



Kenya Power

TENDER NO. KP1/9AA-2/OT/82/HR/16-17

PREQUALIFICATION OF BUILDING & CIVIL WORKS CONTRACTORS

(LOCAL BIDDERS ONLY)

TENDER DOCUMENT

MAY, 2017

(E-PROCUREMENT SYSTEM)

**ALL CONTRACTORS ARE ADVISED TO READ CAREFULLY THIS PRE-Q
TENDER DOCUMENT IN ITS ENTIRETY BEFORE MAKING ANY BID**

**(ENSURE TO READ THE APPENDIX TO INSTRUCTIONS TO
TENDERERS)**

THE KENYA POWER & LIGHTING COMPANY LIMITED
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SECTION I - INVITATION TO TENDER

DATE: MAY 2017

PRE-QUALIFICATION TENDER NO. KP1/9AA-2/OT/82/HR/16-17 FOR PROVISION OF BUILDING & CIVIL WORKS CONTRACTORS

- 1.1 The Kenya Power & Lighting Company Ltd (KPLC) invites bids from eligible contractors for the provision of Building & Civil Works Services (*hereinafter referred to as “the Services”*). Interested eligible contractors may obtain further information from the Procurement Manager, The Kenya Power & Lighting Company Ltd at Stima Plaza, 3rd Floor, Kolobot Road, P. O. Box 30099 – 00100 Nairobi, Kenya; e-mail MKihara@kplc.co.ke .
- 1.2 **Obtaining tender documents**
 - 1.2.1 Pre-Q Tender documents detailing the requirements may be viewed at KPLC E-Procurement Web Portal found on the KPLC website (www.kplc.co.ke) beginning on **Wednesday 24th May 2017** Registration and submission is online. No manual submission will be accepted.
- 1.3 **Submission of Tender documents**

Completed Tenders are to be saved as PDF documents marked **PRE-QUALIFICATION TENDER NO. KP1/9AA-2/OT/82/HR/16-17 FOR PROVISION OF BUILDING & CIVIL WORKS CONTRACTORS** and submitted in the appropriate KPLC E-procurement Web Portal found on the KPLC website (www.kplc.co.ke) so as to be received on or before **Tuesday 13th June 2017 at 10.00 am**. (*Note: This is a Central Office Tender, contractor registration should be done under Central Office E-procurement portal*).
- 1.4 **Prices**

Any charges or fees quoted should preferably be in Kenya Shillings. The tender validity shall be for a hundred and twenty (120) days from the closing date of the tender.
- 1.5 **Opening of Submitted Tenders**

Tenders will be opened electronically on **Tuesday 13th June 2017 at 10.30 am** in the presence of the Contractor’s or their representatives who choose to attend in **Stima Plaza, Auditorium, Kolobot Road, Parklands, Nairobi**.
- 1.6 There will be a pre-bid meeting on **31st May 2017 at 10.00 am Stima Club Ruaraka Nairobi**. It is advisable for prospective bidders to attend this meeting as guidance will be given on the E-procurement process.

SECTION II - TENDER SUBMISSION CHECKLIST

This order and arrangement shall be strictly adhered to as the Tender Format. Failure to submit the tender in this order and format lead to automatic disqualification. Candidates shall tick against each item indicating that they have provided it.

1	Submission of certified copy of Company or Firm's Registration Certificate	
2	Submission of certified copy of a Valid Tax Compliance Certificate	
3	Submission of certified Copy of business permit/ council trade license including evidence of physical address	
4	Submission and considering the Confidential Business Questionnaire:-	
5	Submission of certified copy of CR12 form	
6	Submission of Declaration Form(s) duly completed and signed.	
7	Submission and considering Tender Form duly completed, signed and that the Tender is valid for the period required	
8	Submission of a valid certified copy of registration certificate issued by National Construction Authority (NCA)	
9	Submission of a list of completed works done within the last five (3) years and indicating the total contract sums and / or Final Account statements in each of the projects (<i>the list of executed works must include completion certificates, handover certificates, certificates of making good defects, contacts for the clients, project managers, Architects, Engineers and / or Quantity Surveyors</i>)	
10	Submission of certified copies of Audited accounts of the company for the last three financial years (Certified by a registered Certified Public Accountant)	
11	Evidence of ownership of equipment, machinery and tools. (Give a list and type of relevant construction tools and equipment owned by the company evidenced by ownership documents. Provide documentary evidence of ability to lease or hire relevant tools and equipment not owned by the company)	
12	Submission of evidence of an established safety program, policies and work practices	
13	A list of Names and ranks of employees together with the assigned responsibilities together with certified copies of Curriculum Vitae and certified copies of certificates for all the Management/at least 2 Key Technical personnel (certified by an Advocate or commissioner for oaths) Appointment letters for the key personnel should be provided	
14	Commitment to carry out quality construction and maintenance works.	
15	Youth, Women and Persons with Disabilities or certificate	

NB: all copies of documents must be satisfied by a commissioner for oaths

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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 KPLC tendering portal.*
- 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 and Lighting Company Limited or its successor(s) and assign(s) where the context so admits (hereinafter abbreviated as KPLC).*
- 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) *KPLC’s “authorised person” shall mean its MD & CEO 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 KPLC staff delegated with such authority.*

- n) *Citizen contractors-means a person/firm wholly owned and controlled by person(s) who are citizens of Kenya.*
- o) *Local contractors- a firm shall be qualified as a local contractor 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-contractor, 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 Provide the services in accordance with this tender and the ensuing contract.

- 3.2.2 In addition the tenderer shall be considered ineligible to bid, where in case of a corporation, private company, partnership or other body, the tenderer, their spouse, child or sub-contractor 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 3.2.3 and 3.2.4, 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 3.2.3 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 subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by KPLC to provide consulting services for the preparation of the design,

specifications, and other documents to be used for the procurement of the goods under this Invitation to Tender.

- 3.2.8 Tenderers shall not be under declarations as prescribed at Section XIII.
- 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 XIII.
- 3.2.10 Those that are under the Declaration as prescribed at Section XIII 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 Declarations of Eligibility

- 3.3.1 Contractors shall not be under declarations of ineligibility for corrupt, fraudulent practices or any other reasons prescribed by the PPAD or any other law.
- 3.3.2 Contractors who are not under these declarations shall complete the Declaration Form strictly in the form and content as prescribed at Section XII.
- 3.3.3 Those that are under the Declaration for corrupt and fraudulent practices 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.

3.4 Pre-Bid Meeting

- 3.4.1 KPLC will conduct a pre-bid meeting. The purpose of the pre-bid meeting shall be to clarify issues and answer any questions that may be raised at that stage.
- 3.4.2 **Contractors'** designated representative is invited to attend the pre-bid meeting which will take place on **31st May 2017 at 10.00 am**. The venue shall be Stima Club Ruaraka, Nairobi.
- 3.4.3 The Contractor is requested as far as possible to submit any questions in writing or be electronic means to reach KPLC through the Procurement Manager in writing at KPLC's address indicated in the Invitation to Tender before the pre-bid meeting.
- 3.4.4 Minutes of the pre-bid meeting including the text of the questions raised and the responses given together with any response prepared after the pre-bid meeting may be transmitted to the downloaders of the Pre-Q Tender Document.
- 3.4.5 Non-attendance during the pre-bid meeting will not be a cause of disqualification of the Pre-Q Tender.

3.5 Cost of Tendering

- 3.5.1 Contractors shall bear all costs associated with the preparation and submission of its Tender. KPLC will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 3.5.2 There are no charges for the Pre-Q Tender Document.

