TENDER NO. KP1/9AA-3/PT/25/14-15
FOR SUPPLY OF CABLES AND CONDUCTORS- SINGLE WIRE EARTHING RETURN
(SWER PROJECT)
OCTOBER, 2014

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

TENDER DOCUMENT FOR SUPPLY OF GOODS
(ONE ENVELOPE TENDER)

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SECTION I - INVITATION TO TENDER

DATE: 22nd October, 2014

TENDER NO KP1/9AA-3/PT/25/14-15
TENDER FOR SUPPLY OF CABLES AND CONDUCTORS (SWER PROJECT)

1.1 The Kenya Power & Lighting Company Limited hereinafter referred to KPLC invites bids from eligible Tenderers for Supply of Cables and Conductors (SWER PROJECT) **.** Interested eligible Tenderers may obtain further information from the General anager, Supply Chain, KPLC at Stima Plaza, 3rd Floor, Kolobot Road, P.O. Box 30099 – 00100 Nairobi, Kenya.

1.2 **Obtaining tender documents.**

1.2.1 Tender documents detailing the requirements may be obtained from the **General Manager, Supply Chain** on **3rd Floor, Stima Plaza, Kolobot Road, Nairobi,** on normal working days from **Monday** to **Friday** (excluding any public or gazetted holiday) beginning on **22nd October, 2014** between **9.00 a.m. & 12.30 p.m.** and **2.00 p.m. & 4.30 p.m.** upon payment of a non–refundable fee of Kenya Shillings One Thousand Only (**KSh. 1,000/=)** or the equivalent amount in United States Dollars (USD) using the selling exchange rate ruling at the date of the tender document purchase provided by the Central Bank of Kenya *(See Central Bank of Kenya website-www.centralbank.go.ke.)* Payment shall be made in cash or by Bankers Cheque at the 1st Floor of Stima Plaza, Kolobot Road, Nairobi, Kenya.

1.2.2 Prospective bidders may also download the tender document from KPLC's website (www.kenyapower.co.ke) free of charge.

***1.3 Submission of Tender documents**

Completed Tenders are to be enclosed in plain sealed envelopes marked **KP1/9AA-3/PT/25/14-15**, **Tender for supply of Cables and Conductors (Swer Project)** and be deposited in the Tender Box located at KPLC premises, Stima Plaza, Ground Floor, Kolobot Road, Nairobi, Kenya so as to be received on or before **11th November, 2014 at 10.00AM**

1.4 Prices quoted should be net inclusive of all taxes and delivery costs to the required site (where applicable) and must be in Kenya Shillings or a freely

convertible currency in Kenya and shall remain valid for ninety (90) days from the closing date of the tender.

1.5 Tenders will be opened promptly thereafter in the presence of the Tenderer's or their representatives who choose to attend in KPLC Auditorium at Stima Plaza, Kolobot Road, Parklands, Nairobi.

SECTION II - TENDER SUBMISSION CHECKLIST

The tenderer shall submit its bid document strictly in the order and arrangement listed in the table below. Tenderers shall tick against each item indicating that they have provided it.

No.	Item	Tick Where Provided
1	Tender Security – Bank Guarantee or Letters of Credit (issued by Banks Licensed by the Central Bank of Kenya), Guarantee by a deposit taking Microfinance Institution, Sacco Society, the Youth Enterprise Development Fund or the Women Enterprise Fund.	
2	Declaration Form	
3	Duly completed Tender Form	
4	Copy of Company or Firm's Registration Certificate	
5*	Copy of PIN Certificate	
6*	Copy of Valid Tax Compliance Certificate	
7	Confidential Business Questionnaire (CBQ)	
8*	Certificate of Confirmation of Directors and Shareholding (C.R. 12) or equivalent (for foreign tenderers)	
9	Type Test Certificates and their Reports and or Test Certificates and their Reports	
10	Copy of accreditation certificate for the testing laboratory as per ISO/ IEC 17025,	
11	Valid and current ISO 9001 Certificates or for locally manufactured or produced goods, valid Diamond Mark of Quality Certificate or Standardization Mark Certificates from the Kenya Bureau of Standards (KEBS).	
12	Catalogues and or Brochures and or Manufacturer's drawings	
13	Duly completed Schedule of Guaranteed Technical Particulars	
14	Manufacturer's Authorisation and warranty	
15	Names with full contact as well as physical addresses of previous customers of similar goods and reference letters from at least four (4) previous customers	
16	Statement on Deviations	
17	Price Schedule(s)	
18	Schedule of requirements duly filled indicating items offered	
19	Audited Financial Statements. The audited financial statements required must be those that are reported within eighteen (18)	

	calendar months of the date of the tender document. *(For companies or firms that are registered or incorporated within the last one calendar year of the Date of the Tender Document, they should submit certified copies of bank statements covering a period of at least six months prior to the date of the tender document. The copies should be certified by the Bank issuing the statements. The certification should be original).*	
20	Any other document or item required by the Tender Document. (The Tenderer shall specify such other documents or items it has submitted)	
21	Samples if required	

<u>*NOTES TO TENDERERS</u>

1. Valid Tax Compliance Certificate shall be one issued by the relevant tax authorities and valid for at least up to the tender closing date. All Kenyan registered Tenderers must provide a valid Tax Compliance Certificate.

2. All Kenyan registered Tenderers must provide the Personal Identification Number Certificate (PIN Certificate).

3. Foreign Tenderers must provide equivalent documents from their country of origin as regards Tax Compliance and PIN certificates OR statements certifying that the equivalent documentation is not issued in the Tenderer's country of origin. The Statement(s) that equivalent documentation is not issued by the Tenderer's country should be original and issued by the Tax authorities in the Tenderer's country of origin.

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SECTION III - INSTRUCTIONS TO TENDERERS

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 begin with the first day and end on the last day of the month appearing on the cover page of the Tender Document.*

c) *"Day" means calendar day and "month" means calendar month.*

d) *"KEBS" wherever appearing means the Kenya Bureau of Standards or its successor(s) and assign(s) where the context so admits.*

e) *"KENAS" wherever appearing means the Kenya National Accreditation Service or its successor(s) and assign(s) where the context so admits*

f) *"PPOA" wherever appearing means The Public Procurement Oversight 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) Citizen contractors-a firm shall be qualified as a citizen contractor if its owners and shareholders are Kenyan citizens

n) Local contractors- a firm shall be qualified as a local contractor if it is registered in Kenya.

3.2 Eligible Tenderers

3.2.1 This Invitation to Tender is open to all Tenderers eligible as described in the **Appendix to Instructions to Tenderers**. Successful Tenderers shall supply the goods in accordance with this tender and the ensuing contract.

3.2.2 Agreements between undertaking to directly or indirectly fix purchase or selling prices or any other trading conditions. Where this is discovered, the undertakings involved will not be eligible for award and all undertakings involved shall be disqualified.

3.2.3 Notwithstanding any other provisions of this tender, the following are not eligible to participate in the tender:-

a) KPLC's employees, its Board or any of its committee members.

b) Any Minister or Assistant Minister of the Government of the Republic of Kenya (GoK).

c) Any public servant of GoK.

d) Any member of a Board or Committee or any department of GoK.

e) Any person appointed to any position by the President of Kenya.

f) Any person appointed to any position by any Minister of GoK.

