



**SUPPLY, INSTALLATION AND COMMISSIONING OF BULK PUSH AND PULL SMS SOLUTION,  
USSD QUERY SERVICES AND MOBILE APPLICATION  
TENDER NO. KPPF/PROC/2-A/01/18**

**MAY 2018**

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**ALL CANDIDATES ARE ADVISED TO READ CAREFULLY THIS TENDER DOCUMENT IN ITS  
ENTIRETY BEFORE MAKING ANY BID**

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## SECTION I - INVITATION TO TENDER

**DATE: MAY 2018**

- 1.1 The Kenya Power Pension Fund (KPPF) invites bids from eligible tenderers for **SUPPLY, INSTALLATION AND COMMISSIONING OF BULK PUSH AND PULL SMS SOLUTION, USSD QUERY SERVICES AND MOBILE APPLICATION TENDER NO. KPPF/PROC/2-A/01/18**
- 1.2 Tendering will be conducted through the Bidding procedures specified in the Public Procurement and Asset Disposal Act, 2015, the Public Procurement and Disposal Regulations, 2006 and Amendment Regulations (2013) Nos. 106 and 114.
- 1.3 Interested firms may obtain further information on the tender document from;  
Procurement Officer,  
Kenya Power Pension Fund , Stima plaza ground Floor, Kolobot Road,  
P.O Box 1548 – 00600  
Nairobi, Kenya.  
TEL NO: 254-20-3201020  
FAX NO. 254-20-3201028  
EMAIL: cmbuiya@kplc.co.ke
- 1.4 Completed Tenders are to be enclosed in plain sealed envelopes marked with the tender reference number and name and be deposited in the Tender Box next to the lift lobby located at Stima Plaza, Ground Floor, Kolobot Road, Nairobi, Kenya so as to be received on or before **28.06.2018 AT 11:30 AM.**
- 1.5 Tenders will be opened promptly thereafter.
- 1.6 All tenderers whose applications will have been received before the closing date and time will be advised of the results of their applications.
- 1.7 Prices quoted should be inclusive of all taxes and delivery costs to the required site (where applicable) and must be in Kenya Shillings and shall remain valid for One Hundred and Twenty (120) days from the closing date of the tender.

## **OUR PURPOSE**

To deliver value and quality of life in retirement for our members

## **OUR VISION**

To be the best-in-class occupational pension scheme in Sub-Saharan Africa

## **CORE VALUES**

Integrity

Accountability

Courteous

Stewardship

## SECTION II - TENDER SUBMISSION CHECKLIST

### Tender Submission Format

Bidders are advised to clearly label their documents according to the tender submission checklist.

No.	Item	Tick Where Provided
1.	Duly completed Declaration Form	
2.	Duly completed Tender Form	
3.	Copy of Valid Tax Compliance Certificate	
4.	Confidential Business Questionnaire (CBQ)	
5.	Price Schedule(s)	
6.	Any other document or item required by the Tender Document. (The Tenderer shall specify such other documents or items it has submitted)	

## **SECTION III - INSTRUCTIONS TO TENDERERS (ITT)**

### **3.1 Definitions**

In this tender, unless the context or express provision otherwise requires: -

- a) *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 there-under.*
- b) *“ Date of Tender Document” shall be the start date specified on the KPPF tender document*
- c) *“ Day” means calendar day and “ month” means calendar month.*
- d) *“ KEBS” wherever appearing means the Kenya Bureau of Standards or its successor(s) and assign(s) where the context so admits.*
- e) *“ KENAS” wherever appearing means the Kenya National Accreditation Service or its successor(s) and assign(s) where the context so admits*
- f) *“ PPRA” wherever appearing means The Public Procurement Regulatory Authority or its successor(s) and assign(s) where the context so admits.*
- g) *Reference to “ the tender” or the “ Tender Document” includes its appendices and documents mentioned hereunder and any reference to this tender 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.*
- h) *“ The Procuring Entity” means The Kenya Power & Lighting Company Limited Staff Retirement Benefits Scheme or its successor(s) and assign(s) where the context so admits( hereinafter referred to as Kenya Power Pension Fund abbreviated as KPPF).*
- i) *“ The Tenderer” means the person(s) submitting its Tender for the supply, installation and commissioning (where applicable) of the goods in response to the Invitation to Tender.*
- j) *Where there are two or more persons included in the expression the “ Tenderer”, any act or default or omission by the Tenderer shall be deemed to be an act, default or omission by any one or more of such persons.*
- k) *Words importing the masculine gender only, include the feminine gender or ( as the case may be) the neutral gender.*
- l) *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 “ Tenderer” the covenants, agreements and obligations expressed to be made or performed by the Tenderer shall be deemed to be made or performed by such persons jointly and severally.*

- m) *KPPF's "authorized person" shall mean its CEO & Trust Secretary who is designated by the PPAD Act 2015 to exercise such power, authority or discretion as is required under the tender and any contract arising therefrom, or such other KPPF staff delegated with such authority.*
- n) *Citizen suppliers-means a person/firm wholly owned and controlled by person(s) who are citizens of Kenya.*
- o) *Local suppliers- a firm shall be qualified as a local supplier if it is registered in Kenya.*

### **3.2 Eligible Tenderers**

3.2.1 A tenderer is eligible to bid for this contract only if the tenderer satisfies the following criteria—

- a) the tenderer has the legal capacity to enter into a contract for procurement or asset disposal;
- b) the tenderer is not insolvent, in receivership, bankrupt or in the process of being wound up;
- c) the tenderer, if a member of a regulated profession, has satisfied all the professional requirements;
- d) the tenderer and his or her sub-supplier, if any, is not debarred;
- e) the tenderer has fulfilled tax obligations;
- f) the tenderer has not been convicted of corrupt or fraudulent practices; and
- g) is not guilty of any serious violation of fair employment laws and practices.

In addition, this Invitation to Tender is open to all Tenderers eligible as described in the **Appendix to Instructions to Tenderers**.

Successful Tenderers shall supply the goods in accordance with this tender and the ensuing contract. Notwithstanding any other provisions of this tender, the following are not eligible to participate in the tender: -

- a) KPPF's employees, its Board or any of its committee members.
- b) Any tenderer submitting false, inaccurate or incomplete information about their qualifications.
- c) where in case of a corporation, private company, partnership or other body, the tenderer, their spouse, child or sub-supplier has substantial or controlling interest and is found to be in contravention of the provisions of section 3.2.1 above.



- 3.2.5 Despite the provisions of section 3.2.1 a tenderer having a substantial or controlling interest shall be eligible to bid where—
- (a) such tenderer has declared any conflict of interest; and
  - (b) performance and price competition for that good, work or service is not available or can only be sourced from that tenderer.
- 3.2.6 For the purposes of this paragraph, any relative i.e. spouse(s) and child(ren) of any person mentioned in sub-paragraph 3.2.1 is also ineligible to participate in the tender. In addition, a Cabinet Secretary shall include the President, Deputy President or the Attorney General of GoK.
- 3.2.7 Tenderers shall provide the qualification information statement that the Tenderer (including sub suppliers) 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 KPPF to provide consulting services and/ or goods for the preparation of the design, specifications, and other documents to be used for the procurement of the goods under this Invitation to Tender.
- 3.2.8 Tenderers shall not be under declarations as prescribed at Section XII.
- 3.2.9 Tenderers who are not under these declarations shall complete the Declaration Form strictly in the form and content as prescribed at Section XII.
- 3.2.10 Those that are under the Declaration as prescribed at Section XII whether currently or in the past shall not complete the Form. They will submit a suitable Form giving details, the nature and present status of their circumstances.

### **3.3 Joint Venture**

- 3.3.1 Tenders submitted by a joint venture of two or more firms, as partners shall comply with the following requirements: -
- a) the Tender Form and in case of a successful tender, the Contract Agreement Form, shall be signed so as to be legally binding on all partners of the joint venture.
  - b) one of the partners shall be nominated as being lead supplier, and this authorization shall be evidenced by submitting a Power of Attorney signed by legally authorized signatories of all the partners.
  - c) The Power of Attorney which shall accompany the tender, shall be granted by the authorized signatories of all the partners as follows:-
    - (i.) for local bidders, before a Commissioner of Oaths or a Notary Public or Magistrate of the Kenyan Judiciary.

- (ii.) for a foreign bidder, before a Notary Public, or the equivalent of a Notary Public, and in this regard the bidder shall provide satisfactory proof of such equivalence.
  - d) the lead supplier shall be authorized to incur liability and receive instructions for and on behalf of any and all the partners of the joint venture and the entire execution of the contract including payment shall be done exclusively with the lead supplier.
- 3.3.2 All partners of the joint venture shall be liable jointly and severally for the execution of the contract in accordance with the contract terms, and a relevant statement to this effect shall be included in the authorization mentioned in paragraph 3.3.1 (b) above as well as in the Form of Tender and the Contract Agreement Form (in case of the accepted tender).
- 3.3.3 A copy of the agreement entered into by the joint venture partners shall be submitted with the tender.