3.6 Obtaining the Tender Document

- 3.6.1 Pre-Q Tender documents detailing the requirements may be obtained by downloading tenders online from the KPLC website (www.kplc.co.ke). No tender documents will be issued from any KPLC office.

- 3.6.2 Within twenty-four (24) hours of downloading the tender document, the Contractors should send only by e-mail its name, e-mail address(es) and telephone/mobile number to the following:-

The Manager, Supply Chain (Procurement)
The Kenya Power & Lighting Company Limited,
Stima Plaza, 3rd Floor, Kolobot Road, Parklands,
P. O. Box 30099 – 00100,
Nairobi, Kenya.
 Email: MKihara@kplc.co.ke
 Email: SWere@kplc.co.ke
 Email: Rireri@kplc.co.ke

3.7 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) *Tender Submission Checklist*
- c) *Instructions to Tenderers*
- d) *Appendix to Instructions to Tenderers*
- e) *Schedule of Requirements*
- f) *Project Implementation Schedule*
- g) *Price Schedule for Services*
- h) *Evaluation Criteria*
- i) *General Conditions of Contract*
- j) *Special Conditions of Contract*
- k) *Tender Form*
- l) *Confidential Business Questionnaire Form*
- m) *Tender Security Form*
- n) *Manufacturer's Authorization Form*
- o) *Manufacturer's Warranty*
- p) *Declaration Form*
- q) *Contract Form*
- r) *Performance Security Form*
- s) *Details of Service*
 - (i.) *General Requirements*
 - (ii.) *Specific Details of Services*

- 3.7.2 The contractor is expected to examine all instructions, forms, provisions, terms and specifications in the Pre-Q Tender Document. Failure to furnish all information required by the Pre-Q Tender Document or to submit a tender not substantially responsive to the Pre-Q Tender Document in every respect will be at the contractor's risk and may result in the rejection of its Tender.
- 3.7.3 All recipients of the documents for the proposed engagement 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".

3.8 Clarification of Documents

- 3.8.1 A prospective contractor requiring any clarification of the Pre-Q Tender Document may notify the Procurement Manager in writing or by post at KPLC's address indicated in the Invitation to Tender.
- 3.8.2 The request for clarification shall also be sent to the following:-
The Manager, Supply Chain (Procurement)
The Kenya Power & Lighting Company Limited,
Stima Plaza, 3rd Floor, Kolobot Road, Parklands,
P. O. Box 30099 – 00100,
Nairobi, Kenya.
Email: MKihara@kplc.co.ke
Email: SWere@kplc.co.ke
Email: Rireri@kplc.co.ke
- 3.8.3 KPLC will respond in writing to any request for clarification of the Pre-Q Tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of Tenders, prescribed by KPLC. Written copies of KPLC's response (*including an explanation of the query but without identifying the source of inquiry*) will be sent to all prospective law firms that have duly received the Pre-Q Tender Document prior to that period.

3.9 Amendment of Documents

- 3.9.1 At any time prior to the deadline for submission of Tenders, KPLC, for any reason, whether at its own initiative or in response to a clarification requested by a prospective contractor, may modify the Pre-Q Tender Documents by amendment.
- 3.9.2 All prospective firms that have received the Pre-Q Tender Documents will be notified of the amendment(s) (*hereinafter referred to or otherwise known as addendum*) in writing and the same will be binding on them.
- 3.9.3 In order to allow prospective contractor reasonable time in which to take the amendment into account in preparing their Tenders, KPLC, at its discretion, may extend the deadline for the submission of Tenders.

3.10 Language of Tender

- 3.10.1 The Tender prepared by the contractor, as well as all correspondence and documents relating to the tender, exchanged between the contractor and KPLC, shall be written in English language.
- 3.10.2 Any printed literature furnished by the contractor may be written in another language so long as they are accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the Tender, the English translation shall govern. The English translation shall be on the contractor's letterhead and shall be signed by the duly authorized signatory signing the Tender and stamped with the contractor's stamp.

3.11 Documents Comprising the Tender

The Tender prepared and submitted by the contractors 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 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 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)*

3.12 Tender Form

The contractor shall complete and sign the Tender Form and all other documents furnished in the Pre-Q Tender Document, indicating the services to be performed, and Methodology of Charging for Services amongst other information required.

3.13 Charges for Services

- 3.13.1 The contractor shall indicate on the appropriate table labelled as Method of Charging for Services the unit prices and rates (where applicable) when called upon to do render such Services.
- 3.13.2 The rates and prices shall be of costs for the Services excluding VAT but inclusive of all other taxes and insurances payable. No other basis shall be accepted for evaluation.

3.14 Tender Currencies

- 3.11.1 The Tenderer shall indicate on the appropriate Price Schedule, the unit prices (where applicable) and total tender price of the services it proposes to provide under the contract.
- 3.11.2 Prices indicated on the Price Schedule shall be of all costs for the services 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.

3.15 Contractor's Competence and Qualifications

- 3.15.1 Pursuant to paragraph 3.2, the contractor shall furnish, as part of its Tender, documents establishing the contractor's eligibility, competence to tender and its qualifications to perform well in any ensuing assignment if its Tender is accepted.
- 3.15.2 The documentary evidence of the Tenderer's qualifications to perform the contract if its Tender is accepted shall be established to KPLC's satisfaction –
- a) *that, in the case of a Tenderer offering to perform the services 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. 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 KPLC with a copy of the accreditation or recognition certificate as applicable. KPLC 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 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 that the Tenderer proposes to perform under the contract.

3.14.2 The documentary evidence of conformity of the services 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 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 for a minimum period of two (2) years following commencement of the provision of the services to KPLC, and,*
- c) *duly completed Statement of Compliance to KPLC'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 sub-paragraphs 3.14.1, 3.14.2 and paragraph 3.15, the Tenderer shall note that standards for workmanship, material, and equipment, designated by KPLC 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 KPLC's satisfaction that the substitutions ensure substantial equivalence to those designated in the Details of Service

3.17 Demonstration(s), Inspection(s) and Test(s)

3.17.1 Where required in the tender, all contractors shall demonstrate ability of performance of the required service in conformity with the Details of Services.

3.17.2 KPLC or its representative(s) after giving reasonable notice to the contractors shall have the right to inspect/ test the contractor's capacity, equipment, premises, and to confirm their conformity to the tender requirements. This shall include any quality management system. KPLC's representative(s) retained for these purposes shall provide appropriate identification at the time of such inspection/ test/ visitation.

- 3.17.3 KPLC shall meet its own costs of the inspection/ test. Where conducted on the premises of the contractors (s), all reasonable facilities and assistance, including access to literature and documentation save for clients confidential information shall be furnished to the inspectors at no charge to KPLC.
- 3.17.4 Demonstration, Inspection/ Test/ Visitation Report(s) shall be completed by KPLC upon conclusion of the inspection/ tests/ visitations. This Report will be considered prior to appointment.

3.16 Warranty

- 3.16.1 Where required in the Tender, all Tenderers must also provide a Warranty that services 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 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, 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. The Original Tender Security, in a clearly labelled envelop, shall be deposited in the Tender Security Box on *KPLC Supply Chain - Procurement Department,*) on or before the opening date and time and receipt acknowledged by KPLC evidenced by a stamped copy.