3.2.4 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 Minister shall include the President, Vice-President or the Attorney General of GoK.

3.2.5 Tenderers shall provide the qualification information statement that the Tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by 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.

3.2.6 Tenderers shall not be under declarations as prescribed at Section XIII.

3.2.7 Tenderers who are not under these declarations shall complete the Declaration Form strictly in the form and content as prescribed at Section XIII.

3.2.8 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 Eligible Goods

3.3.1 All goods to be supplied under the contract shall have their origin in eligible source countries. These countries are as described in the Appendix to Instructions to Tenderers.

3.3.2 For purposes of this clause, "origin" means the place where the goods are mined, grown, or produced. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially recognized product results that is substantially different in basic characteristics or in purpose or utility from its components.

3.3.3 The origin of goods is distinct from the nationality of the Tenderer.

3.4 Cost of Tendering

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

3.4.2 The price to be charged for the Tender Document shall be as indicated in the Invitation to Tender but in any case not exceeding KSh 1,000/=.

3.5 Contents of the Tender Document

3.5.1 The Tender Document comprises the documents listed below and Addendum (where applicable) issued in accordance with paragraph 3.7 of these Instructions to Tenderers: -

a) Invitation to Tender
b) Tender Submission Checklist
c) Instructions to Tenderers
d) Appendix to Instructions to Tenderers
e) Schedule of Requirements
f) Price Schedule for Goods
g) Evaluation Criteria
h) General Conditions of Contract
i) Special Conditions of Contract
j) Tender Form
k) Confidential Business Questionnaire Form
l) Tender Security Form
m) Manufacturer's Authorization Form
n) Manufacturer's Warranty
o) Declaration Form
p) Contract Form
q) Performance Security Form
r) Technical Specifications

(i) General Requirements

(ii.) Detailed Technical Specifications

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

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

3.6 Clarification of Documents

A prospective Tenderer requiring any clarification of the Tender Document may notify the Procurement Manager in writing or by post at KPLC's address indicated in the Invitation to Tender. KPLC will respond in writing to any request for clarification of the Tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of Tenders, prescribed by 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 Tenderers that have duly received the Tender Document.

3.7 Amendment of Documents

3.7.1 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 Tenderer, may modify the tender documents by amendment.

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

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

3.8 Language of Tender

The Tender prepared by the Tenderer, as well as all correspondence and documents relating to the tender, exchanged between the Tenderer and KPLC, shall be written in English language, provided that any printed literature furnished by the Tenderer may be written in another language provided they are accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the Tender, the English translation shall govern. The English translation shall be on the Tenderer's letterhead and shall be

signed by the duly authorized signatory signing the Tender and stamped with the Tenderer's stamp.

3.9 Documents Comprising the Tender

The Tender prepared and submitted by the Tenderer 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 goods and ancillary services to be supplied by the Tenderer are eligible goods and services and 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 items on tender and their contact addresses shall be submitted with the Tender for the purpose of reference, or for evaluation where the technical specifications so dictate.

3.10 Tender Form

The Tenderer shall complete and sign the Tender Form and all other documents furnished in the Tender Document, indicating the goods to be supplied, a brief description of the goods, their country of origin, quantity, and prices amongst other information required.

3.11 Tender Prices

3.11.1 The Tenderer shall indicate on the appropriate Price Schedule, the unit prices and total tender price of the goods it proposes to supply under the contract.

3.11.2 Prices indicated on the Price Schedule shall include all costs including taxes, insurances and delivery to the premises (where applicable) of KPLC or other specified site.

3.11.3. For the avoidance of doubt, Tenderers shall quote on Delivered Duty Paid (DDP) basis. No other basis shall be accepted for evaluation, award or otherwise.

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

3.12 Tender Currencies

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

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

3.13 Tenderer's Eligibility and Qualifications

3.13.1 Pursuant to paragraph 3.2, the Tenderer shall furnish, as part of its Tender, documents establishing the Tenderer's eligibility to tender and its qualifications to perform the contract if its Tender is accepted.

3.13.2 The documentary evidence of the Tenderer's eligibility to tender shall establish to KPLC's satisfaction that the Tenderer, at the time of submission of its Tender, is from an eligible source country as defined under paragraph 3.2

3.13.3 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 supply goods under the contract which the Tenderer did not manufacture or otherwise produce, the Tenderer has been duly authorized by the goods' manufacturer or producer to supply the goods. The authorization shall strictly be in the form and content as prescribed in the Manufacturer'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 Technical Specifications.*

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

3.14 Goods Eligibility and Conformity to Tender Documents

3.14.1 Pursuant to paragraph 3.3 of this Section, the Tenderer shall furnish, as part of its tender, documents establishing the eligibility and conformity to the Tender Document of all goods that the Tenderer proposes to supply under the contract.

3.14.2 The documentary evidence of the eligibility of the goods shall consist of a statement in the Price Schedule of the country of origin of the goods and services offered which shall be confirmed by a certificate of origin issued at the time of shipment.

3.14.3 The documentary evidence of conformity of the goods to the Tender Document may be in the form of literature, drawings and data, and shall consist of: -

a) *a detailed description of the essential technical and performance characteristics of the goods whether in brochures, 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 functioning of the goods for a minimum period of two (2) years, following commencement of the use of the goods by KPLC, and,*

c) *Duly completed Schedule of Guaranteed Technical Particulars (GTP) as per Tender Specifications demonstrating substantial responsiveness of the goods and service to those specifications and, if any, a statement of deviations and exceptions to the provisions of the Technical Specifications.*

For (a), (b) and (c) above, the literature, drawings and data shall be those from the Manufacturer.

3.14.4 For goods from outside Kenya, the Tenderer shall be required to demonstrate that the goods or products conform to required standards by evidence of:

a) A Type Test Certificate and its Reports issued by a third party testing laboratory accredited to ISO/IEC 17025.

b) Where (a) above is not required in the tender specifications, a Test Certificate and its Reports issued by the National Testing or Standards Authority of the country of manufacture or production.

c) The Type Test Certificates, Type Test Reports, Test Certificates and Test Reports shall NOT be more than five years old.

3.14.5 For goods manufactured or produced in Kenya, the Tenderer shall be required to demonstrate that the goods conform to required standards and specifications by evidence of:–

a) A Type Test Certificate and its Reports issued by KEBS.

b) Where (a) above is not required in the tender specifications, a Test Certificate and its Reports issued by KEBS or any Testing Authority approved by KEBS or accredited by KENAS.

c) The Type Test Certificates, Type Test Reports, Test Certificates and Test Reports shall NOT be more than five years old.

3.14.6 For both paragraphs 3.14.4 and 3.14.5, the Tenderer shall submit with its Tender a copy of the accreditation certificate for the testing body. KPLC reserves the right to subject the certificate to authentication.