### **3.4 Cost of Tendering**

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

### **3.5 Contents of the Tender Document**

- 3.5.1 The Tender Document comprises the documents listed below and Addendum (where applicable) issued in accordance with paragraph 3.7 of these Instructions to Tenderers: -
  - a. *Invitation to Tender*
  - b. *Instructions to Tenderers*
  - c. *Appendix to Instructions to Tenderers*
  - d. *Schedule of Requirements*
  - e. *Price Schedule for Services and/ or goods*
  - f. *Evaluation Criteria*
  - g. *General Conditions of Contract*
  - h. *Special Conditions of Contract*
  - i. *Tender Form*
  - j. *Declaration Form*
  - k. *Contract Form*
  - l. *Performance Security Form*

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

3.5.3 All recipients of the documents for the proposed Contract for the purpose of submitting a tender (*whether they submit a tender or not*) shall treat the details of the documents as "Private and Confidential".

### **3.6 Clarification of Documents**

A prospective Tenderer requiring any clarification of the Tender Document may notify the Procurement Officer in writing and ensure receipt is acknowledged at KPPF's Physical address indicated on the Tender Document. KPPF will respond in writing to any request for clarification of the Tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of Tenders, prescribed by KPPF. Written copies of KPPF's response (*including an explanation of the query but without identifying the source of inquiry*) will be published and accessible to all prospective Tenderers on the KPPF's tendering portal.

### **3.7 Amendment of Documents**

3.7.1 At any time prior to the deadline for submission of Tenders, KPPF, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Tenderer, may modify the tender documents by amendment.

3.7.2 All prospective Tenderers that have registered in the portal for the Tender will be notified of the amendment(s) (*hereinafter referred to or otherwise known as addendum*) in writing and will be binding on them.

3.7.3 In order to allow prospective Tenderers reasonable time in which to take the amendment into account in preparing their Tenders, KPPF, at its discretion, may extend the deadline for the submission of Tenders.

### **3.8 Language of Tender**

The Tender prepared by the Tenderer, as well as all correspondence and documents relating to the tender, exchanged between the Tenderer and KPPF, shall be written in English language. Any printed literature furnished by the Tenderer written in any other language shall be 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. The English

translation shall be on the Tenderer's letterhead and shall be signed by the duly authorized signatory signing the Tender and stamped with the Tenderer's stamp.

### **3.9 Documents Comprising the Tender**

The Tender prepared and submitted by the Tenderers shall include but not be limited to all the following components: -

- a) *Declaration Form, Tender Form and a Price Schedule completed in compliance with paragraphs 3.2, 3.10, 3.11 and 3.12.*
- b) *Documentary evidence established in accordance with paragraph 3.13 that the Tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted.*
- c) *Documentary evidence established in accordance with paragraph 3.14 that the services and/ or goods and any ancillary thereto to be provided by the Tenderer conform to the tender documents, and,*
- d) *Tender Security furnished in accordance with paragraph 3.17*
- e) *A detailed list of previous customers as prescribed for similar services and/ or goods on tender and their contact addresses shall be submitted with the Tender for the purpose of reference, or for evaluation where the Details of Service so dictate.*
- f) *And all other documents indicated in Section II (Tender Submission Checklist)*

### **3.10 Tender Form**

The Tenderer shall complete and sign the Tender Form and all other documents furnished in the Tender Document, indicating the services and/ or goods to be performed, a brief description of the services and/ or goods, quantity (where applicable), and prices amongst other information required.

### **3.11 Tender Prices**

3.11.1 The Tenderer shall indicate on the appropriate Price Schedule, the unit prices (where applicable) and total tender price of the services and/ or goods it proposes to provide under the contract.

3.11.2 Prices indicated on the Price Schedule shall be of all costs for the services and/ or goods including insurances, duties, Value Added Tax (V.A.T) and other taxes payable. No other basis shall be accepted for evaluation, award or otherwise.

3.11.3 Tender prices to be submitted (quoted) by the Tenderer shall remain fixed for the contract duration.

3.11.4 A price that is derived by a disclosed incorporation or usage of an international accepted standard formula shall be acceptable within the meaning of this paragraph.

### **3.12 Tender Currencies**

3.12.1 For services and/ or goods that the Tenderer will provide from within or outside Kenya, the prices shall be quoted in Kenya Shillings, or in another freely convertible currency in Kenya. The currency quoted must be indicated clearly on the Price Schedule of Services and/ or goods.

3.12.2 The exchange rate to be used for currency conversion shall be the Central Bank of Kenya selling rate prevailing on the Tender closing date. (*Please visit the Central Bank of Kenya website*).

### **3.13 Tenderer's Eligibility and Qualifications**

3.13.1 Tenderer shall furnish, as part of its Tender, documents establishing the Tenderer's eligibility to tender and its qualifications to perform the contract if its Tender is accepted.

3.13.2 The documentary evidence of the Tenderer's qualifications to perform the contract if its Tender is accepted shall be established to KPPF's satisfaction –

*a) that, in the case of a Tenderer offering to perform the services and/ or goods under the contract which the Tenderer is not the Principal, the Tenderer has been duly authorized by the Manufacturer, Principal or Producer to provide the services and/ or goods. The authorization shall strictly be in the form and content as prescribed in the Manufacturer's or Principal's Authorization Form in the Tender Document*

*b) that the Tenderer has the financial capability necessary to perform the contract. The Tenderer shall be required to provide the documents as specified in the Appendix to Instructions to Tenderers including a current Tax Compliance Certificate issued by the relevant tax authorities.*

*c) that the Tenderer has the technical and production capability necessary to perform the contract.*

*d) that, in the case of a Tenderer not doing business within Kenya, the Tenderer is or will be (if awarded the contract) represented by an agent in Kenya equipped, and able to*

*carry out the Tenderer's maintenance, repair, spare parts and stocking obligations prescribed in the Conditions of Contract and or in the Details of Service.*

*e) that the Tenderer is duly registered and is a current member of a recognized body or institution accredited and or pertaining to that service.*

3.13.3 The Tenderer will furnish KPPF with a copy of the accreditation or recognition certificate as applicable. KPPF reserves the right to subject the certificate to authentication.

3.13.4 Tenderers with a record of unsatisfactory or default in performance obligations in any contract shall not be considered for evaluation or award. For the avoidance of doubt, this shall include any Tenderer with unresolved case(s) in its obligations for more than two (2) months in any contract.

### **3.14 Conformity of Services and/ or goods to Tender Documents**

3.14.1 The Tenderer shall furnish, as part of its tender, documents establishing the conformity to the Tender Document of all services and/ or goods that the Tenderer proposes to perform under the contract.

3.14.2 The documentary evidence of conformity of the services and/ or goods to the Tender Document may be in the form of literature, drawings, and data, and shall (where applicable) consist of: -

- a) a detailed description of the essential technical and performance characteristics of the services and/ or goods whether in catalogues, drawings or otherwise,*
- b) a list giving full particulars, including available source and current prices of spare parts, special tools and other incidental apparatus necessary for the proper and continuing performance of the services and/ or goods for a minimum period of two (2) years following commencement of the provision of the services and/ or goods to KPPF, and,*
- c) duly completed Statement of Compliance to KPPF's Details of Service demonstrating substantial responsiveness of the service to those Details or, a statement of deviations and exceptions to the provisions of the Details of Service.*

3.14.3 For purposes of the documentary and other evidence to be furnished pursuant to subparagraphs 3.14.1, 3.14.2 and paragraph 3.15, the Tenderer shall note that standards for workmanship, material, and equipment, designated by KPPF in its Details of Service are

intended to be descriptive only and not restrictive. The Tenderer may adopt higher standards in its Tender, provided that it demonstrates to KPPF's satisfaction that the substitutions ensure substantial equivalence to those designated in the Details of Service.

### **3.15 Demonstration(s), Inspection(s) and Test(s)**

- 3.15.1 Where required in the tender, all Tenderers shall demonstrate ability of performance of the required service in conformity with the Details of Services and/ or goods.
- 3.15.2 KPPF or its representative(s) shall have the right to inspect/ test the Tenderer's capacity, equipment, premises, and to confirm their conformity to the tender requirements. This shall include the quality management system. KPPF's representative(s) retained for these purposes shall provide appropriate identification at the time of such inspection/ test.
- 3.15.3 KPPF shall meet its own costs of the inspection/ test. Where conducted on the premises of the Tenderer(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to KPPF.
- 3.15.4 Demonstration, Inspection/ Test Report(s) shall be completed upon conclusion of the inspection/ tests. This Report will be considered at time of evaluation and or award.

### **3.16 Warranty**

- 3.16.1 Where required in the Tender, all Tenderers must also provide a Warranty that services and/ or goods to be rendered in the Tenderer's bid have no defect arising from manufacture, materials or workmanship or from any act or omission of the Tenderer that may develop under normal use or application of the services and/ or goods under the conditions obtaining in Kenya.
- 3.16.2 This warranty will remain valid for the period indicated in the special conditions of contract after the services and/ or goods, or any portion thereof as the case may be, have been rendered.

### **3.17 Tender Security**

- 3.17.1 The Tenderer shall furnish, as part of its Tender, a tender security for the amount specified in the Appendix to Instructions to Tenderers.
- 3.17.2 The tender security shall be either one of the following:-
  - a) an original Bank Guarantee that is strictly in the form and content as prescribed in the Tender Security Form (Bank Guarantee) in the Tender Document.