N/B Not applicable in this tender

- 3.17.2 The tender security shall be either one or a combination 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) For Local bidders, Standby Letters of Credit (LC). All costs, expenses and charges levied by all banks party to the LC shall be prepaid/borne by the Tenderer. The LC must contain all the mandatory conditions of payment to KPLC as prescribed in the Tender Security (Letters of Credit) provided in the Tender Document.
 - c) For Foreign bidders, Standby Letters of Credit (LC) confirmed by a bank in Kenya. All costs, expenses and charges levied by all banks party to the LC including confirmation charges shall be prepaid/borne by the Tenderer. The LC must contain all the mandatory conditions of payment to KPLC as prescribed in the Tender Security (Letters of Credit) provided in the Tender Document.

- d) 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 KPLC 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 or a Standby Letter of Credit issued on behalf of local bidders, should be from a commercial bank licensed by the Central Bank of Kenya. A Tender Security in form of a Standby Letter of Credit issued on behalf of foreign bidders by foreign banks, should be confirmed by 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 KPLC 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 KPLC. The period for response shall not exceed five (5) days from the date of KPLC'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 KPLC as non-responsive, pursuant to paragraph 3.26.
- 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) *KPLC 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 3.40.
- 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 3.39*
- c) *if the successful Tenderer fails to furnish the performance security in accordance with paragraph 3.40*
- d) *if the Tenderer fails to extend the validity of the tender security where KPLC has extended the tender validity period in accordance with paragraph 3.18.*

3.19 Validity of Tenders

- 3.19.1 Tenders shall remain valid for a 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 KPLC, pursuant to paragraph 3.23. A Tender that is valid for a shorter period shall be rejected by KPLC as non-responsive.
- 3.19.2 In exceptional circumstances, KPLC may extend the Tender validity period. The extension shall be made in writing. For the purposes of evaluation and award, the PI Cover provided under paragraph 3.18 shall not be affected by any extension. A Law firm shall not be required nor permitted to modify its tender during the extended period.

3.20 Tender Format

- 3.20.1 Tender evaluation shall be done in three stages;
 - i. Checking of compulsory mandatory requirements/Preliminary stage
 - ii. Detailed evaluation/Technical stage
 - iii. Due diligence on the following basic tools: come-along, pull lifts. PPEs, earthing harness (CMEs), Live-line testers & climbing irons for wooden and concrete poles
- 3.20.2 KPLC will determine the responsiveness of each Tender. For purposes of this pre-qualification, a responsive Tender is one that conforms to all the requirements of the Evaluation. KPLC's determination of a Tender's responsiveness is to be based on the contents of the Tender itself without recourse to extrinsic evidence.
- 3.20.3 The Tender shall be divided clearly in descending order as listed in the Tender Submission Checklist. The divisions are for clear identification and marking of the respective documents or information that are serially numbered in the Checklist.
- 3.20.4 The order and arrangement as indicated in the Tender Submission Checklist will be considered as the Tender Format.
- 3.20.5 Any Tender not prepared and signed in accordance with this paragraph may be rejected by KPLC as non-responsive, pursuant to paragraph 3.28.

3.21 Preparation and Signing of the Tender

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 initialed 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 initialed by the person or persons signing the Tender.
- 3.20.5 KPLC will assume no responsibility whatsoever for the Tenderer's failure to comply with or observe the entire contents of this paragraph 3.20.
- 3.20.6 Any Tender not prepared and signed in accordance with this paragraph may be rejected by KPLC as non-responsive, pursuant to paragraph 3.26.

3.22 Deadline for Submission of Tenders

- 3.21.1 Tenders must be received by KPLC by the date and time specified in KPLC's tendering portal in PDF form.
- 3.21.2 KPLC 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 KPLC 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

- 3.22.1 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 KPLC prior to the deadline prescribed for submission of tenders.
- 3.22.2 No Tender may be modified after the deadline for submission of Tenders.
- 3.22.3 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 KPLC 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 KPLC extends the initial validity period.

3.24 Opening of Tenders

- 3.23.1 KPLC shall open all Tenders promptly at the date and time specified in the KPLC tendering portal and at the location specified in the Invitation to Tender or as may otherwise be indicated.
- 3.23.2 The Tenderer's names, tender modifications or withdrawals, the presence or absence of requisite Tender Security and such other details as KPLC, at its discretion, may consider appropriate, will be announced at the opening.

- 3.23.3 At the Tender opening, tender prices, discounts, and such other details as KPLC, at its discretion, may consider appropriate will be read out.
- 3.23.4 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

- 3.24.1 After the opening of tenders, information relating to the examination, clarification, evaluation and comparisons of tenders and recommendations arising there-from shall not be disclosed to a Tenderer or other person(s) not officially concerned with such process until conclusion of that process.
- 3.24.2 Conclusion of that process shall be deemed to have occurred, at the latest, by the date and time KPLC notifies the successful bidder(s). In any event, official disclosure by KPLC 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.
- 3.24.3 Any effort by a Tenderer to influence KPLC 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 KPLC

- 3.25.1 To assist in the examination, evaluation and comparison of Tenders KPLC 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.
- 3.25.2 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 KPLC within five (5) days from the date of KPLC'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.
- 3.25.3 Save as is provided in this paragraph and paragraph 3.22 above, no Tenderer shall contact KPLC on any matter related to its Tender, from the time of the tender opening to the time the successful Tenderer is announced.
- 3.25.4 Any effort by a Tenderer to influence KPLC 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, KPLC 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. KPLC'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 KPLC will examine the Tenders to determine whether they conform to the Preliminary Evaluation Criteria set out in Section VI 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 KPLC and cannot subsequently be made responsive by the law firm by correction of any non-conformity.

3.28 Minor Deviations, Errors or Oversights

- 3.28.1 KPLC may waive any minor deviation in a Tender that does not materially depart from the requirements of the Services set out in the Pre-Q Tender Document.
- 3.28.2 Such minor deviation -
- a) *shall be quantified to the extent possible*
 - b) *shall be taken into account in the evaluation process and comparison of tenders and,*
 - c) *shall be applied uniformly and consistently to all qualified Tenders duly received by KPLC.*
- 3.28.3 KPLC may waive errors and oversights that can be corrected without affecting the substance of the Tender.
- 3.28.4 A material deviation or reservation is one –
- a) which affects in any substantial way the scope, quality, or ability of performance of the Services;
 - b) which limits in any substantial way, inconsistent with the tendering documents, KPLC's rights or the law firm's obligations under any ensuing engagement; or,
 - c) whose rectification would affect unfairly the competitive position of other law firms presenting responsive tenders.

3.29 Technical Evaluation and Comparison of Tenders

- 3.29.1 KPLC will further evaluate and compare the Tenders that have been determined to be substantially responsive, in compliance to the Technical Evaluation Criteria as set out in the Tender Document.

3.30 Financial Evaluation

- 3.30.1 The financial evaluation and comparison shall be as set out in the Financial Evaluation Criteria. The comparison shall be of the –
- a) Methodology of Charging for Services
 - b) Audited Financial Statements or Bank Statements
 - c) Quantified deviations, if any, as relates to any of the tender requirements

3.31 Preferences

- 3.31.1 Preferences for the certified Youth, Women and Persons with Disabilities will be applied as per the PPAD, 2015.

3.32 Tender Evaluation Period

- 3.32.1 The Evaluation Committee may conduct and complete evaluation of the tender within thirty (30) days of the validity period.
- 3.32.2 Notwithstanding the above, the evaluation period as stated in the Evaluation Criteria may be extended by KPLC but in any event such evaluation will not exceed twenty one (21) days in the validity period of the tender.