3.14.7 Additional evidence of conformity of the goods to the Tender Document shall include sample(s) where required.

3.14.8 For purposes of the documentary and other evidence to be furnished pursuant to sub-paragraphs 3.14.3, 3.14.4 and 3.14.5 above, the Tenderer shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by KPLC in its Technical Specifications, are intended to be descriptive only and not restrictive. The Tenderer may adopt higher standards, brand names, and or catalogue numbers in its Tender, provided that it demonstrates to KPLC's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

3.15 Sample(s)

3.15.1 Where required in the Appendix to Instruction to Tenderers, all Tenderers must also submit sample(s) in conformity with the technical specifications securely and clearly labelled with -

a) the Tender number and name,

b) the opening date and time of the tender,

c) the name or identity of the sample, and,

d) the name of the Tenderer.

3.15.2 The sample(s) shall be considered as part of the tender and must be submitted together with the Tender before the deadline for submission of Tenders.

3.16 Warranty

3.16.1 All Tenderers must provide a Warranty that warrants that the goods to be supplied under the contract are new, unused, of the most recent or current specification and incorporate all recent improvements in design and materials unless provided otherwise in the Tender. The Warranty shall also warrant that the goods 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 of the goods under the conditions obtaining in Kenya.

3.16.2 The Warranty will remain valid for one (1) year after the goods, or any portion thereof as the case may be, have been delivered to the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port of loading in the source country, whichever period concludes earlier.

3.17 Tender Security

3.17.1 The Tenderer shall furnish, as part of its Tender, a tender security for the amount specified in the Appendix to Instructions to Tenderers.

3.17.2 The tender security shall be either one 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 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 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 3.28.

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 rejects a correction of an arithmetic error

c) if the Tenderer fails to enter into a written contract in accordance with paragraph 3.39

d) if the successful Tenderer fails to furnish the performance security in accordance with paragraph 3.40

e) 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.

3.18 Validity of Tenders

3.18.1 Tenders shall remain valid for ninety (90) 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.

3.18.2 In exceptional circumstances, KPLC may extend the Tender validity period. The extension shall be made in writing. The tender security provided under paragraph 3.17 shall also be extended. A Tenderer shall not be required nor permitted to modify its tender during the extended period.

3.19 Alternative Offers

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

3.20 Number of Sets of and Tender Format

3.20.1 The Tenderer shall prepare three complete sets of its Tender, identifying and clearly marking the **"**ORIGINAL TENDER", "COPY 1 OF TENDER", and "COPY 2 OF TENDER" as appropriate. Each set shall be properly bound. The copies shall be a replica of the Original. Each copy will be deemed to contain the same information as the Original.

3.20.2 The Tender shall be bound and 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.

3.20.3 The order and arrangement as indicated in the Tender Submission Checklist will be considered as the Tender Formats.

3.20.4 Any Tender not prepared and signed in accordance with this paragraph, in particular sub-paragraphs 3.20.1, 3.20.2 and 3.20.3 shall be rejected by KPLC as non-responsive, pursuant to paragraph 3.28.

3.21 Preparation and Signing of the Tender

3.21.1 The Original and all copies of the Tender shall be typed or written in indelible ink. They shall be signed by the Tenderer or a person or persons duly authorized to bind the Tenderer to the contract.

3.21.2 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.

3.21.3 All pages of the Tender, including un-amended printed literature, shall be initialled by the person or persons signing the Tender and serially numbered.

3.21.4 The Tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the Tenderer, in which case such corrections shall be initialled by the person or persons signing the Tender.

3.21.5 KPLC will assume no responsibility whatsoever for the Tenderer's failure to comply with or observe the entire contents of this paragraph 3.21.

3.21.6 Any Tender not prepared and signed in accordance with this paragraph may be rejected by KPLC as non-responsive, pursuant to paragraph 3.28.

3.22 Sealing and Outer Marking of Tenders

3.22.1 The Tenderer shall seal the Original and each Copy of the Tender in separate envelopes or packages, duly marking the envelopes or packages as "ORIGINAL", "COPY 1 OF TENDER" and "COPY 2 OF TENDER". The envelopes or packages shall then be sealed in outer envelopes or packages.

3.22.2 The inner and outer envelopes or packages shall -

a) be addressed to KPLC at the address given in the Invitation to Tender,

b) bear the tender number and name as per the Invitation to Tender and the words,

***"DO NOT OPEN BEFORE THE CLOSING DATE AND TIME** as specified in the Invitation to Tender.*

3.22.3 All inner envelopes or packages shall also indicate the name and full physical, telephone, e-mail, facsimile and postal contacts of the Tenderer to enable the Tender to be returned unopened in circumstances necessitating such return including where Tenders are received late, procurement proceedings are terminated before tenders are opened.

3.22.4 If the envelopes or packages are not sealed and marked as required by this paragraph, KPLC will assume no responsibility whatsoever for the Tender's misplacement or premature opening. A tender opened prematurely for this cause will be rejected by KPLC and promptly returned to the Tenderer.

3.23 Deadline for Submission of Tenders

3.23.1 Tenders must be received by KPLC by the time and at the place specified in the Invitation to Tender.

3.23.2 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.

3.24 Modification and Withdrawal of Tenders

3.24.1 The Tenderer may modify or withdraw its Tender after it has submitted it, provided that written notice of the modification, including substitution or withdrawal of the Tender is received by KPLC prior to the deadline prescribed for submission of tenders.

3.24.2 The Tenderer's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraphs 3.20, 3.21 and 3.22. A withdrawal notice may also be sent by facsimile, electronic mail, cable or telex but followed by an original signed confirmation copy, postmarked not later than the deadline for submission of Tenders.

3.24.3 No Tender may be modified after the deadline for submission of Tenders.

3.24.4 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. Any withdrawal of a Tender during this interval shall result in forfeiture of the Tenderer's Tender Security.

3.25 Opening of Tenders

3.25.1 KPLC shall open all Tenders promptly after the tender closing date and time, at the location specified in the Invitation to Tender or as may otherwise be indicated.

3.25.2 The Tenderer's names, tender modifications or withdrawals, the presence or absence of requisite Tender Security, the number of sets of tender documents duly received and such other details as KPLC, at its discretion, may consider appropriate, will be announced at the opening.

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

3.25.4 The Tenderers or their representatives may attend the opening and those present shall sign a register evidencing their attendance.

3.26 Process to be Confidential

3.26.1 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.

3.26.2 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 award of Contract may result in the rejection of the Tenderer's tender.

3.27 Clarification of Tenders and Contacting KPLC

3.27.1 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.

3.27.2 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.

3.27.3 Save as is provided in this paragraph and paragraph 3.26 above, no Tenderer shall contact KPLC on any matter related to its Tender, from the time of the tender opening to the time the contract is awarded.

3.27.4 Any effort by a Tenderer to influence KPLC in its decisions on tender evaluation, tender comparison, tender recommendation(s) or contract award may result in the rejection of the Tenderer's Tender.

3.28 Preliminary Tender Evaluation

3.28.1 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.

3.28.2 KPLC will examine the Tenders to determine whether they conform to the Preliminary Evaluation Criteria set out in the Section VI Evaluation Criteria.

3.28.3 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 Tenderer by correction of any non–conformity.

3.29 Minor Deviations, Errors or Oversights

3.29.1 KPLC may waive any minor deviation in a Tender that does not materially depart from the requirements of the goods and or services set out in the Tender Document.