- b) An original Guarantee by a deposit taking Microfinance Institution, Sacco Society, Youth Enterprise Development Fund or the Women Enterprise Fund, that is strictly in the form and content as prescribed in the Tender Security Form
- 3.17.3 The tender security is required to protect KPPF against the risk of the Tenderer's conduct which would warrant the security's forfeiture pursuant to paragraph 3.17.10.
- 3.17.4 The Tender Security shall be denominated in Kenya Shillings or in another freely convertible currency in Kenya. A Tender Security in form of a Bank Guarantee should be from a commercial bank licensed by the Central Bank of Kenya.
- 3.17.5 The Tender Security shall be valid for thirty (30) days beyond the validity of the tender.
- 3.17.6 KPPF shall seek authentication of the Tender Security from the issuing bank. It is the responsibility of the Tenderer to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPPF. The period for response shall not exceed five (5) days from the date of KPPF's query. Should there be no conclusive response by the bank within this period, such Tenderer's Tender Security may be deemed as invalid and the bid rejected.
- 3.17.7 Any Tender not secured in accordance with this paragraph will be rejected by KPPF as non-responsive, pursuant to paragraph 3.27.
- 3.17.8 The unsuccessful Tenderer's Tender Security will be released as promptly as possible, in any of the following circumstances: -
- a) *the procurement proceedings are terminated*
  - b) *KPPF determines that none of the submitted Tenders is responsive*
  - c) *a contract for the procurement is entered into.*
- 3.17.9 The successful Tenderer's Tender Security will be released upon the successful Tenderer's signing the contract, pursuant to paragraph 3.39 and furnishing an authentic Performance Security, pursuant to paragraph 3.38.
- 3.17.10 The Tender Security shall be forfeited –
- a) *if the Tenderer withdraws its Tender after the deadline for submitting Tenders but before the expiry of the period during which the Tenders must remain valid*
  - b) *if the Tenderer fails to enter into a written contract in accordance with paragraph 3.37*



- c) *if the successful Tenderer fails to furnish the performance security in accordance with paragraph 3.38*
- d) *if the Tenderer fails to extend the validity of the tender security where KPPF has extended the tender validity period in accordance with paragraph 3.18.*

### **3.18 Validity of Tenders**

- 3.18.1 Tenders shall remain valid for One Hundred and Twenty (120) days after the date of tender opening as specified in the Invitation to Tender or as otherwise may be prescribed by KPPF, pursuant to paragraph 3.22. A Tender that is valid for a shorter period shall be rejected by KPPF as non-responsive.
- 3.18.2 In exceptional circumstances, KPPF may extend the Tender validity period. The extension shall be made in writing. The tender security provided under paragraph 3.17 shall also be extended. A Tenderer shall not be required nor permitted to modify its tender during the extended period

### **3.19 Alternative Offers**

Only main offers shall be considered, as alternative offers are not acceptable.

### **3.20 Preparation and Signing of the Tender**

- 3.20.1 The Tender shall be typed or written in indelible ink. It shall be signed by the Tenderer or a person or persons duly authorized to bind the Tenderer to the contract.
- 3.20.2 The authorization shall be indicated by a written Power of Attorney granted by the Tenderer to the authorized person before any of the following persons:-
  - a) *For local Tenderers, a Commissioner of Oaths or a Notary Public or a Magistrate of the Kenyan Judiciary.*
  - b) *For foreign Tenderers, a Notary Public in the country of the Tenderer.*In either case above, the Power of Attorney shall accompany the Tender.
- 3.20.3 All pages of the Tender, including un-amended printed literature, shall be initialled by the person or persons signing the Tender and serially numbered.
- 3.20.4 The Tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the Tenderer, in which case such corrections shall be initialled by the person or persons signing the Tender.
- 3.20.5 KPPF will assume no responsibility whatsoever for the Tenderer's failure to comply with or observe the entire contents of this paragraph 3.21.

3. 20.6 Any Tender not prepared and signed in accordance with this paragraph may be rejected by KPPF as non-responsive, pursuant to paragraph 3.27.

**3.22 Deadline for Submission of Tenders**

- 3.22.1 Tenders must be received by KPPF by the date and time specified in Invitation to tender.
3. 22.2 KPPF may, at its discretion, extend this deadline for submission of Tenders by amending the tender documents in accordance with paragraph 3.7, in which case all rights and obligations of KPPF and the Tenderer previously subject to the initial deadline, will therefore be subject to the deadline as extended.

**3.23 Modification and Withdrawal of Tenders**

- 3.23.1 The Tenderer may modify or withdraw its Tender after it has submitted, provided that the modification, including substitution or withdrawal of the Tender is received by KPPF prior to the deadline prescribed for submission of tenders.
- 3.23.2 No Tender may be modified after the deadline for submission of Tenders.
- 3.23.3 No Tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period during which the Tender must remain valid except where KPPF extends the initial validity period. Any withdrawal of a Tender during this interval shall result in forfeiture of the Tenderer's Tender Security except where KPPF extends the initial validity period.

**3.24 Opening of Tenders**

- 3.24.1 KPPF shall open all Tenders promptly at the date and time at the location specified in the Invitation to Tender or as may otherwise be indicated.
3. 24.2 The Tenderer's names, tender modifications or withdrawals, the presence or absence of requisite Tender Security and such other details as KPPF, at its discretion, may consider appropriate, will be announced at the opening.
3. 24.3 At the Tender opening, tender prices, discounts, and such other details as KPPF, at its discretion, may consider appropriate will be read out.
3. 24.4 The Tenderers or their representatives may attend the opening and those present shall sign a register evidencing their attendance.

**3.25 Process to be Confidential**

- 3.25.1 After the opening of tenders, information relating to the examination,

clarification, evaluation and comparisons of tenders and recommendations arising therefrom shall not be disclosed to a Tenderer or other person(s) not officially concerned with such process until conclusion of that process.

- 3.25.2 Conclusion of that process shall be deemed to have occurred, at the latest, by the date and time KPPF notifies the successful bidder(s). In any event, official disclosure by KPPF of any information upon conclusion of that process may only be to the unsuccessful bidders and may contain only the information permissible by law in summary form.
- 3.25.3 Any effort by a Tenderer to influence KPPF or any of its staff members in the process of examination, evaluation and comparison of tenders and information or decisions concerning the Tender may result in the disqualification of the Tenderer.

### **3.26 Clarification of Tenders and Contacting KPPF**

- 3.26.1 To assist in the examination, evaluation and comparison of Tenders KPPF may, at its discretion, ask the Tenderer for a clarification of its Tender. The request for clarification and the response shall be in writing, and no change in the prices or substance of the Tender shall be sought, offered, or permitted.
- 3.26.2 The Tenderer is required to provide timely clarification or substantiation of the information that is essential for effective evaluation of its qualifications. It is the responsibility of the Tenderer to provide in writing the clarification or substantiation which should reach KPPF within five (5) days from the date of KPPF's query. Such writing may include by electronic mail, facsimile or postal mail. Should there be no conclusive response within this period, it shall result in the Tenderer's disqualification.
- 3.26.3 Save as is provided in this paragraph and paragraph 3.26 above, no Tenderer shall contact KPPF on any matter related to its Tender, from the time of the tender opening to the time the successful Tenderer is announced.
- 3.26.4 Any effort by a Tenderer to influence KPPF in its decisions on tender evaluation, tender comparison, tender recommendation(s) or signing of Agreement may result in the disqualification of the Tenderer.

### **3.27 Preliminary Evaluation and Responsiveness**

- 3.27.1 Prior to the detailed Technical and Financial evaluation, KPPF will determine the substantial responsiveness of each Tender. For purposes of this tender, a substantially responsive Tender is one that conforms to the requirements of Preliminary Evaluation. KPPF's determination of a Tender's responsiveness is to be based on the contents of the Tender itself without recourse to extrinsic evidence.

- 3.27.2 KPPF will examine the Tenders to determine whether they conform to the set Evaluation Criteria .
- 3.27.3 Notwithstanding the contents of the foregoing sub-paragraphs, if a Tender is not substantially responsive, it will be rejected at the earliest stage of evaluation by KPPF and cannot subsequently be made responsive by the Tenderer by correction of any non-conformity.

### **3.28 Minor Deviations, Errors or Oversights**

- 3.28.1 KPPF may waive any minor deviation in a Tender that does not materially depart from the requirements of the goods and or services and/ or goods set out in the Tender Document.
- 3.28.2 Such minor deviation -
- 3.28.2.1 shall be quantified to the extent possible,*
  - 3.28.2.2 shall be taken into account in the evaluation process, and,*
  - 3.28.2.3 shall be applied uniformly and consistently to all qualified Tenders duly received by KPPF.*
- 3.28.3 KPPF may waive errors and oversights that can be corrected without affecting the substance of the Tender.

### **3.29 Technical Evaluation and Comparison of Tenders**

- 3.29.1 KPPF will further evaluate and compare the Tenders that have been determined to be substantially responsive, in compliance to the Details of Services and/ or goods set out in the Tender Document and as per the prescribed Evaluation Criteria.
- 3.29.2 The Operational Plan is a critical aspect of the Tender. KPPF requires that the Services and/ or goods shall be performed at the time specified in the Schedule of Requirements. KPPF's evaluation of a tender will also take into account the Operational Plan proposed in the Tender. Tenderers offering to perform longer than KPPF's required delivery time will be treated as non-responsive and rejected.

