e) Drawings/video clips/photos
    - f) Work program (work methods and schedule)
    - g) CoG’s Notification of Award dated.....
    - h) Tender Form signed by the Supplier
    - l) Declaration Form signed by the Supplier / successful Tenderer
  6. In the event of any ambiguity or conflict between the contract documents listed above, the order of precedence shall be the order in which the contract documents are listed in 5 above except where otherwise mutually agreed in writing.
  7. The Commencement date shall be the working day immediately following the fulfillment of all the following: -
    - a) Execution of this Contract Agreement by CoG and the Supplier.
    - b) Issuance of the Official Order by CoG to the Supplier.

8. Any amendment, change, addition, deletion or variation howsoever to this Contract shall only be valid and effective where expressed in writing and signed by both parties.
9. No failure or delay to exercise any power, right or remedy by CoG shall operate as a waiver of that right, power or remedy and no single or partial exercise of any other right, power or remedy.
10. Notwithstanding proper completion of performance or parts thereof, all the provisions of this Contract shall continue in full force and effect to the extent that any of them remain to be implemented or performed unless otherwise expressly agreed upon by both parties.
11. Any notice required to be given in writing to any Party herein shall be deemed to have been sufficiently served, if where delivered personally, one day after such delivery; notices by electronic mail and facsimile shall be deemed to be served one day after the date of such transmission and delivery respectively, notices sent by post shall be deemed served seven (7) days after posting by registered post (*and proof of posting shall be proof of service*), notices sent by courier shall be deemed served two (2) days after such receipt by the courier service for Local Suppliers and five (5) days for Foreign Suppliers.
12. For the purposes of Notices, the address of CoG shall be Council Chief Executive Officer, Council of Governors, Delta Corner 2nd Floor. P.O Box 40401-00100, Nairobi,

The address for the Supplier shall be the Supplier's address as stated in the Confidential Business Questionnaire provided in the Tender Document.

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

**SIGNED** for and on behalf of **CoG**

Chief Executive Officer  
\_\_\_\_\_

**SEALED** with the **COMMON SEAL** of the **SUPPLIER**

in the presence of:-

\_\_\_\_\_  
DIRECTOR

\_\_\_\_\_  
*Affix Supplier's Seal here*

\_\_\_\_\_  
DIRECTOR'S FULL NAMES

and in the presence of:-

\_\_\_\_\_



DIRECTOR/ COMPANY SECRETARY

---

DIRECTOR/ COMPANY SECRETARY'S FULL NAMES

DRAWN BY: -

C/o Council Of Governors,  
Delta Corner 2nd Floor,  
P.O Box 40401-00100 ,  
Nairobi

Telephones: + 254-20-503313/4

**6 - LETTER OF ACCEPTANCE**

**[Letter-head paper of the Employer]**

\_\_\_\_\_ [date]

To: \_\_\_\_\_  
[name of the Supplier]

\_\_\_\_\_  
[address of the **Supplier**]

Dear Sir,

This is to notify you that your Tender dated \_\_\_\_\_ for the execution of \_\_\_\_\_ [name of the Supplier and identification number, as given in the Tender documents] for the Contract Price of Kshs. [amount in figures][Kenya Shillings \_\_\_\_\_ (amount in words)] in accordance with the Instructions to Tenderers is hereby accepted.

You are hereby instructed to proceed with the execution of the said Services in accordance with the Contract documents.

Authorized Signature ..... Name

and Title of Signatory ..... Attachment:

Agreement