3.29.2 Such minor deviation -

3.29.2.1 shall be quantified to the extent possible,

3.29.2.2 shall be taken into account in the evaluation process, and,

3.29.2.3 shall be applied uniformly and consistently to all qualified Tenders duly received by KPLC.

3.29.3 KPLC may waive errors and oversights that can be corrected without affecting the substance of the Tender.

3.30 Technical Evaluation of Tenders

KPLC will evaluate and compare the Tenders that have been determined to be substantially responsive in compliance to the Technical requirements set out in the Tender Document.

3.31 Financial Evaluation of Tenders

3.31.1 Upon completion of the preliminary and technical evaluation, KPLC shall conduct a Financial Evaluation and comparison as set out in Section VI Evaluation Criteria.

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

3.31.3 Arithmetical errors will be rectified on the following basis - if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected. If there is a discrepancy between words and figures, the amount in words will prevail.

3.31.4 The Tenderer will be promptly notified of the correction of the arithmetical error(s). If the Tenderer does not accept the correction of the error(s), its Tender will stand rejected, and its Tender Security automatically forfeited.

3.32 Preferences

3.32.1 In the evaluation of tenders, exclusive preference shall firstly be given to citizen contractors where the amount of the tender as evaluated is below

a) Ksh. 1 Billion in respect of construction materials and others used in transmission and conduction of electricity of which the material is made in Kenya.

b) Ksh. 100 Million in respect of goods.

3.32.2 Where the above does not apply, exclusive preference shall be given to local contractors who offer:

(a) motor vehicles, plant and equipment that are assembled in Kenya

(b) Construction material and other material used in the transmission and conduction of electricity of which such material is made in Kenya

(c) furniture, textile, foodstuffs and other goods made or locally available in Kenya

3.32.3 For purposes of this paragraph the Tenderer shall submit with its Tender, a valid copy of certificate of Confirmation of Directorships and Shareholding issued **and signed** by either the Registrar of Companies or Registrar of Business Names. This certificate must not be more than three (3) months old from the Date of the Tender Document. Kenya Power reserves the right to subject the certificate to authentication.

3.33 Debarment of a Tenderer

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

3.34 Confirmation of Qualification for Award

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

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

3.34.3 An affirmative confirmation will be a prerequisite for award of the contract to the Tenderer. A negative confirmation will result in rejection of the Tenderer's Tender, in which event KPLC will proceed to the next lowest evaluated responsive tender to make a similar confirmation of that Tenderer's capabilities to perform satisfactorily.

3.35 Award of Contract

3.35.1 KPLC will award the contract to the successful Tenderer whose Tender has been determined to be substantially responsive, technically compliant and has been determined to be the lowest evaluated tender, and further, where deemed necessary, that the Tenderer is confirmed to be technically and financially qualified to perform the contract satisfactorily.

3.35.2 Award will be done as indicated in the Appendix to Instructions to Tenderers.

3.36 Termination of Procurement Proceedings

3.36.1 KPLC may at any time terminate procurement proceedings before entering into a contract and shall not be liable to any person for the termination.

3.36.2 KPLC shall give prompt notice of the termination to the Tenderers, and, on request from any Tenderer, give its reasons for termination within fourteen (14) days of such request.

3.37 Notification of Award

3.37.1 Prior to the expiration of the period of tender validity, KPLC shall notify the successful Tenderer in writing that its Tender has been accepted.

3.37.2 The notification of award shall not constitute the formation of the contract until one is finally signed by both parties.

3.37.3 Simultaneously, and without prejudice to the contents of paragraph 3.26, on issuance of Notification of Award to the successful Tenderer, KPLC shall notify each unsuccessful Tenderer.

3.37.4 A notification of the tender outcome does not reduce the validity period for any tender security whether the Tenderer is successful or not, except where such tender security is officially released to the Bank and/or the Tenderer and such Bank discharged of all its obligations by KPLC prior to the expiry of its stated validity period.

3.38 Signing of Contract

3.38.1 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.

3.38.2 Within seven (7) 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 seven (7) days.

3.38.3 KPLC shall sign and date the Contract in the period between not earlier than seven (7) days from the date of notification of contract award and not later than thirty (30) days after expiry of tender validity. Further, KPLC shall not sign the contract until and unless the authentic performance security is received in accordance with paragraph 3.39.

3.38.4 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.

3.38.5 Paragraph 3.36 together with the provisions of this paragraph 3.37 will apply with necessary modifications with respect to the Tenderer notified under sub-paragraph 3.37.4.

3.39 Performance Security

3.39.1 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.

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 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 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.

3.39.2 The Performance Security shall be denominated in Kenya Shillings or in another freely convertible currency in Kenya. A Performance 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 Performance 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.

3.39.3 The successful Tenderer shall furnish a Performance Security being the sum of ten percent (10%) of the contract price.

3.39.4 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.

3.39.5 Failure of the successful Tenderer to furnish an authentic Performance Security, the award shall be annulled and the Tender Security forfeited, in which event KPLC may notify the next lowest evaluated Tenderer that its Tender has been accepted.

3.398.6 Paragraph 3.37, 3.38 together with the provisions of this paragraph 3.39 will apply with necessary modifications, and as far as circumstances permit, with respect to the Tenderer notified under sub-paragraph 3.39.5.

3.40 Corrupt or Fraudulent Practices

3.40.1 KPLC requires that Tenderers observe the highest standard of ethics during the procurement process and execution of contracts. When used in the present Regulations, the following terms are defined as follows: -

a) "Corrupt practice" means the offering, giving, receiving or soliciting of anything 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.

3.40.2 KPLC will reject a proposal for award if it determines that the Tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.

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

3.41 Monopolies and Restrictive Trade Practices

3.41.1 Agreements between undertakings, decisions by associations of undertakings, decisions by undertakings or concerted practices by undertakings which have as their object or effect the prevention, distortion or lessening of competition in trade in the goods tendered for are prohibited.

3.41.2 An agreement or a concerted practice of the nature prohibited above shall be deemed to exist between two or more undertakings if-

a. Any one of the undertakings owns a significant interest in the other or has at least one director or one substantial shareholder in common; or
b. Any combination of the undertakings engages in any of the below practices;

   i. Directly or indirectly fixing purchase or selling prices or any other trading conditions, and/or
   ii. Collusive tendering.