### **3.30 Financial Evaluation**

- 3.30.1 The financial evaluation and comparison shall be as set out in the Evaluation Criteria. The comparison shall be
- a) 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 and/ or goods.

b) deviations in Payment Schedule from that specified in the Special Conditions of Contract

3.30.2 Where other currencies are used, KPPF will convert those currencies to the same currency using the selling exchange rate ruling on the date of tender closing provided by the Central Bank of Kenya.

### **3.31 Preferences**

3.31.1 In the evaluation of tenders, exclusive preference shall firstly be given to citizen suppliers where the amount of the tender as evaluated is below Ksh. 500 Million in respect of works, goods and services and/ or goods.

3.31.2 Where a person is entitled to more than one preference scheme, the scheme with the highest advantage to the person shall be applied.

3.31.3 For purposes of this paragraph the Tenderer shall submit with its Tender, a valid copy of certificate of Confirmation of Directorships and Shareholding issued **and signed** by either the Registrar of Companies or Registrar of Business Names. KPPF reserves the right to subject the certificate to authentication.

### **3.32 Debarment of a Tenderer**

A Tenderer who gives false information in the Tender about its qualification or who refuses to enter into a contract after notification of contract award shall be forward to PPRA for consideration of debarment from participating in future public procurement.

### **3.33 Confirmation of Qualification for Award**

3.33.1 KPPF may confirm to its satisfaction whether the Tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.

3.33.2 The confirmation will take into account the Tenderer's financial, technical, and performance capabilities. It will be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to paragraph 3.13 as well as confirmation of such other information as KPPF deems necessary and appropriate. This may include factory, office and other facilities inspection and audits.

3.33.3 An affirmative confirmation will be a prerequisite for award of the contract to

the Tenderer. A negative confirmation will result in rejection of the Tenderer's Tender, in which event KPPF will proceed to the next lowest evaluated responsive tender to make a similar confirmation of that Tenderer's capabilities to perform satisfactorily.

### **3.34 Award of Contract**

- 3.34.1 KPPF will award the contract to the successful Tenderer whose Tender has been determined to be substantially responsive, compliant with the evaluation criteria and has been determined to be the lowest evaluated tender, and further, where deemed necessary, that the Tenderer is confirmed to be qualified to perform the contract satisfactorily.
- 3.34.2 Award will be done as indicated in the Appendix to Instructions to Tenderers.

### **3.35 Termination of Procurement Proceedings**

- 3.35.1 KPPF may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 3.35.2 KPPF shall give prompt notice of the termination to the Tenderers, and, on request from any Tenderer, give its reasons for termination within fourteen (14) days of such request.

### **3.36 Notification of Award**

- 3.36.1 Prior to the expiration of the period of tender validity, KPPF shall notify the successful Tenderer in writing that its Tender has been accepted.
- 3.36.2 The notification of award shall not constitute the formation of the contract until one is finally signed by both parties.
- 3.36.3 Simultaneously, and without prejudice to the contents of paragraph 3.27, on issuance of Notification of Award to the successful Tenderer, KPPF shall notify each unsuccessful Tenderer.
- 3.36.4 A notification of the tender outcome does not reduce the validity period for any tender security whether the Tenderer is successful or not, except where such tender security is officially released to the Bank and/or the Tenderer and such Bank discharged of all its obligations by KPPF prior to the expiry of its stated validity period.

### **3.37 Signing of Contract**

- 3.37.1 At the same time as KPPF notifies the successful Tenderer that its Tender has been accepted, KPPF will send the Tenderer the Contract Agreement provided in the Tender

Document together with any other necessary documents incorporating all agreements between the Parties.

- 3.37.2 Within fourteen (14) days of the date of notification of award, the successful Tenderer shall only sign the Contract Form and all the documents specified in that Form and return them to KPPF within that period of fourteen (14) days.
- 3.37.3 KPPF shall sign and date the Contract not earlier than fourteen (14) days from the date of notification of contract award. Further, KPPF shall not sign the contract until and unless the authentic performance security is received in accordance with paragraph 3.37.
- 3.37.4 Failure of the successful Tenderer to sign the Contract, the award shall be annulled and its tender security forfeited in which event KPPF shall notify the next lowest evaluated Tenderer that its Tender has been accepted.
- 3.37.5 Paragraph 3.34 together with the provisions of this paragraph 3.36 will apply with necessary modifications with respect to the Tenderer notified under sub-paragraph 3.36.4.

### **3.38 Performance Security**

- 3.38.1 After fourteen (14) days of the date of notification of intent of award from KPPF, the successful Tenderer shall furnish KPPF with a Performance Security which shall be an original Bank Guarantee that is strictly in the form and content as prescribed in the Performance Security Form (Bank Guarantee) in the Tender Document.
- 3.38.2 The Performance Security shall be issued by a commercial bank licensed by the Central Bank of Kenya. The bank must be located in Kenya.
- 3.38.3 The Performance Security shall be the sum of ten percent (10%) of the contract value. It shall be in the currency of the contract price.
- 3.38.4 KPPF shall seek authentication of the Performance Security from the issuing bank. It is the responsibility of the successful Tenderer to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPPF. The period for response shall not exceed three (3) days from the date of KPPF's query. Should there be no conclusive response by the Bank within this period, such successful Tenderer's Performance Security may be deemed as invalid.
- 3.38.5 Failure of the successful Tenderer to furnish an authentic Performance Security, the award shall be annulled and the Tender Security forfeited, in which event KPPF may notify the next lowest evaluated Tenderer that its Tender has been accepted.
- 3.38.6 Paragraph 3.36, 3.37 together with the provisions of this paragraph 3.38 will apply with necessary modifications, and as far as circumstances permit, with respect to the Tenderer notified under sub-paragraph 3.37.4.

### **3.39 Corrupt or Fraudulent Practices**

- 3.39.1 KPPF requires that Tenderers observe the highest standard of ethics during the procurement process and execution of contracts. When used in the present Regulations, the following terms are defined as follows: -
- a) *“ Corrupt practice” means the offering, giving, receiving or soliciting of any thing of value to influence the action of public official in the procurement process or in contract execution;*
  - b) *“ Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of KPPF, and includes collusive practice among Tenderers (prior to or after Tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive KPPF of the benefits of free and open competition.*
- 3.39.2 KPPF will nullify its notification of award if it determines that the Tenderer recommended has engaged in corrupt or fraudulent practices in competing for the contract in question.
- 3.39.3 Further, a Tenderer who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.



## APPENDIX TO INSTRUCTIONS TO TENDERERS

The following information regarding the particulars of the tender shall complement and or amend the provisions of the Instructions to Tenderers *hereinafter abbreviated as ITT*. Wherever there is a conflict between the provisions of the ITT and the Appendix, the provisions of the Appendix herein shall prevail over those of the ITT.

No.	ITT Reference Clause	Particulars of Appendix
1.	<b>3.2.1 Eligible Tenderers</b>	<i>This tender is open</i>
2.	<b>3.9 (e) Documents Comprising the Tender – List of Previous Customers</b>	<i>The Tenderer shall submit names with full contact as well as physical addresses of previous customers of similar services and/ or goods and letters from the previous customers confirming satisfactory delivery and performance</i>
3.	<b>3.17 Tender Security</b>	Original Tender Security shall be Kshs. 50,000.00 by a bank licensed by Central Bank of Kenya or from an Insurance company approved the PPRA valid for at 120 days from the date of tender opening
4.	<b>3.34 &amp; 3.36 Award of Contract</b>	<i>Award shall be to the highest combined score bidder</i>
5.	<b>3.38 Performance Security</b>	<i>supplier who will be awarded the contract will be required to provide a 10% performance bond if the value of the contract is above Ksh.1,000,000.00.</i>

## **SECTION IV - SCHEDULE OF REQUIREMENTS**

### **TERMS OF REFERENCE AND REQUIREMENTS FOR SUPPLY, INSTALLATION AND COMMISSIONING OF BULK PUSH AND PULL SMS SOLUTION, USSD QUERY SERVICE AND MOBILE APPLICATION TENDER NO. KPPF/PROC/2-A/01/18**

#### **1. INTRODUCTION**

The main purpose of the Kenya Power Pension Fund is to provide benefits and pension for all permanent and pensionable employees of Kenya Power and related entities. The Fund also provides benefits and pension to dependents of employees who die in service. The Fund is currently implementing its corporate strategy that spans for the period 2016 – 2020. One of the pillars of the strategy is to enhance member offerings. In pursuant of this the Fund seeks to engage a service provider to supply, installation and commissioning of bulk push and pull SMS solution, USSD query service and mobile application solution. The terms of reference for the respective services are as outlined below.

#### **2. BULK PUSH AND PULL SMS SOLUTION**

Below are the specifications and deliverables for the bulk push and pull SMS solution.