3.33 Debarment of a contractor

- 3.33.1 A contractor that gives false information in the Tender about its qualification or which refuses to enter into a contract after notification of appointment shall be considered for debarment from participating in future public procurement.

3.34 Confirmation of Qualification for Appointment

- 3.34.1 KPLC may confirm to its satisfaction whether a contractor's that is selected as having submitted the highest compliant evaluated responsive tender is qualified to be appointed and perform any eventual assignment satisfactorily.
- 3.34.2 The confirmation will take into account the contractor's financial, technical, and performance capabilities. It will be based upon an examination of the documentary evidence of the contractor's qualifications submitted by it pursuant to paragraphs 3.11 and 3.15 as well as confirmation of such other information as KPLC deems necessary and appropriate. This may include offices and other facilities inspection and audits; cleanliness, orderliness of its offices, and, general satisfaction and good welfare of its non-lawyer staff.
- 3.34.3 An affirmative confirmation will be a prerequisite for appointment of the contractor to the KPLC Panel. A negative confirmation will result in rejection of the contractor's Tender, in which event KPLC will proceed to fill in the available gap by the next available highest evaluated responsive tender to make a similar confirmation of that law firm's capabilities to perform satisfactorily.

3.35 Notification of Appointment

- 3.35.1 Prior to the expiration of the period of tender validity, KPLC shall notify the successful 3.30.1 Prior to the expiration of the period of tender validity, KPLC

- shall notify the successful Candidate(s) in writing that its Tender has been approved.
- 3.30.2 The notification of appointment shall not constitute the formation of the contract.
- 3.30.3 Simultaneously, on issuance of Notification of Appointment to the successful Candidate(s), KPLC shall notify each unsuccessful Candidate(s) in writing that its Tender has been accepted.
- 3.35.2 Subject to paragraph 3.35.3, the successful contractors shall be those whose Tenders have been determined to be substantially responsive, compliant with the evaluation criteria and have been determined to be the highest evaluated tenders, and further, where deemed necessary, that the contractors are confirmed to be qualified for appointment to the KPLC prequalified list.
- 3.35.3 The appointment of contractor shall take into account the need for KPLC to have appropriate representation in its regions.
- 3.36 Termination of Procurement Proceedings**
- 3.36.1 KPLC may at any time terminate procurement proceedings before Notice of Appointment or Rejection and shall not be liable to any person for the termination.
- 3.36.2 KPLC shall give prompt notice of the termination to the contractors, and, on request from any law firm, give its reasons for termination within fourteen (14) days of such request.
- 3.37 Acceptance of Appointment**
- 3.37.1 At the same time as KPLC notifies the successful Tenderer that its Tender has been accepted, KPLC 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 KPLC within that period of fourteen (14) days.
- 3.37.3 KPLC shall sign and date the Contract in the period between not earlier than fourteen (14) days from the date of notification of contract award. Further, KPLC shall not sign the contract until and unless the authentic performance security is received in accordance with paragraph 3.36.
- 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 KPLC shall notify the next lowest evaluated Tenderer that its Tender has been accepted.
- 3.37.5 Paragraph 3.33 together with the provisions of this paragraph 3.35 will apply with necessary modifications with respect to the Tenderer notified under sub-paragraph 3.35.3.

- 3.37.6 Within fourteen (14) days of the date of notification of award from KPLC, the successful Tenderer shall furnish KPLC with a Performance Security which shall be either one or a combination of the following:
- a) 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.
- 3.37.7 The Performance Security shall be issued by a commercial bank licensed by the Central Bank of Kenya. The bank must be located in Kenya.
- 3.37.8 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.
- 3.37.9 KPLC 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 KPLC. The period for response shall not exceed three (3) days from the date of KPLC'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.
- 3.37.10 Failure of the successful Tenderer to furnish an authentic Performance Security, the award shall be annulled and the Tender Security forfeited, in which event KPLC may notify the next lowest evaluated Tenderer that its Tender has been accepted.
- 3.37.11 Paragraph 3.35, 3.36 together with the provisions of this paragraph 3.37 will apply with necessary modifications, and as far as circumstances permit, with respect to the Tenderer notified under sub-paragraph 3.37.5.

3.38 Corrupt or Fraudulent Practices

- 3.38.1 KPLC requires that contractors 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 KPLC, 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 KPLC of the benefits of free and open competition.*
- 3.38.2 KPLC will nullify its notification of award if it determines that the contractor recommended has engaged in corrupt or fraudulent practices in competing for the contract in question.

3. 38.3 Further, a Tenderer who is found to have indulged in corrupt or fraudulent practices risks being debarred from participating in public procurement in Kenya.

SECTION IV APPENDIX TO INSTRUCTIONS TO CANDIDATES

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

No.	<i>ITC Reference Clause</i>	<i>Particulars of Appendix</i>
1.	<i>Eligible Candidates</i>	<i>Only local limited liability companies are eligible to apply.</i>
2.	<i>Prequalification period</i>	<i>This prequalification shall last for Two years from the date of appointment</i>
3.	<i>GCC 7.15&7.16</i>	<i>-should a contractor be involved in an accident during the contract period and contractor is found liable for the occurrence his contract shall be terminated. -if directorship changes without formal knowledge and approval by KPLC then contract shall become null and void</i>
	<i>3.22 Tender Submission,</i>	<i>There will be only one document submitted on the e-procurement portal. Bidders shall ensure that:</i> <ul style="list-style-type: none"> • <i>they upload all the required documents in pdf format into the web portal</i>
4.	<i>Sealing and Outer Marking of Tenders</i>	<i>For purposes of this tender, this is not applicable as the tender is being submitted electronically.</i>
5	<i>3.37.1 Performance bond</i>	<i>Not Applicable</i>
6	<i>3.24 Opening of Tenders</i>	<i>The tender shall be opened electronically at Stima Plaza Auditorium on Tuesday 13th June 2017 at 10.00 am and bidders are Encouraged to participate.</i>
7	<i>Documentary evidence of financial capability</i>	<i>Audited Financial Statements. The audited financial statements that have been reported in the last three (3) financial years from the date of the tender document. The statement must be stamped and signed. The auditors must be currently registered as practicing by ICPAK.</i>
8	<i>Insurance</i>	<i>Successful contractors shall be required to take Insurance Cover for the Project and materials worth Kshs 10,000,000 (Ten Million) and shall be obtained</i>

		<i>from reputable Insurance Companies. The Contractors All Risks policy shall be jointly in favour of KPLC and the Contractor.</i>
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SECTION V - EVALUATION CRITERIA

4.1 Preliminary Evaluation Criteria under Paragraph 3.2.2 of the ITC. These are mandatory requirements as per mandatory/preliminary evaluation table (part 1) 4.1.0 – 4.1.15

All candidates must meet all the requirements from no.4.1.0 to no.4.1.15 (Below). Those who do not meet any of the requirements will automatically be disqualified from further evaluation.

Candidates already barred from working for KPLC due to fraud will be automatically disqualified.

NB:

1. Audited financial statements required must be those that are reported within thirty six (36) calendar months of the date of the prequalification document.
2. All copies of documents and certificates must be certified by a commissioner for oaths. The stamp shall bear the name, address and Tel. contracts of the commissioner for oaths. Any document not certified shall not be evaluated
3. Tenders will proceed to the Technical Evaluation Stage only if they qualify in full compliance with Part 1 above, Preliminary Evaluation under Paragraph 3.23.