APPENDIX TO INSTRUCTIONS TO TENDERERS

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

No.	ITT Reference Clause	Particulars of Appendix
1.	**3.2.1 Eligible Tenderers**	*The Tender is open to all Manufacturers/Suppliers/Agents of Cables and Conductors.*
2.	**3.3.1 Origin of Eligible goods**	*All countries are eligible save where otherwise stated.* *All tenderers shall state country of origin.*
3.	**3.9 (e) Documents Comprising the Tender – List of Previous Customers**	*The Tenderer shall submit at least four (4) names with full contact as well as physical addresses of previous customers of similar goods together with a letter from each of them confirming completion of the contracts on schedule.*
4.	**3.13.3 (a) Manufacturer's Authorization**	*All Non- Manufacturers must submit Manufacturers Authorization.*
5.	**3.13.3 (b) Documentary evidence of financial capability**	*The audited financial statements required must be those that are reported within eighteen (18) calendar months of the date of the tender document.*
6.	**3.13.3 (c) and (d) Documents of evidence of eligibility** *b) that,*	*a) that the Tenderer has the technical and production capability necessary to perform the contract.* *b) 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 Technical Specifications.*
7.	**3.14.3 (a) Catalogues, Brochures, Manufacturer's Drawings**	*Bidders shall submit, Drawings, Brochures or catalogues.*
8.	**3.15.1 Sample(s)**	***Not required***
9.	**3.16.2 Warranty – Period of**	*The warranty period will remain valid for one (1) year after goods have been delivered to the final destination or for eighteen (18) months after the date of shipment from the port of loading in the source country.*
10.	**3.17.1 Tender Security**	*The Tender security shall be 1% of the bid price.*

11.	**3.34.2 Award of Contract**	*The items will be awarded to the lowest evaluated bidder on item to item basis.*

SECTION IV - SCHEDULE OF REQUIREMENTS

Part A - Brief Schedule Of Details On Goods Required

For Supply of **Cables and Conductors (Swer Project)Tender No KP1/9AA-3/PT/25/14-15**

Item No.	Code	Brief Description	Unit of Measure	Quantity
1	182400	Conductor 25SQMM ACSR Bare	M	1,372,635
2	182401	Conductor 25SQMM ACSR PVC	M	152,515
3	108863	Cable 6 SQMM CU S/C Concentric	M	209,100

***NOTES:-**

1. All Tenderers must indicate the type, model (where applicable), dimensions and weight of the goods in their bid documents.
2. Tenderers shall, where applicable, indicate ready stocks and quantity if available.
3. Tenderers' shall submit samples for the items on tender where required as indicated above.

Part B – Delivery Schedule of Goods Required

Item No.	**Code**	**Brief Description**	**Unit of Measure**	**Quantity**	**1st Lot Insert date**	**2nd Lot Insert date**
1	182400	Conductor 25SQMM ACSR Bare	M	1,372,635		
2	182401	Conductor 25SQMM ACSR PVC	M	152,515		
3	108863	Cable 6 SQMM CU S/C Concentric	M	209,100		

<u>*NOTES:</u>

1. All deliveries shall be made to KPLC Nairobi South stores.

2. The delivery period for this tender shall be from February 2015 to March 2015 .

SECTION V - PRICE SCHEDULE FOR GOODS

(TENDERER MUST INDICATE THE CURRENCY OF THE OFFER PRICE)

	1	2	3	4	5	6
	Code	Description	Quantity	Country of origin	Unit price DDP VAT Exclusive	Total price DDP VAT inclusive
1	182400	Conductor 25SQMM ACSR Bare	1,372,635			
2	182401	Conductor 25SQMM ACSR PVC	152,515			
3	108863	Cable 6 SQMM CU S/C Concentric	209,100			

Name of Tenderer

_____

Name and Capacity of authorised person signing the Tender

_____

Signature of authorised person signing the Tender

_____

Stamp of Tenderer and date

_____

***NOTES:-**

1. The offered unit price MUST be rounded to two decimal places. Where the Tenderer fails to round the offered unit price as required, then, the offered unit price shall be rounded down-wards to two decimal places and used for the purposes of this tender.

SECTION VI - EVALUATION CRITERIA

Evaluation of duly submitted tenders will be conducted along the following stages: -

6.1 Part 1 - Preliminary Evaluation Criteria Under Paragraph 3.28 of the ITT. These are mandatory requirements. This shall include confirmation of the following: -

6.1.1 S*ubmission of Tender Security - Checking its validity, whether it is Original; whether it is issued by a local bank/institution; whether it is strictly in the format required in accordance with the sample Tender Security Form(s).*

6.1.2 Submission of Declaration Form(s) duly completed and signed.

6.1.3 Submission and considering Tender Form duly completed and signed.

6.1.4 Submission and considering the following:-

6.1.4.1 For Local Tenderers

a) Company or Firm's Registration Certificate

b) PIN Certificate.

c) Valid Tax Compliance Certificate.

d) Names with full contact as well as physical addresses of previous customers of similar goods and reference letters from at least four (4) previous customers.

6.1.4.2 For Foreign Tenderers

a) Company or Firm's Registration Certificate

b) PIN Certificate or its equivalent in the country of bidder or a statement from the tax authorities in the Tenderer's country of origin indicating that such certificate or its equivalent is not issued.

c) Valid Tax Compliance Certificate or its equivalent in the country of bidder or a statement from the tax authorities in the Tenderer's country of origin indicating that such certificate or its equivalent is not issued.

d) Names with full contact as well as physical addresses of previous customers of similar goods and reference letters from at least four (4) previous customers.

6.1.5 That the Tender is valid for the period required.

6.1.6 Submission and considering that the required number of sets (original and copies) of Tender.

6.1.7 Submission and considering the Confidential Business Questionnaire:-

a) Is fully filled.

b) That details correspond to the related information in the bid.

c) That the Tenderer is not ineligible as per paragraph 3.2 of the ITT.

6.1.8 *Submission and considering the Certificate of Confirmation of Directors and Shareholding if any one of the undertakings owns a significant interest in the other or has at least one director or one substantial shareholder in common as per paragraph 3.2 and 3.41of the ITT.*

6.1.9 Submission of Copies of relevant Type Test Certificates and their Reports or Test Certificate and their Reports from the designated bodies.

6.1.10 Submission of a copy of accreditation certificate for the testing body to ISO/ IEC 17025.

6.1.11 Submission of a copy of:-

a) the Manufacturer's valid quality management system certification i.e. ISO 9001 for goods from outside Kenya.

b) valid KEBS Diamond Mark of Quality Certificate or KEBS Standardisation Mark Certificate for goods manufactured in Kenya.

6.1.12 If required in the Tender Document, submission of the following-

a) Samples

b) Catalogues and/or Brochures and/or Manufacturer's Drawings

c) Schedule of Guaranteed Technical Particulars as per tender specifications.

6.1.14 Record of unsatisfactory or default in performance obligations in any contract shall be considered. This shall include any Tenderer with unresolved case(s) in its performance obligations for more than two (2) months in any contract.

6.1.15 notwithstanding the above, considering any outstanding orders where applicable and the production capacity indicated by the Tenderer.

Tenders will proceed to the Technical Stage only if they qualify in compliance with Part 1 above, Preliminary Evaluation under Paragraph 3.28.

6.2 Part II - Technical Evaluation Criteria Under Paragraph 3.30 of the ITT.

6.2.1 Evaluation of the following technical information against Tender Requirements and Specifications:-

6.2.1.1 For goods manufactured outside Kenya, applicable relevant valid ISO 9001 certification

6.2.1.2 For goods manufactured in Kenya - valid KEBS Diamond Mark of Quality Certificate or KEBS Standardisation Mark Certificate

6.2.1.3 Type Test Certificates and their Reports or Test Certificates and their Reports from the designated bodies for full compliance with Tender Specifications

6.2.1.4 The accreditation certificate for the testing laboratory to ISO/ IEC 17025.

6.2.1.5 Manufacturer's Authorization

6.2.1.6 As contained in the following documents –

a) Manufacturer's Warranty

b) Catalogues and or Brochures and or Manufacturer's drawings

c) Schedule of Guaranteed Technical Particulars as per Technical Specifications.