- a. The SMS solution provided to the Fund should be accessible to at least two leading (by subscriber numbers) licensed and operational mobile network operators. It is the responsibility of the bidder to enable SMS services availability across the mobile network operators.
- b. The SMS service should be able to deliver a minimum of 100 SMS /second
- c. The SMS service should be able to deliver the query response within 10 second upon receipt.
- d. The SMS service should be able to support messages longer than 160 characters of length (i.e. It should support message concatenation). If possible up to 320 characters or two messages.
- e. The SMS service should support common special characters such as (! @#\$%^&\*()-\_+=/\*,<>.{ } [] `~|\;|") etc.
- f. The SMS service should provide a feature for delivery status notifications for each message sent.
- g. The SMS service should be able to support both PUSH and PULL methods.
- h. The solution shall have Antispam and duplicate filters
- i. Provision of User ID/Password to access to website/portal
- j. Provision of a website/portal for sending bulk SMS

- k. Provision of a website/portal for viewing of statistics and generation of reports.
- l. Provision of a website/portal to store and archive content of all sent and received SMS.
- m. The bidder shall be the single point of contact for the Fund. Kenya Power Pension Fund will not enter into any contract with any telecom, carrier or service provider.
- n. Availability of the Bulk Push and Pull SMS solution to be made on 24\*7\*365 basis.
- o. The solution offered should be scalable to meet the requirements of the Fund for the next 5 years from the date of award of contract
- p. Facility of Admin Users to create/modify/delete/maintain users
- q. Upload of Mobile Numbers through Excel and Txt formats
- r. Provision for Scheduling of SMS
- s. Provision for customized messages to many members

### **3. USSD QUERY SERVICE**

Below are the specifications and deliverables for the USSD query service

- a. The USSD query code provided should be a dedicated sub-code to Kenya Power Pension Fund e.g. \*303#.
- b. The bidder shall be responsible for provision of the USSD interface and menus as per Kenya Power Pension Fund business requirements.
- c. The USSD query service shall be integrated to our current legacy system for the query raised by our members for quick and accurate response. Our current legacy system is web based.
- d. The USSD query code provided to the Fund to serve its members should be accessible across at least two leading (by subscriber numbers) licensed and operational mobile network operators. It is the responsibility of the bidder to enable USSD query services across the mobile network operators.
- e. All USSD query transactions will require confirmation prior to submission at the end of all stages.
- f. The USSD query service should be able to accept a minimum of fifty (50) simultaneous connections.
- g. The USSD query response for a menu should not exceed 10 sec.
- h. USSD service session timeout should be configurable, but not less than 60 seconds.
- i. Availability of USSD query services and to be made on 24\*7\*365 basis.
- j. The bidder shall be the single point of contact for the Fund. Kenya Power Pension Fund will not enter into any contract with any telecom, carrier or service provider.

- k. The query service offered should be scalable to meet the requirements of the Fund for the next 5 years from the date of award of contract

#### **4. Mobile Application**

Below are the specifications and deliverables for the Mobile Application

- a. Develop the content for the mobile phone application as per requirements of Kenya Power Pension Fund
- b. Develop the user interface for the application that is easy to use with context help features.
- c. Upload the front-end application on Google Play Store and Apple Store
- d. The mobile App will be available for all devices using android operating system or windows operating system or Linux operating system
- e. The Service Provider shall seek and maintain the Security Certification of the Mobile App.
- f. The Mobile App shall be adequately branded Kenya Power Pension Fund and protected by Copyright laws to be property of Kenya Power Pension Fund
- g. The Service Provider shall monitor and evaluate the rating of the app and keep enhancing its features and functionality after approval by Kenya Power Pension Fund.
- h. The mobile application shall be integrated to our current legacy system for the query raised by our members for quick and accurate response. Our current web legacy system is web based.

#### **5. Additional Requirements**

Further to the above specifications and deliverables below are two additional services that the Fund requires.

- a. An automated Voice Response service to be configured in our communication services
- b. Registration with service providers, setup and installation of a toll-free number

#### **6. Post Project Implementation costs Proposal**

The following Information should be clearly indicated in the financial proposal **separately**;

- Bulk SMS charge (Per SMS) - Bidder to specify cost per SMS for Bulk SMS (from Kenya Power Pension Fund to members). The Fund to be billed monthly for bulk messages transmitted.
- Cost of hosting mobile application on google play store and apple store per annum
- Cost of USSD Code per annum

Name of Tenderer

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Signature of duly authorised person signing the Tender

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Name and Designation of duly authorised person signing the Tender

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Stamp or Seal of Tenderer

## SECTION V - PRICE SCHEDULE

### **SCHEDULE OF REQUIREMENTS AND PRICE SCHEDULE FOR SUPPLY, INSTALLATION AND COMMISSIONING OF BULK PUSH AND PULL SMS SOLUTION, USSD QUERY SERVICE AND MOBILE APPLICATION TENDER NO. KPPF/PROC/2-A/01/18**

<b>NO.</b>	<b>ITEM DESCRIPTION</b>	<b>Amount In Kshs.</b>
1.	Supply, Installation and Commissioning of Bulk Push and Pull SMS Solution	
2.	Supply, Installation and Commissioning of USSD query service	
3.	Supply, Installation and Commissioning of mobile application	
4.	Supply, Installation and Commissioning of Automated Voice Response Service	
5.	Set up and Installation of a Toll free Number	
6.	Integration of the USSD query service and Mobile Application to the existing legacy system	
VAT		
<b>Total Price VAT Inclusive in Kshs</b>		

#### **NOTE**

- The currency quoted must be in Kenya Shillings.
- **All recurrent costs MUST BE INDICATED SEPARATELY INCLUSIVE OF ALL TAXES, that is for, Bulk SMS charge per SMS, Cost per annum for hosting mobile application on google play store and apple store, Cost per annum for USSD Code from at least two service providers.**

Name of Tenderer

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Signature of duly authorised person signing the Tender

---

Name and Designation of duly authorised person signing the Tender

---

Stamp or Seal of Tenderer

## SECTION VI - EVALUATION CRITERIA

**6.1:** Evaluation of duly submitted tenders will be conducted in accordance with the following mandatory requirements: -

1. Duly completed Declaration Form
2. Duly completed Tender form
3. Copy of Valid Tax Compliance Certificate from the tender opening date
4. Duly signed and stamped Confidential Business Questionnaire

Only bidders who meet the mandatory requirements will proceed for technical evaluation

### 6.2 : Technical Evaluation Stage

The proposals shall be evaluated using the following criteria and score points with total of 100marks:

#### 1. Team Qualification and experience; (30 marks)

Qualifications of the team to handle the assignment. CVs recently signed by the proposed professional staff and the authorized representative submitting the proposal. Key information should include number of years working for the firm/entity and degree of responsibility held in various assignments and relevant academic certificates **must** be attached in order to score marks.

Team	Qualification	Marks
Project Lead	Post graduate certification	2
	Undergraduate certificate	3
	Relevant experience > 7 years - 10 marks 5 - 7 years - 7 marks 3 - 5 years - 5 marks Below 3 years will score zero	10
	Two technical staff	5
Two technical staff	Undergraduate certificate	5
	Relevant experience > 5 years - 10 marks 4 - 5 years - 7 marks 3 - 4 years - 5 marks Below 3 years will score zero	10

#### 2. Firm's experience; (20 marks)

Brief description of the firm's organization and an outline of recent experience (reference sites) of the firm in providing Mobile Applications, SMS and USSD services. Reference Sites relevant to this project (at least three and include a brief of work done or services rendered,



value of contracts, duration of project, and contact person with both reachable phone number and email). Bidders to provide evidence of serviced LSOs or signed contracts. (these must have amount of services done to score any marks)

Qualification	Marks
More than 7 years	20
5 to 7 years	15
3 to 5 years	10

Below 3 years will score zero

### 3. Methodology (30 marks)

Description of proposed approach, methodology and work plan to be adopted for the assignment including tools to be used, estimated time and report architecture

Item	Marks
Understanding and Conformity to the terms of reference provided	15
Completeness of description of methodology and work plan	10
Training and Knowledge transfer	5

### 4. Financial capability (15 marks)

The average turnover of the entity for the last three fiscal years. **To submit audited financial statements for the last three years. Unaudited financial statements will score zero.**

Item	Amounts (Kshs)	Marks
Average turnover	Above 50 million	15
	30 - 50 million	10
	10 - 30 million	7
	Below 5 million	5

### 5. Referees (5 marks)

The bidder to provide five recommendation letters from previous clients within the last five years (1 mark for each) of carrying out similar assignments.

Tenders will proceed to the financial evaluation stage if they score a minimum of 80 marks and above in the criteria. Technical will carry a weighting of 80%.

### 6.3 : Financial Proposal Evaluation.

The Financial proposals of qualified firms will be opened and checked for any arithmetical errors and any anomalies.

- The opening date of the financial proposal shall be the date indicated in the notification letter to technically compliant bidder(s).
- The Total Percentage price **MUST** be indicated on the financial proposal submission form which is duly signed and stamped by the consultant.
- The formulae for determining the financial scores is the following:  
 $S_f = 100 \times \frac{F_M}{F}$  where  $S_f$  is the financial score;

$F_M$  is the lowest priced financial proposal and  $F$  is the price of the proposal under consideration. The lowest evaluated bidder shall score 20%

**The combined technical and financial scores shall be determined using the formula below. The Weights given to The Technical (T) and Financial Proposals(P) are:**

$$T=0.80 \quad P= 0.20$$

**Successful bidder will be the highest combined score.**

The assignment is expected to commence at Nairobi, Kenya when due for execution or as shall be informed.