4.1 TENDER EVALUATION TABLE (PART 1)

4.1.0	Correct order and format of submitted documents	
4.1.1	Submission of certified copy of Company or Firm's Registration Certificate	
4.1.2	Submission of certified copy of a Valid Tax Compliance Certificate	
4.1.3	Submission of certified Copy of business permit/ council trade license	
4.1.4	Submission and considering the Confidential Business Questionnaire: -	
4.1.5	Submission of certified copy of CR12 form	
4.1.6	Submission of Declaration Form(s) duly completed and signed.	
4.1.7	Submission and considering Tender Form duly completed, signed and that the Tender is valid for the period required	
4.1.8	Submission of a valid certified copy of registration certificate issued by National Construction Authority (NCA)	
4.1.9	<i>For other categories of general building contractors, civil works and services</i> Submission of a list of completed works done within the last five (3) years and indicating the total contract sums and / or Final Account statements in each of the projects (<i>the list of executed works must include completion certificates, handover certificates, certificates of making good defects, contacts for the clients, project managers, Architects, Engineers and / or Quantity Surveyors</i>)	
4.1.10	<i>Audited Financial Statements. The audited financial statements that have been reported in the last three (3) financial years from the date of the tender document. The statement must be stamped and signed. The auditors must be currently registered as practicing by ICPAK.</i>	
4.1.11	Evidence of ownership of equipment and tools and evidence to be given vide log books bearing the company's name. (Give a list and type of relevant construction tools and equipment owned by the company evidenced by ownership documents. Provide documentary evidence of ability to lease or hire relevant tools and equipment not owned by the company)	
4.1.12	Submission of evidence of an established safety program, policies and work practices	
4.1.13	A list of Names and ranks of employees together with the assigned responsibilities together with certified copies of Curriculum Vitae and certified copies of certificates for all the Management/at least 2 Key Technical personnel (certified by an Advocate or commissioner for oaths)	
4.1.14	Submission of commitment to carry out quality works as per section XIII.	
4.1.15	Submission of registration with ERC for the Technical Director	
4.1.16	For Youth , women and persons with disabilities - Submission of Youth, Women and Persons with Disabilities certificate	

NB: all copies of documents must be satisfied by a commissioner for oaths

4.2 DETAILED EVALUATION (PART II)

DETAILED EVALUATION (PART III) APPLICABLE TO GENERAL BUILDING, CIVIL & SERVICES CONTRACTORS ONLY

Detailed evaluation shall be carried out according to items 4.2.2.1 – 4.2.2.8 of detailed evaluation table (part II) below. NB: Bidders who score 70 marks (50 marks For Youth, women and persons with disabilities) and above in the Technical evaluation stage will be subjected to due diligence under clause 4.3 before being confirmed eligible to be prequalified as contractors.

NO.	EVALUATION ATTRIBUTE	WEIGHTING %
4.2.2.1	<p><i>Experience as main contractor in the construction of at least 5 years.</i></p> <p><i>a. Above 5 years– 10 marks</i></p> <p><i>b. Below 5 years but above three years – 5 marks</i></p> <p><i>c. Less than three years but not below 1 year - 2marks</i></p> <p><i>For youth, women and peoples with disability</i></p> <p><i>a. Any experience as a main contractor 10marks</i></p> <p><i>b. Any experience as a subcontractor 5 marks</i></p>	10
4.2.2.2	<p><i>Qualified Technical staff in the company relevant to the building construction industry who will actively be involved in the projects. Provide detailed CVs showing length of service, Academic and professional certificates and evidence of registration with relevant professional bodies and Telephone contacts. (to include any other relevant degrees and diplomas)</i></p> <p><i>i) Degree in Construction Management or civil/structural/elec/mech Engineering or Quantity Surveying or Architecture --- 5 marks</i></p> <p><i>ii) Diploma in ditto2 marks</i></p> <p><i>iii)project manager with degree in any relevant engineering/building field-5marks;diploma 2 marks</i></p>	10

	<i>Note: Bidders can only qualify in i or ii and iii to get maximum 10 marks.</i>	
4.2.2.3	<p><i>Numbers of years of gainful employment of key staff</i></p> <p><i>1. Project Manager</i></p> <p><i>i. 5 years and above – 6 marks</i></p> <p><i>ii. Less than 5 years – 1 marks</i></p> <p><i>2 General Foreman –</i></p> <p><i>i. 5 years and above – 10 marks</i></p> <p><i>ii. Less than 5 years – 1 marks</i></p> <p><i>3 Safety officer</i></p> <p><i>i 5 years and above– 4 marks</i></p> <p><i>ii Less than 5 years – 1 marks</i></p> <p><i>Employment records including length of service</i></p>	20
4.2.2.4	<p><i>Accomplishments: (previous & current projects of similar nature and magnitude) Details of building projects undertaken successfully within the last 5 years with evidence of 3 by letters of reference from clients, certificates of occupation and completion certificates for the respective projects. (For a project to qualify it must be at least 70% complete and not behind schedule. For Projects that are not completed, letters of reference from respective Architects, Quantity Surveyors or Engineers and Clients must be provided.</i></p> <p><i>Maximum of 5 projects ----- 3 marks each</i></p>	15
4.2.2.5	<p><i>Tools and equipment. Provide list and type of relevant building construction tools and equipment including evidence of ownership, purchase, lease etc</i></p> <p><i>(i.) Pick-up vehicles.....10marks</i></p> <p><i>(ii.) Mixers, vibrator, scaffolds10marks</i></p> <p><i>(iii.) Haul vehicles, damp trucks, tippers,10marks</i></p> <p><i>(iv.) Hand tools-drills, masonry tools ,welding machines, dumpy etc...10 marks</i></p> <p><i>(v.) Any other 5 relevant tools and equipments-5marks</i></p>	45

	TOTAL	100

4.3 Due Diligence evaluation for Technically successful bidders

Site evaluation will be carried out to ascertain that technically successful bidders have physical offices and the following basic construction tools:

SECTION VI - LETTER OF APPLICATION

Date: Tender No.

To:

The Kenya Power & Lighting Company Limited,
Stima Plaza,
Kolobot Road, Parklands,
P.O Box 30099 – 00100,
Nairobi, Kenya

Ladies and Gentlemen,

1. Having read, examined and understood all of the pre-qualification information provided in the Prequalification Document, the receipt of which is hereby duly acknowledged, we, the undersigned Candidate, hereby apply to be prequalified by yourselves as a potential bidder for the item(s) as indicated by us in Section IV Detailed Description of Items.
2. We agree to abide by this Tender for a **period of.....days (Candidate please indicate validity of your tender)** from the date fixed for tender opening as per the Prequalification Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
3. This application, together with your written appointment thereof, shall not constitute a contract between us nor commit KPLC to any actual tender or amount of contract.
4. We understand that you are not bound to accept any application you may receive.
5. We declare that the statements made and the information provided in our prequalification tender document are complete, true, and correct in every detail.

Yours sincerely,

Name of Candidate

Name and Capacity of authorized person signing the Application

Signature of authorized person signing the Tender

Stamp or Seal of Candidate

NOTES:-

1. KPLC requires a validity period of at least ninety (120) days.
2. This form must be duly signed, stamped and/or sealed.

1. SECTION VII- STATEMENT OF THE

1 Name of Tenderer _____

2 Address _____

3 Legal Status _____

4 Registered Office _____

5 Date of Registration _____

(attach a copy certificate of registration)

6 Detailed description of physical address of the office (Town, Road/street name, building & office) (attach copies of the office lease agreement and rent receipts)

7 DIRECTORS (attach the *Certificate of Confirmation of Directors and Shareholding*)

Yours sincerely,

Name of Tenderer

Signature of duly authorised person signing the Tender

Name and Capacity of duly authorised person signing the Tender

Stamp or Seal of Tenderer

SECTION VIII - TENDER FORM

Date:

Tender No.