Tenders will proceed to the Detailed Technical Stage only if they qualify in compliance with Part II clause 6.2.1 above, Preliminary Evaluation under Paragraph 3.28.

6.2.2 Detailed Technical Evaluation

a) The Schedule of Guaranteed Technical Particulars (GTP) shall be evaluated against Tender Specifications to confirm compliance of the goods and services to the specifications and evaluation of any deviations and exceptions declared by the Tenderer.

b) Evaluation of compliance of submitted samples (where required) to technical specifications.

c) Identifying and determining any deviation(s) from the requirements; errors and oversights.

Tenderers will proceed to Financial Evaluation stage only if they qualify in compliance with Parts I and II i.e. Preliminary and Technical stages.

6.3 Part III – Financial Evaluation Criteria Under Paragraph 3.31 of the ITT. These are mandatory requirements.

6.3.1 This will include the following: -

a) Confirmation of the authenticity and sufficiency of the submitted Tender Security.

b) Confirmation of and considering Price Schedule duly completed and signed.

c) Checking that the Tenderer has quoted prices based on Delivery Duty Paid (DDP) terms,

*d)** *Checking submission of audited financial statements required which must be those that are reported within eighteen (18) calendar months of the date of the tender document.*

e) *Conducting a financial comparison, including conversion of tender currencies into one common currency,*

f) *Correction of arithmetical errors,*

g) *Taking into account the cost of any deviation(s) from the tender requirements,*

h) *Considering information submitted in the Confidential Business Questionnaire against other information in the bid including:-*

i) *Declared maximum value of business*

ii) *Shareholding and citizenship for preferences where applicable.*

i) *Apply Exclusive margin of preference, where applicable as per Clause 3.32 of the tender document*

6.3.2 Confirming the following: -

6.3.2.1 that the Supplier's offered Delivery Schedule meets KPLC's requirements.

6.3.2.2 that the Supplier's offered Terms of Payment meets KPLC's requirements.

6.4 The Successful Tenderer shall be the one with the lowest evaluated price.

***NOTES: -**

1. For purposes of evaluation, the exchange rate to be used for currency conversion shall be the selling exchange rate ruling on the date of tender closing provided by the Central Bank of Kenya. (Visit the Central Bank of Kenya website).

2. Total tender value means the Tenderer's total tender price inclusive of Value Added Tax (V.A.T) for the goods it offers to supply.

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SECTION VII – GENERAL CONDITIONS OF CONTRACT

The General Conditions of Contract *hereinafter referred abbreviated as the GCC* shall form part of the Conditions of Contract in accordance with the law and 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 Supplier, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.*

c) *"The Contract Price" means the price payable to the Supplier under the contract for the full and proper performance of its contractual obligations.*

d) *"The Goods" includes all of the equipment, machinery, and or other materials, which the Supplier is required to supply 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 Supplier" means the individual or firm supplying the goods 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, "delivery" shall be complete or be deemed to be complete, unless the circumstances indicate otherwise, when the goods have been inspected and tested in accordance with the Contract and where KPLC does not signify its approval to the Supplier, but retains the goods without giving notice of rejection, on the expiration of thirty (30) days from date of documented receipt by the duly authorized representative of KPLC, of the goods, at KPLC stores or other indicated site.*

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 Country of Origin

7.3.1 For purposes of this clause, "Origin" means the place where the goods were mined, grown, or produced.

7.3.2 The origin of Goods and Services is distinct from the nationality of the Supplier.

7.4 Standards

The Goods supplied under this contract shall conform to the standards mentioned in the Technical Specifications.

7.5 Use of Contract Documents and Information

7.5.1 The Supplier 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 Supplier in the performance of the contract.

7.5.2 The Supplier 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 Supplier's performance under the contract if so required by KPLC.

7.6 Patent Rights

The Supplier shall indemnify KPLC against all third party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods of any part thereof in KPLC's country.

7.7 Performance Security

7.7.1 Within fourteen (14) days of the date of the notification of contract award, the Supplier 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.

7.7.2 The Performance Security shall be issued by a commercial bank licensed by the Central Bank of Kenya. The bank must be located in Kenya.

7.7.3 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.

7.7.4 Failure of the Supplier 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.

7.7.5 The proceeds of the Performance Security shall be payable to KPLC as compensation for any loss resulting from the Supplier's failure to comply with its obligations in accordance with the contract without KPLC being required to demonstrate the loss it has suffered.

7.7.6 The Performance Security shall be valid for a minimum of sixty (60) days after satisfactory delivery for both Foreign and Local Suppliers.

7.7.7 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, unless information to the contrary is received by KPLC two (2) days before the expiry of the Supplier's Tender Security.

7.7.8 Subject to the provisions of this contract, the Performance Security will be discharged by KPLC and returned to the Supplier not earlier than thirty (30) days following the date of completion of the Supplier's obligations under the contract, including any warranty obligations, under the contract.

7.8 Approval Before Manufacture

7.8.1 All technical details and design drawings for the items to be supplied shall be submitted by the Supplier to KPLC for approval before manufacture.

7.8.2 Should the Supplier fail to observe this condition of approval before manufacture, KPLC may decline to accept the goods, or the Supplier shall either replace them or make alterations necessary, but in any case, KPLC shall incur no liability howsoever.

7.9 Inspection and Tests

7.9.1 KPLC or its representative shall have the right to inspect and/or to test the goods to confirm their conformity to the contract specifications. KPLC shall notify the Supplier in writing in a timely manner, of the identity of any representative(s) retained for these purposes.

7.9.2 Prior to the manufacture or production of the goods on order, KPLC reserves the right to inspect the manufacturing or production facility and the quality

management system. The manufacturer or producer shall meet the cost of routine inspection while KPLC shall meet the cost of air travel to the nearest airport and accommodation of two of its nominated officers inspecting and witnessing tests.

7.9.3 It is the responsibility of the Supplier to confirm if this right is to be exercised. Such visit and or inspection shall in no way prejudice KPLC's rights and privileges.

7.9.4 Upon completion of manufacturing or production process, KPLC reserves the right to send two of its nominated officers to inspect the goods on order at the place of manufacture where inspection and acceptance tests as per tender specifications shall be carried out in their presence. Tests shall be done in accordance with the test standard(s) given in the Technical Specification of the goods on order.

7.9.5 The manufacturer or producer shall meet the cost of tests as per tender specifications while KPLC shall meet the cost of air travel to the nearest airport and accommodation of its two nominated officers inspecting and witnessing the tests.

7.9.6 The inspections and tests may be conducted on the premises of the Supplier or its subcontractor(s), at point of production, manufacture, delivery and or at the goods' final destination. If conducted on the premises of the Supplier 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. In all cases, the equipment used for tests must be validly calibrated by the national standards body and a copy(ies) of the calibration certificate(s) must be submitted with the test report(s).