## SECTION VII – GENERAL CONDITIONS OF CONTRACT

The General Conditions of Contract *hereinafter referred abbreviated as the GCC* shall form part of the Conditions of Contract in accordance with the law and KPPF's guidelines, practices, procedures and working circumstances. The provisions in the GCC will apply unless an alternative solution or amendment is made under other parts of the Contract including the Special Conditions of Contract.

### 7.1 Definitions

In this contract, the following terms shall be interpreted as follows: -

- a) *“ Day” means calendar day and “ month” means calendar month.*
- b) *“ The Contract” means the agreements entered into between KPPF and the Supplier, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.*
- c) *“ The Contract Price” means the price payable to the Supplier under the contract for the full and proper performance of its contractual obligations.*
- d) *“ The Services and/ or goods” means services and/ or goods or art thereof to be provided by the Supplier and includes all of the materials and incidentals, which the Supplier is required to perform and provide to KPPF under the contract.*
- e) *“ The Procuring Entity” means The Kenya Power Pension or its successor(s) and assign( s) where the context so admits( hereinafter abbreviated as KPPF).*
- f) *“ The Supplier” means the individual or firm providing the services and/ or goods under this contract or his/ her/ its permitted hei( s), personal representative( s), successor( s) or permitted assign( s) where the context so admits. For the avoidance of doubt this shall mean the successful Tenderer( s) pursuant to the tender.*
- g) *Wherever used in the contract, “ performance” shall be complete or be deemed to be complete, unless the circumstances indicate otherwise, when the services and/ or goods have been performed in accordance with the Contract and where KPPF does not signify its approval to the Supplier, but without giving notice of dissatisfaction, on the expiration of thirty (30) days from date of documented completion of performance of the service.*

### 7.2 Application

These General Conditions shall apply to the extent that provisions of other parts of the contract do not supersede them.

### **7.3 Standards**

The Services and/ or goods supplied under this contract shall conform to the standards mentioned in the Details of Service.

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

- 7.4.1 The Supplier shall not, without KPPF's prior written consent, disclose the contract, or any provision thereof or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of KPPF in connection therewith, to any person other than a person employed by the Supplier in the performance of the contract.
- 7.4.2 The Supplier shall not, without KPPF's prior written consent, make use of any document or information enumerated in clause 7.4.1 above.
- 7.4.3 Any document, other than the contract itself, enumerated in clause 7.4.1 shall remain the property of KPPF and shall be returned (including all copies) to KPPF on completion of the Supplier's performance under the contract if so required by KPPF.

### **7.5 Patent Rights**

The Supplier shall indemnify KPPF against all third party claims of infringement of patent, trademark, or industrial design rights arising from provision of the services and/ or goods or any part thereof.

### **7.6 Performance Security**

- 7.6.1 Within fourteen (14) days of the date of the notification of contract award, the Supplier shall furnish to KPPF the Performance Security which shall be an original Bank Guarantee that is strictly in the form and content as prescribed in the Performance Security Form (Bank Guarantee) in the Tender Document.
- 7.6.2 The Performance Security shall be issued by a commercial bank licensed by the Central Bank of Kenya. The bank must be located in Kenya.
- 7.6.3 The Performance Security shall be the sum of ten percent (10%) of the contract price. It shall be in the currency of the contract price.
- 7.6.4 Failure of the Supplier to furnish the Performance Security, the award shall be annulled and the Tender Security forfeited, in which event KPPF may notify the next lowest evaluated Tenderer that its Tender has been accepted.

- 7.6.5 The proceeds of the Performance Security shall be payable to KPPF as compensation for any loss resulting from the Supplier's failure to comply with its obligations in accordance with the contract without KPPF being required to demonstrate the loss it has suffered.
- 7.6.6 The Performance Security shall be valid for a minimum of sixty (60) days after satisfactory delivery for both Foreign and Local Suppliers.
- 7.6.7 KPPF shall seek authentication of the Performance Security from the issuing bank. It is the responsibility of the Supplier to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPPF. The period for response shall not exceed three (3) days from the date of KPPF's query. Should there be no conclusive response by the Bank within this period, such Supplier's Performance Security may be deemed as invalid and the Contract nullified, unless information to the contrary is received by KPPF two (2) days before the expiry of the Supplier's Tender Security.
- 7.6.8 Subject to the provisions of this contract, the Performance Security will be discharged by KPPF and returned to the Supplier not earlier than thirty (30) days following the date of completion of the Supplier's obligations under the contract, including any warranty obligations, under the contract.

## **7.7 Inspection and Tests**

- 7.7.1 KPPF or its representative(s) shall have the right to inspect and/or to test the services and/or goods to confirm their conformity to the contract specifications. KPPF shall notify the Supplier in writing in a timely manner, of the identity of any representative(s) retained for these purposes. Such visit and or inspection/ test shall in no way prejudice KPPF's rights and privileges.
- 7.7.2 In appropriate circumstances, Inspection/ Test Report(s) shall be completed upon conclusion of the inspection/ tests.
- 7.7.3 The inspections and tests may be conducted in the premises of the Supplier or its subsupplier(s). If conducted on the premises of the Supplier or its subsupplier(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to KPPF.
- 7.7.4 Should any inspected or tested services and/ or goods fail to conform to the specifications, KPPF may reject the Service(s), and the Supplier shall either replace or remedy the rejected services and/ or goods or make alterations necessary to meet specification requirements free of cost to KPPF.
- 7.7.5 KPPF's right to inspect, test and where necessary, reject the services and/ or goods after provision shall in no way be limited or waived by reason of the services and/ or goods

having previously been inspected, tested and passed by KPPF or its representative(s) prior to the services and/ or goods performance / delivery.

- 7.7.6 For the avoidance of doubt, any acknowledgement by KPPF on the Supplier's or sub-supplier's document shall not be conclusive proof or evidence of satisfactory performance without duly authorized approval by KPPF.
- 7.7.7 Nothing in this clause 7.7 shall in any way release the Supplier from any warranty or other obligations under this Contract.

## **7.8 Packaging and Labelling**

- 7.8.1 Where applicable, the Supplier shall provide such packaging of the material and equipment as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract.
- 7.8.2 The method of packaging, labeling and marking shall comply strictly with such special requirements as shall be specified and attached to the Contract and particular Order.
- 7.8.3 The labelling, marking and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract.
- 7.8.4 The materials and equipment shall be packed in good condition suitable for sea/air/road/rail dispatch. Hazard in transit to the final destination shall include rough handling and storage in tropical conditions.
- 7.8.5 The Supplier shall enclose a packing list in each package and all documents relating to the Order shall show the Tender reference number and name against the items or package indicating the supplier or supplier's agent as the consignee.

## **7.9 Delivery and Documents for Materials/ Equipment**

- 7.9.1 Where applicable, delivery of the materials/ equipment shall be made by the Supplier to the place and in accordance with the terms specified by KPPF in its Schedule of Requirements or as may be otherwise indicated.
- 7.9.2 The Supplier shall notify KPPF of the full details of the delivered materials/ equipment by delivering the materials/ equipment with a full set of the following documents: -
- a) *Supplier's invoice showing the materials/ equipment description, quantity, unit price and total price*
  - b) *Delivery note*
  - c) *Packing list identifying contents of each package*

7.9.3 It is the responsibility of the Supplier to ensure that the delivery documents are received by KPPF at the designated delivery point at the time of delivery.

**7.10 Insurance**

7.10.1 The Supplier shall be responsible for and keep in force current appropriate insurance covers for its property and persons engaged in the performance and or provision of the Services and/ or goods under the contract.

7.10.2 The Supplier shall (*except in respect to losses, injuries or damage resulting from any act or neglect of KPPF*) indemnify and keep indemnified KPPF against all losses and claims for injuries or damage to any person or property whatsoever which may arise out of or in consequence of the contract and against all claims, demands, proceedings, damages, costs, charges, and expenses whatsoever in respect thereof or in relation thereto.

**7.11 Payment**

7.11.1 Payments shall be made promptly by KPPF and shall not be less than thirty (30) days from completion of satisfactory performance and submission of invoice together with other required and related documents or as otherwise prescribed in the contract.

7.11.2 Payment shall primarily be through KPPF's cheque or Real Time Gross Settlement (*RTGS*) or telegraphic transfer. Where applicable, a copy of a valid Performance Security, stamped, certified as authentic by KPPF, shall form part of the documents to be presented to KPPF before any payment is made.

**7.12 Interest**

Interest payment by KPPF is inapplicable in the contract.

**7.13 Prices**

7.13.1 Subject to clause 7.14 herein below, prices charged by the Supplier for services and/ or goods performed under the contract shall be fixed for the period of the contract with no variations.

7.13.2 A price that is derived by a pre-disclosed incorporation or usage of an internationally accepted standard formula shall not be deemed to be a price variation within the meaning of this clause.

#### **7.14 Variation of Contract**

KPPF and the Supplier may vary the contract only in accordance with the following: -

- a) *the quantity variation of services and/ or goods shall not exceed twenty percent (20%) of the original contract quantity.*
- b) *The cumulative value variation shall not exceed twenty five percent (25%) of the original contract value.*
- c) *the quantity variation must be executed within the period of the contract.*

#### **7.15 Assignment**

The Supplier shall not assign in whole or in part its obligations to perform under this contract, except with KPPF's prior written consent.