To:

The Kenya Power & Lighting Company Limited,
 Stima Plaza,
 Kolobot Road, Parklands,
 P.O Box 30099 – 00100,
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 to perform, deliver, install and commission (*the latter two where applicable*) (*insert services description*) in accordance and conformity with the said tender document and in particular the Schedule of Prices that are made part of this Tender.
2. We undertake, if our Tender is accepted, to perform and provide the services in accordance with the Schedule of Requirements.
3. If our Tender is accepted, we will obtain the guarantee of a bank in a sum of 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. KPLC requires a validity period of at least one hundred and twenty (120) days.
2. This form must be duly signed and stamped.

5. SECTION IX - EXPERIENCE RECORD FORM

1. Name of company _____

2. Experience of the company in electrical engineering work and services.
 _____(Years)

3. Brief description of electrical engineering services offered in the past:

4. Experience of the company in power line construction in the regions has worked in. this should be certified by regional D&C Engineer/others authorized officers

Project Name	Voltage Levels involved	Scope (KMs of line, No. of Transformers)	Contract Amount in Kshs.	Commencement Date	Completion Date

CERTIFICATION: Region.....

: Name of Authorized officer/D&C Engineer.....

: Signature.....

: Date

SECTION XI - EXPERIENCE OF THE TENDERER'S PERSONNEL FORM**PERSONNEL**

Give detailed information of the following 2 (two) key supervisory personnel, who would be employed as full-time staff on the project if awarded contract. Give similar details for (a) Project Manager (b) One Technical Director (c) Safety Officer. This will be in the format below. Appointment letters for the key personnel should be provided.

(Copies of Curriculum Vitae with certified copies of certificates for all the Management/Technical Personnel certified by an Advocate or Magistrate should be attached)

(a) 1st Key Supervisory personnel

1. Name _____
2. Highest Level of Education _____
3. Speciality _____
4. Professional Registration (if any) _____
5. Length of service with company _____ Years:
6. Years of experience _____
7. ERC License Class _____

(b) 2nd Key Supervisory personnel

1. Name _____
2. Highest Level of Education _____
3. Speciality _____
4. Professional Registration (if any) _____
5. Length of service with company _____ Years:
6. Years of experience _____
7. ERC License Class _____

(c) Project Manager

1. Name _____
2. Highest Level of Education _____
3. Speciality _____
4. Professional Registration (if any) _____
5. Length of service with company _____ Years:
6. Years of experience _____
7. ERC License Class _____

(d) Technical Director

1. Name _____
2. Highest Level of Education _____
3. Speciality _____
4. Professional Registration (if any) _____
5. Length of service with company _____ Years:
6. Years of experience _____
7. ERC License Class _____

(e) Safety Officer

1. Name _____
2. Highest Level of Education _____
3. Speciality _____
4. Professional Registration (if any) _____
5. Length of service with company _____ Years:
6. Years of experience _____
7. Safety Certification _____

Yours sincerely,

Name of Tenderer

Signature of duly authorised person signing the Tender

Name and Capacity of duly authorised person signing the Tender

Stamp or Seal of Tenderer

SECTION XII - DECLARATION FORM

Date _____

To:

The Kenya Power & Lighting Company Limited,
 P.O Box 30099 – 00100,
 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 are **not** associated with any other Tenderer participating in this Tender.
- f) That I/We do hereby confirm that all the information given in this tender is accurate, factual and true to the best of our knowledge.

Yours sincerely,

Name of Tenderer

Signature of duly authorized person signing the Tender

Name and Capacity of duly authorized person signing the Tender

Stamp or Seal of Tenderer

SECTION XIII– COMMITMENT TO CARRY OUT BUILDING & CIVIL WORKS AND MAINTENANCE

To:
The Kenya Power & Lighting Company Limited,
P.O Box 30099 – 00100,
Stima Plaza, Kolobot Road, Parklands,
Nairobi,
KENYA.

We M/s

Of P.o Box

Commit ourself to the following if our company/firm is prequalified as L&T contractor

- I. We shall be carrying out work according to the set KPLC safety requirements and procedures strictly adhering to “safety first” policy.
- II. We shall allways ensure use of appropriate Personal Protective Equipments (PPE’s) while carrying out assigned works including use of branded uniforms by all our staff.
- III. We shall ensure use of appropriate tools in all assignments at all times
- IV. We quarantee that all our projects shall be implemented according to KPLC’s construction standards. The following documents shall always be available and used in all work sites to enhance adherance to quality:
 - a. Quality construction check list – to enhance quality construction
 - b. Site inspection forms – for site visitcomments by KPLC supervisory staff when work is in progress (i.e. evidence of supervision of each project prior to invoicing)
- V. We agree that failure to observe the commitments above shall form sufficient grounds for cancellation of our prequalification.

Signed by all directors listed in the CR12 form:

Director No. 1.....

Director No. 2.....

Director No. 3.....

Director No. 4.....

TABLE OF CLAUSES ON GENERAL CONDITIONS OF APPOINTMENT

Clause No.	Headings
8.1	Definitions
8.2	Application
8.3	Standards
8.4	Use of Documents and Information
8.5	Professional Indemnity Cover
8.6	Demonstration(s), Inspection(s) and Test(s)
8.7	Nature of the Conditions
8.8	Interest
8.9	Fees and Rates
8.10	Assignment
8.11	Resolution of Disputes
8.12	Language and Law
8.13	Waiver
8.14	Force Majeure

SECTION XIV – 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 KPLC’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 KPLC and the Contractor, 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 Contractor under the contract for the full and proper performance of its contractual obligations.*
- d) *“The Services” means services or art thereof to be provided by the Contractor and includes all of the materials and incidentals, which the Contractor is required to perform and provide to KPLC under the contract.*
- e) *“The Procuring Entity” means The Kenya Power and Lighting Company Limited or its successor(s) and assign(s) where the context so admits (hereinafter abbreviated as KPLC).*
- f) *“The Contractor” means the individual or firm providing the services under this contract or his/ her/ its permitted heir(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 have been performed in accordance with the Contract and where KPLC does not signify its approval to the Contractor, but without giving notice of dissatisfaction, on the expiration of thirty (30) days from date of documented completion of performance of the service.*
- h) *Supplier Rating Performance Scheme (SPRS) means the continuous evaluation of the Supplier’s performance of the contract based on the parameters of timely delivery, quality of service, frequency of communication, timely response, innovation, dispute resolution.*

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 supplied under this contract shall conform to the standards mentioned in the Details of Service.

7.4 Supplier Performance Rating Scheme

7.4.1 KPLC shall use a Supplier Performance Rating Scheme (SPRS) to measure the annual performance of the Supplier's obligations and its conduct of the contract.

7.4.2 The Scheme will be updated periodically commencing with the date of execution of the contract by both parties. KPLC shall provide the Supplier with a copy of the SPRS report.

7.4.3 KPLC shall consider the Supplier's overall performance at the end of the performance period.

7.4.4 At the request of either party, the parties shall discuss and conclude deliberations on the annual SPRS report. At any such meetings and/or for the purposes of the deliberations, KPLC Supply Chain – Procurement Department shall appoint the Chairperson as well as the Secretariat.