7.9.7 Complete test report(s) for all the goods as per Tender Specifications shall be submitted to KPLC for approval before packaging and shipment. No material or goods shall be shipped or delivered without written approval from KPLC.

7.9.8 Should any inspected or tested goods fail to conform to the specifications, KPLC shall reject the goods, and the Supplier shall either replace the rejected goods or make alterations necessary to meet specification requirements free of cost to KPLC. The period for replacement or alterations together with delivery to KPLC shall be fourteen (14) days or as may otherwise be specified in the notice of rejection.

7.9.9 The Supplier shall collect the rejected goods within fourteen (14) days from the date of notification of rejection. If the rejected goods are not collected within this period, the goods will be disposed of by KPLC guided by the Disposal of Uncollected Goods Act, Chapter 38 of the Laws of Kenya.

7.9.10 Notwithstanding any previous inspection(s) and test(s) KPLC shall inspect and may test the goods upon arrival at the indicated site. Where KPLC inspects and rejects the goods after the goods arrival, KPLC shall claim from the Supplier the

full cost of the goods including delivery charges to KPLC Stores or other indicated site and other incidental costs incurred in relation thereof.

7.9.11 KPLC's right to inspect, test and where necessary, reject the goods after their arrival shall in no way be limited or waived by reason of the goods having previously been inspected, tested and passed by KPLC or its representative(s) prior to the goods delivery.

7.9.12 For the avoidance of doubt, any acknowledgement by KPLC on the Supplier's or sub-contractor's document shall not be conclusive proof or evidence of satisfactory delivery without duly authorized approval by KPLC.

7.9.13 Nothing in clause 7.9 shall in any way release the Supplier from any warranty or other obligations under this Contract.

7.10 Pre–Shipment Verification of Conformity (PVoC)

7.10.1 All Suppliers of imported goods and or products must obtain a Certificate of Conformity issued by an authorized KEBS appointed partner prior to shipment.

7.10.2 The Certificate is a mandatory customs clearance document in Kenya. KEBS has appointed a number of Inspection Bodies to perform the PVoC programme on their behalf depending on the country of supply origin. The cost of pre-shipment verification shall be borne by the Supplier.

Full information on authorized inspection bodies should be obtained from KEBS.

7.11 Consignment

7.11.1 The terms shall be strictly on Delivered and Duty Paid (DDP) basis.

7.11.2 The Consignee shall be the supplier or supplier's agent whose responsibilities shall include payment of all Customs taxes, duties and levies, clearance of the goods, and delivery to KPLC stores. For avoidance of doubt, this includes Value Added Tax (VAT), Railway Development Levy (RDL) and Import Duties.

7.12 Packaging and Labelling

7.12.1 The Supplier shall provide such packaging of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract.

7.12.2 The method of packaging, labeling and marking shall comply strictly with such special requirements as shall be specified and attached to the Tender and particular Order.

7.12.3 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.

7.12.4 The goods 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.

7.12.5 The Supplier shall enclose a packing list in each package and all documents relating to the Order shall show the Stores Code Number detailed against the items.

7.12.6 The Supplier shall ensure that all cases or packages shall be marked (painted) with bright pink bands five (5) inches in width so as to form a diagonal cross on

every face. All bundles and pieces must bear a conspicuous bright pink colour mark to ensure identification in any position in which they may appear on un–loading.

7.12.7 The Supplier shall ensure that all lettering shall be no less than seven decimal five centimeters (7.5cm) or three inches (3”) high.

7.13 Delivery and Documents for Goods on Delivered Duty Paid (DDP) Terms.

7.13.1 Delivery of the goods shall be made by the Supplier to the place and in accordance with the terms specified by KPLC in its Schedule of Requirements.

7.13.2 The Supplier shall notify KPLC of the full details of the delivered goods by delivering together with the goods a full set of the following documents:-

a) Supplier’s invoice showing the goods description, quantity, unit price and total price,

b) Delivery note for every consignment originating from the party contracted by KPLC. The Delivery Note should be serialized, dated and contain the number of the Official Purchase Order,

c) Copy of the Certificate of Conformity (CoC),

d) Manufacturer’s warranty certificate and

e) Packing list identifying contents of each package which list should include casing number, full description of the items and the quantities in each package.

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

7.13.4 Any late or non-submission of the delivery documents shall be treated as part of non-performance on the part of the Supplier and KPLC shall be entitled to call up the Performance Security.

7.13.5 The Supplier should notify KPLC in writing of its intention to deliver goods fourteen (14) days prior to delivery, and a further confirmation two (2) working days before actual delivery to the designated delivery point.

7.14 Transportation

7.14.1 Where the Supplier is required to effect the delivery under any other terms, for example by post or to another address in the source country, the Supplier shall be required to meet all transport expenses until delivery.

7.14.2 In all the above cases, transportation of the goods after delivery shall be the responsibility of KPLC.

7.15 Insurance

7.15.1 The Supplier 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.

7.16 Payment

7.16.1 Payments shall be made promptly by KPLC thirty (30) days from delivery and submission of invoice together with other required and related documents or as otherwise prescribed in the contract.

7.16.2 The credit period shall be thirty (30) days from satisfactory delivery and submission of invoice together with other required and related documents.

7.16.3 Upon satisfactory delivery and submission of invoice together with other required and related documents, KPLC shall pay for the goods after the credit period.

7.16.4 Payment shall primarily be through KPLC's cheque or Real Time Gross Settlement (RTGS) for local based suppliers or Telegraphic Transfer (TT) for foreign based suppliers.

7.16.5 Suppliers who are to be paid through RTGS or TT must ensure that they submit the following:

a) invoices containing the Bank's Name and Branch,

b) Name/Title of Bank account,

c) Bank account number

d) SWIFT CODE.

e) A letter signed by the authorized signatory of the bank account of the Tenderer confirming details (a) to (d) above. This letter must contain the name of that authorized signatory and a Board Resolution that is sealed.

7.16.6 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.

7.16.7 The terms shall be strictly on Delivered and Duty Paid (DDP) basis as modified by KPLC in this contract.

7.16.8 Suppliers who request for a Letter of Credit *(hereinafter abbreviated as LC) –*

a) *shall submit proforma invoices containing the advising Bank's Name and Branch, Name/Title of Bank account, Bank account number and the SWIFT CODE; where required, proposed confirming bank; LC validity period and any other details that may be required to facilitate this process.*

b) *Shall meet all the LC bank charges levied by both its bank and KPLC's bank as well as any other bank that is a party to the LC.*

c) *Any extension and or amendment charges and any other costs that may result from the Supplier's delays, requests, mistakes or occasioned howsoever by the Supplier shall be to the Beneficiary's account.*

d) *The maximum number of extensions and amendments shall be limited to two (2).*

e) *Notwithstanding sub-clause 7.18.6 (a), should the Supplier require a confirmed LC, then all confirmation and any other related charges levied by both the Supplier's and KPLC's bank as well as any other bank party to such confirmation shall be to the Beneficiary's account.*

f) *LCs shall be -*

(i.) *partial for partial performance*

(ii.) *opened only for the specific deliveries in accordance with the delivery schedule indicated in the Official Purchase Order or any formal note amending that Order.*

(iii.) *revolving subject to the maximum annual value of total quantity indicated in the Official Purchase Order*

(iv.) *without prejudice to any other provision of the contract, valid for a maximum period of one year.*

g) *The Supplier 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 DDP 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.*

7.16.9 KPLC shall have the sole discretion to accept or decline any Supplier's payment request through Letters of Credit without giving any reason for such decline.