#### **7.16 Subcontracts**

7.16.1 The Supplier shall notify KPPF in writing of all subcontracts awards under this contract if not already specified in the tender. Such notification, in the original tender or obligation under the Contract shall not relieve the Supplier from any liability or obligation under the Contract.

7.16.2 In the event that an award is given and the contract is sub-contracted, the responsibility and onus over the contract shall rest on the Supplier who was awarded.

#### **7.17 Termination of Contract**

7.17.1 KPPF may, without prejudice to any other remedy for breach of contract, by written notice sent to the Supplier, terminate this contract in whole or in part due to any of the following:

-

- a) *if the Supplier fails to perform any or all of the services and/ or goods within the period(s) specified in the contract, or within any extension thereof granted by KPPF.*
- b) *if the Supplier fails to perform any other obligation(s) under the contract.*
- c) *if the Supplier, in the judgment of KPPF has engaged in corrupt or fraudulent practices in competing for or in executing the contract.*
- d) *by an act of force majeure.*
- e) *if the Supplier becomes insolvent or bankrupt*
- f) *if the Supplier has a receiving order issued against it, compounds with its creditors, or an order is made for its winding up (except for the purposes of its amalgamation or reconstruction), or a receiver is appointed over its or any part of its undertaking*



*or assets, or if the Supplier suffers any other analogous action in consequence of debt.*

*g) if the Supplier abandons or repudiates the Contract.*

7.17.2 In the event that KPPF terminates the contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, services and/ or goods similar to those undelivered or not rendered, and the Supplier shall be liable to KPPF for any excess costs for such similar services and/ or goods and or any other loss PROVIDED that the Supplier shall not be so liable where the termination is for convenience of KPPF.

7.17.3 The Parties may terminate the Contract by reason of an act of *force majeure* as provided for in the contract.

7.17.4 The Contract may automatically terminate by reason of an act of *force majeure* as provided for in the Contract.

#### **7.18 Liquidated Damages**

Notwithstanding and without prejudice to any other provisions of the contract, if the Supplier fails to perform any or all of the services and/ or goods within the period specified in the contract, KPPF shall, without prejudice to its other remedies under the contract, deduct from the contract prices, liquidated damages sum equivalent to 0.5% of the performance price per day of delay of the delayed due services and/ or goods up to a maximum of ten percent (10%) of the performance price of the delayed due services and/ or goods.

#### **7.19 Warranty**

7.19.1 Where applicable, the Supplier warrants that the Services and/ or goods provided under the contract are of the highest quality or current specification and incorporate all recent improvements unless provided otherwise in the contract. The Supplier further warrants that any materials/ equipment provided under this contract shall have no defect arising from manufacture, materials or workmanship or from any act or omission of the Supplier that may develop under normal use of the materials/ equipment provided under the conditions obtaining in Kenya.

7.19.2 This warranty will remain valid for the period indicated in the special conditions of contract after the goods, or any portion thereof as the case may be, have been delivered to the final destination indicated in the contract.

7.19.3 KPPF shall promptly notify the Supplier in writing of any claims arising under this Warranty.

- 7.19.4 Upon receipt of such a notice, the Supplier shall, with all reasonable speed, remedy the defective services and/ or goods without cost to KPPF.
- 7.19.5 If the Supplier having been notified, fails to remedy the defect(s) within a reasonable period, KPPF may proceed to take such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which KPPF may have against the Supplier under the contract.

## **7.20 Resolution of Disputes**

- 7.20.1 KPPF and the Supplier may make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the contract.
- 7.20.2 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 resort to resolution before a recognized local forum for the resolution of disputes.

## **7.21 Language and Law**

The language of the contract and the law governing the contract shall be the English language and the laws of Kenya respectively unless otherwise stated.

## **7.22 Waiver**

Any omission or failure by KPPF to exercise any of its rights or enforce any of the penalties arising from the obligations imposed on the Supplier shall in no way, manner or otherwise howsoever, alter, amend, prejudice, vary, waive or be deemed to alter, amend, prejudice, vary, waive or otherwise whatsoever any of KPPF's powers and rights as expressly provided in and as regards this contract.

## **7.23 Force Majeure**

- 7.23.1 Force majeure means any circumstances beyond the control of the parties, including but not limited to:
- a) *war and other hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition or embargo;*
  - b) *ionizing radiation or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosives*

*or other hazardous properties of any explosive nuclear assembly or nuclear components thereof;*

*c) rebellion, revolution, insurrection, military or usurped power & civil war;*

*d) riot, commotion or disorder except where solely restricted to employees servants or agents of the parties;*

*e) un-navigable storm or tempest at sea.*

7.23.2 Notwithstanding the provisions of the contract, neither party shall be considered to be in default or in breach of its obligations under the Contract to the extent that performance of such obligations is prevented by any circumstances of *force majeure* which arise after the contract is entered into by the parties.

7.23.3 If either party considers that any circumstances of *force majeure* are occurring or have occurred which may affect performance of its obligations it shall promptly notify the other party and provide reasonable proof of such circumstances.

7.23.4 Upon the occurrence of any circumstances of *force majeure*, the Supplier shall endeavour to continue to perform its obligations under the contract so far as is reasonably practicable. The Supplier shall notify KPPF of the steps it proposes to take including any reasonable alternative means for performance, which is not prevented by *force majeure*. The Supplier shall not take any such steps unless directed so to do by KPPF.

7.23.5 If the Supplier incurs additional costs in complying with KPPF's directions under sub clause 7.23.4, then notwithstanding the provisions of the contract, the amount thereof shall be agreed upon with KPPF and added to the contract price.

7.23.6 If circumstances of *force majeure* have occurred and shall continue for a period of twenty one (21) days then, notwithstanding that the Supplier may by reason thereof have been granted an extension of time for performance of the contract, either party shall be entitled to serve upon the other seven (7) days' notice to terminate the contract. If at the expiry of the period of twenty-eight (28) days, *force majeure* shall still continue, the contract shall terminate.

## SECTION VIII – SPECIAL CONDITIONS OF CONTRACT

The Special Conditions of Contract *hereinafter abbreviated as SCC* shall form part of the Conditions of Contract. They are made in accordance with the law and KPPF's guidelines, practices, procedures and working circumstances. They shall amend, add to and vary the GCC. The clauses in this section need not therefore, be completed but must be completed by KPPF if any changes to the GCC provisions are deemed necessary. Whenever there is a conflict between the GCC and SCC, the provisions of the SCC shall prevail over those in the GCC.

No.	GCC Reference Clause	Particulars of SCC
1.	7.11.1 Terms of Payment	Payment is thirty (30) days from completion of satisfactory performance and submission of invoice together with other required and related documents

### SCHEDULE OF PAYMENT

**Payment shall be made as per below schedule;**

1. Kshs.(20% of the contract price) upon signature of this contract, submission of an Inception Report, and a Performance Bank Guarantee of 10% of contract price in the format provided issued by a local bank licensed by the central bank of Kenya;
2. Kshs.(30% of the contract price) after development, end user testing signs off mobile application, USSD code and Bulk push and pull SMS solution.
3. Kshs.(30% of the contract price) after installation, integration with internal legacy system, end user training signs off mobile application, USSD code and Bulk push and pull SMS solution.
4. Kshs.(20% of the contract price) after commissioning certificate sign off.

## SECTION IX - TENDER FORM

Date:

Tender No.

**To:**

The Kenya Power Pension Fund,  
Stima Plaza,  
Kolobot Road, Parklands,  
P.O Box 1548 – 00600,  
Nairobi, Kenya.

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 supply and installation of ..... (*insert service/works 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 deliver, install and commission the goods in accordance with the delivery schedule specified in the Description of works schedule.
3. If our Tender is accepted, we will obtain the performance security of a licensed commercial bank in Kenya in a sum equivalent to ten percent (10%) of the contract price for the due performance of the contract, in the form(s) prescribed by The Kenya Power & Lighting Company Limited.
- 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 authorised person signing the Tender

\_\_\_\_\_  
Name and Designation of duly authorised person signing the Tender

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

**\*NOTES:**

1. KPPF requires a validity period of at least **One hundred and twenty (120) days**.
2. This form must be duly signed, stamped and/or sealed.

## SECTION X - CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

All Tenderers are requested to give the particulars 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 ..... Postal Code .....
Tel No.....
Facsimile.....
Mobile and/ or CDMA No.....
E-mail:.....
Nature of your business .....
Registration Certificate No.....
Maximum value of business which you can handle at any time KSh.....
Name of your Bankers .....Branch... ..
*Names of Tenderer’s contact person(s) .....
Designation of the Tenderer’s contact person(s) .....
Address, Tel, Fax and E-mail of the Tenderer’s contact person(s) .....

.....  
.....

---

**Part 2 (a) Sole Proprietor**  
Your name in full .....  
Nationality ..... Country of origin .....  
\*Citizenship details.....

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**Part 2 (b) Partnership**  
Give details of partners as follows: -

Names	Nationality	*Citizenship Details	Shares
1.....			
2.....			
3.....			
4.....			
5.....			

**Part 2 (c) Registered Company**  
Private or Public .....  
State the nominal and issued capital of company-  
Nominal KSh.....  
Issued KSh.....  
Give details of all directors as follows

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



Name of duly authorized person to sign for and on behalf of the Tenderer

.....

Designation of the duly authorized person.....

Signature of the duly authorized person.....