7.4.5 The SPRS measures shall be according to Supplier Performance Rating Form in Section XXVI

7.4.6 A KP1, KP2 & KP3 assessment of the Supplier on the SPRS will be a consideration for continued engagement between the parties in the subsequent year. A KP4 assessment of the Supplier shall be a termination event.

7.5 Use of Contract Documents and Information

7.5.1 The Contractor shall not, without KPLC'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 KPLC in connection therewith, to any person other than a person employed by the Contractor in the performance of the contract.

7.5.2 The Contractor shall not, without KPLC's prior written consent, make use of any document or information enumerated in clause 7.5.1 above.

7.5.3 Any document, other than the contract itself, enumerated in clause 7.5.1 shall remain the property of KPLC and shall be returned (including all copies) to KPLC on completion of the Contractor's performance under the contract if so required by KPLC.

7.6 Patent Rights

The Contractor shall indemnify KPLC against all third party claims of infringement of patent, trademark, or industrial design rights arising from provision of the services 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 Contractor shall furnish to KPLC the Performance Security which shall be either one or a combination of the following:-
- a) 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.
 - b) Confirmed Standby Letters of Credit (LC). All costs, expenses and charges levied by all banks party to the LC including confirmation charges shall be prepaid by the successful Tenderer. Certain mandatory conditions of the LC shall be as prescribed in the Performance Security Form (LC) 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 Contractor to furnish the Performance Security, the award shall be annulled and the Tender Security forfeited, in which event KPLC 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 KPLC as compensation for any loss resulting from the Contractor's failure to comply with its obligations in accordance with the contract without KPLC 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 Contractors.
- 7.6.7 KPLC shall seek authentication of the Performance Security from the issuing bank. It is the responsibility of the Contractor to sensitize its issuing bank on the need to respond directly and expeditiously to queries from KPLC. The period for response shall not exceed three (3) days from the date of KPLC's query. Should there be no conclusive response by the Bank within this period, such Contractor's Performance Security may be deemed as invalid and the Contract nullified, unless information to the contrary is received by KPLC two (2) days before the expiry of the Contractor's Tender Security.
- 7.6.8 Subject to the provisions of this contract, the Performance Security will be discharged by KPLC and returned to the Contractor not earlier than thirty (30) days following the date of completion of the Contractor's obligations under the contract, including any warranty obligations, under the contract.

7.7 Inspection and Tests

- 7.7.1 KPLC or its representative(s) shall have the right to inspect and/or to test the services to confirm their conformity to the contract specifications. KPLC shall notify the Contractor 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 KPLC'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 Contractor or its subcontractor(s). If conducted on the premises of the Contractor or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to KPLC.
- 7.7.4 Should any inspected or tested services fail to conform to the specifications, KPLC may reject the Service(s), and the Contractor shall either replace or remedy the rejected services or make alterations necessary to meet specification requirements free of cost to KPLC.
- 7.7.5 KPLC's right to inspect, test and where necessary, reject the services after provision shall in no way be limited or waived by reason of the services having previously been inspected, tested and passed by KPLC or its representative(s) prior to the services performance / delivery.
- 7.7.6 For the avoidance of doubt, any acknowledgement by KPLC on the Contractor's or sub-contractor's document shall not be conclusive proof or evidence of satisfactory performance without duly authorized approval by KPLC.
- 7.7.7 Nothing in this clause 7.7 shall in any way release the Contractor from any warranty or other obligations under this Contract.

7.8 Packaging and Labelling

- 7.8.1 Where applicable, the Contractor 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 Contractor 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 Contractor to the place and in accordance with the terms specified by KPLC in its Schedule of Requirements or as may be otherwise indicated.
- 7.9.2 The Contractor shall notify KPLC of the full details of the delivered materials/ equipment by delivering the materials/ equipment with a full set of the following documents: -
- a) *Contractor'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 Contractor to ensure that the delivery documents are received by KPLC at the designated delivery point at the time of delivery.

7.10 Insurance

- 7.10.1 The Contractor 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 under the contract.
- 7.10.2 The Contractor shall (*except in respect to losses, injuries or damage resulting from any act or neglect of KPLC*) indemnify and keep indemnified KPLC 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 KPLC 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 KPLC'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 KPLC, shall form part of the documents to be presented to KPLC before any payment is made.

- 7.11.3 A Contractor who requests for a Letter of Credit (*hereinafter abbreviated as LC*)–
- a) *Shall meet the LC bank charges levied by its bank while KPLC shall meet the LC bank charges levied by its bank.*
 - b) *Any extension and or amendment charges and any other costs that may result from the Contractor's delays, requests, mistakes or occasioned howsoever by the Contractor shall be to the Beneficiary's account.*
 - c) *The maximum number of extensions and amendments shall be limited to two (2).*
 - d) *Notwithstanding sub-clause 7.11.3 (a), should the Contractor require a confirmed LC, then all confirmation and any other related charges levied by both the Contractor's and KPLC's bank shall be to the Beneficiary's account.*
 - e) *The LC shall be opened only for the specific Order within the validity period of the contract.*
 - f) *LCs shall be partial for partial performance or full for whole performance as per the contract.*
 - g) *The Contractor shall be required to submit a proforma invoice for each lot for use in the placement of order and opening of the LC. The proforma invoice shall be on total all-inclusive costs basis.*
 - h) *A copy of the Performance Security, stamped and certified as authentic by KPLC, whose expiry date should not be less than sixty (60) days from the LC expiry date, shall form part of the documents to be presented to the Bank before any payment is effected.*
- 7.11.4 KPLC shall have the sole discretion to accept or decline any Contractor's payment request through Letters of Credit without giving any reason for any decline.

7.12 Interest

Interest payment by KPLC is inapplicable in the contract.

7.13 Prices

- 7.13.1 Subject to clause 7.14 herein below, prices charged by the Contractor for services 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

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

- a) *the quantity variation of services 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 Contractor shall not assign in whole or in part its obligations to perform under this contract, except with KPLC's prior written consent.

7.16 Subcontracts

- 7.16.1 The Contractor shall notify KPLC 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 Contractor 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 Contractor who was awarded.

7.17 Termination of Contract

- 7.17.1 KPLC may, without prejudice to any other remedy for breach of contract, by written notice sent to the Contractor, terminate this contract in whole or in part due to any of the following: -
- a) *if the Contractor fails to perform any or all of the services within the period(s) specified in the contract, or within any extension thereof granted by KPLC.*
 - b) *if the Contractor fails to perform any other obligation(s) under the contract.*
 - c) *if the Contractor, in the judgment of KPLC 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 Contractor becomes insolvent or bankrupt*
 - f) *if the Contractor 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 Contractor suffers any other analogous action in consequence of debt.

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

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

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 Contractor fails to perform any or all of the services within the period specified in the contract, KPLC 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 up to a maximum of ten percent (10%) of the performance price of the delayed due services.

7.19 Warranty

7.19.1 Where applicable, the Contractor warrants that the Services provided under the contract are of the highest quality or current specification and incorporate all recent improvements unless provided otherwise in the contract. The Contractor 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 Contractor 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 KPLC shall promptly notify the Contractor in writing of any claims arising under this Warranty.

7.19.4 Upon receipt of such a notice, the Contractor shall, with all reasonable speed, remedy the defective services without cost to KPLC.

7.19.5 If the Contractor having been notified, fails to remedy the defect(s) within a reasonable period, KPLC may proceed to take such remedial action as may be

necessary, at the Contractor's risk and expense and without prejudice to any other rights which KPLC may have against the Contractor under the contract.

7.20 Resolution of Disputes

- 7.20.1 KPLC and the Contractor 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 KPLC to exercise any of its rights or enforce any of the penalties arising from the obligations imposed on the Contractor 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 KPLC'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 Contractor shall endeavour to continue to perform its obligations under the contract so far as is reasonably practicable. The Contractor shall notify KPLC of the steps it proposes to take including any reasonable alternative means for performance, which is not prevented by *force majeure*. The Contractor shall not take any such steps unless directed so to do by KPLC.
- 7.23.5 If the Contractor incurs additional costs in complying with KPLC's directions under sub clause 7.23.4, then notwithstanding the provisions of the contract, the amount thereof shall be agreed upon with KPLC 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 Contractor 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 XV - 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.

<p>Part 1 – General</p> <p>Business Name.....</p> <p>Location of business premises.....</p> <p>Plot No.Street/ Road</p> <p>Postal Address Postal Code</p> <p>Tel No.....</p> <p>Facsimile.....</p> <p>Mobile and/ or CDMA No.....</p> <p>E-mail:.....</p> <p>Nature of your business</p> <p>Registration Certificate No.....</p> <p>Maximum value of business which you can handle at any time KSh.....</p> <p>Name of your BankersBranch.....</p> <p>*Names of Tenderer’s contact person(s)</p> <p>Designation of the Tenderer’s contact person(s)</p> <p>Address, Tel, Fax and E-mail of the Tenderer’s contact person(s)</p> <p>.....</p> <p>.....</p>

Part 2 (a) Sole Proprietor

Your name in full

NationalityCountry of origin

*Citizenship details.....

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 CONTRACTOR ON THE QUESTIONNAIRE

1. *The address and contact person of the contractor provided above shall at all times be used for purposes of this tender.*
2. *The details on this Form are essential and compulsory for all law firms. **Failure to provide all the information requested may lead to the contractor’s disqualification.***

SECTION XV I– DRAFT LETTER OF NOTIFICATION OF AWARD

To:

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

Dear Sirs/ Madams,

RE: NOTIFICATION OF AWARD OF TENDER NO.

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

.....
.....

This notification does not constitute a contract. The formal Contract Agreement, which is enclosed herewith shall be entered into upon expiry of fourteen (14) days from the date hereof pursuant to the provisions of the Public Procurement and Asset Disposal Act, 2015 *(or as may be amended from time to time or replaced).*

Kindly sign, and seal the Contract Agreement. Further, initial and stamp on all pages of the documents forming the Contract that are forwarded to you with this letter. Thereafter return the signed and sealed Contract together with the documents to us within fourteen (14) days of the date hereof for our further action.

We take this opportunity to remind you to again note and strictly comply with the provisions as regards the Tender Security, Signing of Contract and Performance Security as stated in the Instructions to Tenderers.

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

Yours faithfully,

FOR: THE KENYA POWER & LIGHTING COMPANY LIMITED

GENERAL MANAGER, SUPPLY CHAIN

Enclosures

SECTION XVII – 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.

We refer to your Tender dated..... and regret to inform 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 *Legal Department (Guarantees Section)*, on the *2nd Floor, Stima Plaza, Kolobot Road, Parklands, Nairobi* only after expiry of twenty five (25) days from the date hereof on Mondays and Wednesdays ONLY between 9.00 a.m to 12.30 pm and 2.00p.m to 4.00p.m.

It is expected that by that time KPLC 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 & LIGHTING COMPANY LIMITED

GENERAL MANAGER, SUPPLY CHAIN

SECTION XVIII - CONTRACT AGREEMENT FORM

THIS AGREEMENT made this.....day of.....**20.... BETWEEN THE KENYA POWER & LIGHTING COMPANY LIMITED**, a limited liability company duly incorporated under the Companies Act, Chapter 486 of the Laws of Kenya, with its registered office situated at Stima Plaza, Kolobot Road, Parklands, Nairobi in the Republic of Kenya and of Post Office Box Number 30099-00100, Nairobi in the Republic aforesaid (*hereinafter referred to as the “KPLC”*) of the one part,

AND

..... (*Contractor’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 Contractor*) in the Republic aforesaid, (*hereinafter referred to as the “Contractor”*) of the other part;

WHEREAS KPLC invited tenders for certain services, that is to say for under Tender Number.....

AND WHEREAS KPLC has accepted the Tender by the Contractor for the services in the (*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 “*Contractor*” the covenants, agreements obligations expressed to be made or performed by the Contractor 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 “*Contractor*” any act default or omission by the Contractor 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 KPLC to the Contractor as hereinbefore mentioned, the Contractor hereby covenants with KPLC to perform and provide the services and remedy any defects thereon in conformity in all respects with the provisions of the Contract.
4. KPLC hereby covenants to pay the Contractor in consideration of the proper performance and provision of the services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.
5. The following documents shall constitute the Contract between KPLC and the Contractor 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 Contractor and agreed upon with KPLC.
 - e) the Details of Service as per KPLC’s Tender Document
 - f) the Schedule of Requirements
 - g) KPLC’s Notification of Award dated.....
 - h) the Tender Form signed by the Contractor
 - i) the Declaration Form signed by the Contractor/ successful Tenderer
 - j) the Warranty
 - h) project implementation schedule

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 KPLC and the Contractor.
 - b) Issuance of the Performance Bond by the Contractor and confirmation of its authenticity by KPLC.
 - c) Issuance of the Official Order by KPLC to the Contractor.
 - d) Where applicable, Opening of the Letter of Credit by KPLC.
8. The period of contract validity shall begin from the Commencement date and end on either -
 - a) sixty (60) days after the last date of the agreed performance schedule, or,
 - b) where a Letter of Credit is adopted as a method of payment, sixty (60) days after the expiry date of the Letter of Credit or the expiry date of the last of any such opened Letter of Credit whichever is later.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 Contractor 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 KPLC 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 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 KPLC shall be Company Secretary, The Kenya Power & Lighting Company Limited, 7th Floor, Stima Plaza, Kolobot Road, Post Office Box Number 30099-00100, Nairobi, Kenya. The address for the Contractor shall be the Contractor’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 **KPLC**

MANAGING DIRECTOR & CEO

and in the presence of:-

COMPANY SECRETARY

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

DIRECTOR

Affix Contractor’s Seal here

DIRECTOR’S FULL NAMES

and in the presence of:-

DIRECTOR/ COMPANY SECRETARY

DIRECTOR/ COMPANY SECRETARY'S FULL NAMES

DRAWN BY: -

C/o The Kenya Power & Lighting Company Limited,
7th Floor, Stima Plaza,
Kolobot Road, Parklands,
Post Office Box Number 30099-00100,
NAIROBI, KENYA,

Telephones: + 254-20-3201000/ 731

SECTION XVIII A - PERFORMANCE SECURITY FORM (BANK GUARANTEE)

(To Be Submitted On Bank’s Letterhead)

Date:

To:

The Kenya Power & Lighting Company Limited,
Stima Plaza,
Kolobot Road, Parklands,
P.O Box 30099 – 00100,
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 theday of.....20....

EITHER

SEALED with the)
COMMON SEAL)
of the said BANK)
)

thisday)
)
of20....)
in the presence of :-)
)
_____)
)
and in the presence of:-)
)
_____)

BANK SEAL

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

1. *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 KPLC. 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. *KPLC 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 KPLC. The period for response shall not exceed five (5) days from the date of KPLC’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 KPLC at the following e-mail address – “guarantees@kplc.co.ke”***

bank in Kenya.

END