**\*NOTES TO 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. *If a Kenyan citizen, please indicate under "Citizenship Details" whether by birth, naturalization or registration.*
3. *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.***
4. *For foreign Tenderers please give the details of nominal and issued share capital in the currency of the country of origin of the Tenderer.*

## SECTION XII - DECLARATION FORM

Date \_\_\_\_\_

**To:**

The Kenya Power Pension Fund,  
P.O Box 1548 – 00600,  
Stima Plaza, Kolobot Road, Parklands,  
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 3.2 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 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 authorised person signing the Tender

\_\_\_\_\_  
Name and Designation of duly authorised person signing the Tender

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

**SECTION XIII– DRAFT LETTER OF NOTIFICATION OF INTENT OF AWARD**

To:

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

Dear Sirs/ Madams,

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

Pursuant to the provision under section 87 of the public procurement and asset disposal Act 2015 we refer to your tender dated ..... we are pleased to inform you that following evaluation, we intend to award you a contract for the above mentioned subject to provision herein.

This notification of intent does not constitute a contract. The formal Contract Agreement and notification of award, shall be entered into pursuant to the provisions of the Public Procurement and Asset Disposal Act, 2015 *(or as may be amended from time to time, or replaced)*.

You are required to accept or reject this offer within a period of 14 days.

We take this opportunity to remind you to again note and strictly comply with the provisions as stated in the tender document.

Kenya Power Pension Fund is committed to best practices in quality management systems and supply chain management, attached please read carefully our Suppliers' Charter. We look forward to a cordial and mutually beneficial business relationship.

Yours faithfully,

**FOR: THE KENYA POWER PENSION FUND**

**CEO & TRUST SECRETARY**

**SECTION XIV – DRAFT LETTER OF NOTIFICATION OF REGRET**

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

Date:

Dear Sirs/ Madams,

**RE: NOTIFICATION OF REGRET IN RESPECT OF TENDER NO. ....**

Pursuant to the provision under section 87(3) of the public procurement and asset disposal Act 2015 to notify you that following evaluation, your Tender is unsuccessful. It is therefore not accepted.

The brief reasons are as follows:-

1. ....
2. ....
3. .... etc

The successful bidder was \_\_\_\_\_.

However, this notification does not reduce the validity period of your Tender Security. In this regard, we request you to relook at the provisions regarding the Tender Security, Signing of Contract and Performance Security as stated in the Instructions to Tenderers.

You may collect the tender security from our offices only after expiry of twenty five (25) days from the date hereof

It is expected that by that time KPPF and the successful bidder will have entered into a contract pursuant to the Public Procurement and Asset Disposal Act, 2015 *(or as may be amended from time to time or replaced)*. When collecting the Security, you will be required to produce the original or certified copy of this letter.

We thank you for the interest shown in participating in this tender and wish you well in all your future endeavours.

Yours faithfully,

**FOR: THE KENYA POWER PENSION FUND**

**CEO & TRUST SECRETARY**

## SECTION XV - CONTRACT AGREEMENT FORM

**THIS AGREEMENT** made this.....day of.....**20.... BETWEEN THE KENYA POWER & LIGHTING COMPANY LIMITED STAFF RETIREMENT BENEFITS SCHEME**, a retirement benefits fund licensed by Retirement Benefits Authority situated at Stima Plaza, Kolobot Road, Parklands, Nairobi in the Republic of Kenya and of Post Office Box Number 1548-00600, Nairobi in the Republic aforesaid (*hereinafter referred to as the "KPPF"*) 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/Physical Address .....(*full address physical and postal of Supplier*) in the Republic aforesaid, (*hereinafter referred to as the "Supplier"*) of the other part;

**WHEREAS** KPPF invited tenders for certain services and/ or goods, that is to say for Provision of ..... under Tender Number.....

**AND WHEREAS** KPPF has accepted the Tender by the Supplier for the services and/ or goods in the sum of ..... **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) words importing the masculine gender only, include the feminine gender

- or (as the case may be) the neutral gender.
- d) 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.
  - e) 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 KPPF to the Supplier as hereinbefore mentioned, the Supplier hereby covenants with KPPF to perform and provide the services and/ or goods and remedy any defects thereon in conformity in all respects with the provisions of the Contract.
4. KPPF hereby covenants to pay the Supplier in consideration of the proper performance and provision of the services and/ or goods 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 KPPF and the Supplier and each shall be read and construed as an integral part of the Contract: -
- a) this Contract Agreement
  - b) the Special Conditions of Contract as per the Tender Document
  - c) the General Conditions of Contract as per the Tender Document
  - d) the Price Schedules submitted by the Supplier and agreed upon with KPPF.
  - e) the Schedule of Requirements
  - f) KPPF’s Notification of intent to Award dated..... and Acceptance Letter dated.....
  - g) the Tender Form signed by the Supplier
  - h) the Declaration Form signed by the Supplier/ successful Tenderer
  - i) the delivery period of.....
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 KPPF and the Supplier.
  - b) Issuance of the Performance Bond by the Supplier and confirmation of its authenticity by KPPF.
  - c) Issuance of the Official Order by KPPF to the Supplier.
8. The period of contract validity shall begin from the Commencement date and end sixty (60) days after the last date of the agreed performance schedule.  
Provided that the expiry period of the Warranty shall be as prescribed and further provided that the Warranty shall survive the expiry of the contract.
9. It shall be the responsibility of the Supplier to ensure that its Performance Security is valid at all times during the period of contract validity and further is in the full amount as contracted.
10. 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.
11. No failure or delay to exercise any power, right or remedy by KPPF shall operate as a waiver of that right, power or remedy and no single or partial exercise of any other right, power or remedy.
12. 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.
13. 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.

14. For the purposes of Notices, the address of KPPF shall be CEO & Trust Secretary, Kenya Power Pension Fund, Ground Floor, Stima Plaza, Kolobot Road, Post Office Box Number 1548-00600, Nairobi, Kenya. The address for the Supplier shall be the Supplier's address as stated by it 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 **KPPF**

---

CEO & TRUST SECRETARY

**SEALED** with the **COMMON SEAL**  
of the **SUPPLIER**  
in the presence of:-

---

DIRECTOR

---

*Affix Supplier's Seal / Stamp here*

---

DIRECTOR'S FULL NAMES

and in the presence of:-

---

DIRECTOR/ COMPANY SECRETARY

---

DIRECTOR/ COMPANY SECRETARY'S FULL NAMES



**SECTION XVI - PERFORMANCE SECURITY FORM (BANK GUARANTEE)**

**(To Be Submitted On Bank’s Letterhead)**

**Date:**

**To:**

The Kenya Power Pension Fund,  
Stima Plaza,  
Kolobot Road, Parklands,  
P.O Box 1548 – 00600,  
Nairobi, Kenya.

**WHEREAS**.....(hereinafter called “the Supplier”) has undertaken, in pursuance of your Tender Number.....(*reference number of the Tender*) and its Tender dated .....(*insert Supplier’s date of Tender taken from the Tender Form*) to supply .....(*description of the goods*) (hereinafter called “the Contract);

**AND WHEREAS** it has been stipulated by you in the said Contract that the Supplier shall furnish you with a bank guarantee by an acceptable bank for the sum specified therein as security for compliance of the Supplier’s performance obligations in accordance with the Contract;

**AND WHEREAS** we have agreed to give the Supplier a guarantee;

**THEREFORE WE HEREBY AFFIRM** that we are Guarantors and responsible to you, on behalf of the Supplier, up to a total sum of..... (*amount of the guarantee in words and figures*) and we undertake to pay you, upon your first written demand declaring the Supplier to be in default under the Contract and without cavil or argument, any sum or sums within the limits of .....  
(*amount of guarantee*) as aforesaid, without you needing to prove or to show grounds or reasons for your demand or the sum specified therein.

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

EITHER

**SEALED** with the )

**COMMON SEAL** )  
of the said **BANK** )  
)

this .....day )

\_\_\_\_\_

BANK SEAL

of .....20.... )

in the presence of :- )

\_\_\_\_\_ )

and in the presence of:- )

OR

**SIGNED** by the **DULY AUTHORISED REPRESENTATIVE(S)/ ATTORNEY(S)** of the **BANK**

\_\_\_\_\_  
Name(s) and Designation of duly authorised representative(s)/ attorney(s) of the Bank

\_\_\_\_\_  
Signature(s) of the duly authorised person(s)

**NOTES TO SUPPLIERS AND BANKS**

- Please note that no material additions, deletions or alterations regarding the contents of this Form shall be made to the Performance Security Bond (the Bond) to be furnished by the successful Tenderer/ Supplier. If any are made, the Bond may not be accepted and shall be rejected by KPPF. For the avoidance of doubt, such rejection will be treated as non-submission of the Bond where such Bond is required in the tender and Contract.*

2. *KPPF shall seek authentication of the Performance Security from the issuing bank. It is the responsibility of the Supplier to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPPF. The period for response shall not exceed five (5) days from the date of KPPF's query. Should there be no conclusive response by the Bank within this period, such Supplier's Performance Security may be deemed as invalid and the Contract nullified.*
  
3. ***The issuing Bank should address its response or communication regarding the bond to KPPF at the following e-mail address –“ [cmbuiya@kplc.co.ke](mailto:cmbuiya@kplc.co.ke)”***