7.17 Interest

Interest payment by KPLC is inapplicable in the contract.

7.18 Prices

7.18.1 Subject to clause 7.19 herein-below, prices charged by the Supplier for goods delivered and services performed under the contract shall, be fixed for the period of the contract with no variations.

7.19 Variation of Contract

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

a) the quantity variation for goods shall not exceed ten percent (10%) of the original contract quantity.

b) the quantity variation must be executed within the period of the contract.

7.20 Assignment

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

7.21 Subcontracts

7.21.1 The Supplier 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 Supplier from any liability or obligation under the Contract.

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

7.22 Termination of Contract

7.22.1 KPLC may, without prejudice to any other remedy for breach of contract, by

written notice sent to the Supplier, terminate this contract in whole or in part due to any of the following: -

a) if the Supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by KPLC.

b) if the Supplier fails to perform any other obligation(s) under the contract.

c) if the Supplier, 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 Supplier becomes insolvent or bankrupt

f) if the Supplier has a receiving order issued against it, compounds with its creditors, or an order is made for its winding up (except for the purposes of its amalgamation or reconstruction), or a receiver is appointed over its

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

g) if the Supplier abandons or repudiates the Contract.

7.22.2 KPLC by written notice sent to the Supplier may terminate the Contract in whole or in part, at any time for its convenience. The notice of termination shall specify that the termination is for KPLC's convenience, the extent to which performance, by the Contractor, of the Contract, is terminated and the date on which such termination becomes effective.

7.22.3 For the remaining part of the Contract after termination for convenience, KPLC may pay to the Supplier an agreed amount for partially completed satisfactory deliveries.

7.22.4 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, goods similar to those undelivered or not rendered, and the Supplier shall be liable to KPLC for any excess costs for such similar goods and or any other loss PROVIDED that the Supplier shall not be so liable where the termination is for convenience of KPLC.

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

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

7.23 Liquidated Damages

Notwithstanding and without prejudice to any other provisions of the contract, if the Supplier fails to deliver any or all of the goods 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 delivered or shipment price (whichever is applicable) per day of

delay of the delayed items up to a maximum of ten percent (10%) of the delivered price of the delayed goods.

7.24 Warranty

7.24.1 The Supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current specification and incorporate all recent improvements in design and materials unless provided otherwise in the contract. The Supplier further warrants that the goods supplied under this contract shall have no defect arising from manufacture, materials or workmanship or from any act or omission of the Supplier that may develop under normal use of the supplied goods under the conditions obtaining in Kenya.

7.24.2 This warranty will remain valid for one (1) year after the goods, or any portion thereof as the case may be, have been delivered to the final destination indicated

in the contract, or for eighteen (18) months after the date of shipment from the port of loading in the source country, whichever period concludes earlier.

7.24.3 KPLC shall promptly notify the Supplier in writing of any claims arising under this warranty.

7.24.4 Upon receipt of such a notice, the Supplier shall, with all reasonable speed, replace the defective goods without cost to KPLC.

7.24.5 If the Supplier 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 Supplier's risk and expense and without prejudice to any other rights which KPLC may have against the Supplier under the contract.

7.25 Resolution of Disputes

7.25.1 KPLC and the Supplier may make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the contract.

7.25.2 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.

7.26 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.

7.27 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 Supplier shall in no way,

manner or otherwise howsoever, alter, amend, prejudice, vary, waive or be deemed to alter, amend, prejudice, vary, waive or otherwise whatsoever any of KPLC's powers and rights as expressly provided in and as regards this contract.

7.28 Force Majeure

7.28.1 *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 and 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.

7.28.2 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.

7.28.3 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.

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

7.28.5 If the Supplier incurs additional costs in complying with KPLC's directions under sub clause 7.28.4, then notwithstanding the provisions of the Contract, the amount thereof shall be agreed upon with KPLC and added to the contract price.

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

SECTION VIII – SPECIAL CONDITIONS OF CONTRACT

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

No.	GCC Reference Clause	Particulars of SCC
1.	**7.16.1 Terms of Payment**	*The credit period shall be thirty (30) days from satisfactory delivery and submission of invoice together with other required and related documents.*
2.	**7.24.2Period of Warranty**	*The warranty period will remain valid for one (1) year after goods have been delivered to the final destination or for eighteen (18) months after the date of shipment from the port of loading in the source country.*

SECTION IX - 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 supply, deliver, install and commission *(the latter two where applicable)* ……. *(insert goods description*) in accordance and conformity with the said tender document for the sum of …….(*total tender amount inclusive of all taxes in words and figures)* or such sums as may be ascertained in accordance with the Price Schedule attached herewith and made part of this Tender.

2. We undertake, if our Tender is accepted, to deliver, install and commission the goods in accordance with the delivery schedule specified in the Schedule of Requirements.

3. If our Tender is accepted, we will obtain the performance security of a licensed commercial bank in Kenya in a sum equivalent to ten percent (10%) of the contract price for the due performance of the contract, in the form(s) prescribed by The Kenya Power & Lighting Company Limited.

4.* We agree to abide by this Tender for a **period of……..…days (Tenderer please indicate validity of your tender)** from the date fixed for tender opening as per the Tender Document, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

5. This Tender, together with your written acceptance thereof and your notification of award, shall not constitute a contract, between us. The contract shall be formed between us when both parties duly sign the written contract.

6. We understand that you are not bound to accept any Tender you may receive.

Yours sincerely,

_____

Name of Tenderer

_____

Signature of duly authorised person signing the Tender

_____

Name and Capacity of duly authorised person signing the Tender

_____

Stamp or Seal of Tenderer

<u>*NOTES:</u>

1. KPLC requires a validity period of at least ninety (90) days.
2. This form must be duly completed, signed, stamped and/or sealed.

SECTION X – CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

All Tenderers are requested to give the particulars indicated in Part 1 and either Part 2 (a), 2 (b) or 2 (c) whichever applies to your type of business. Tenderers are advised that it is a serious offence to give false information on this form.

Part 1 – General

Business Name……

Location of business premises……

Plot No. ……Street/ Road ……..

Postal Address …….. Postal Code …….

Tel No……..

Facsimile..……..

Mobile and CDMA No…….

E-mail:……

Nature of your business ……..
Registration Certificate No.……

Maximum value of business which you can handle at any time KSh……..

Name of your Bankers ……..Branch… ……

*Names of Tenderer's contact person(s) …….

Designation/ capacity of the Tenderer's contact person(s) ……

Address, Tel, Fax and E-mail of the Tenderer's contact person(s) …….
……...
……

Part 2 (a) Sole Proprietor

Your name in full …….

Nationality ……Country of origin ……..

Part 2 (b) Partnership

Give details of partners as follows: -

Names Nationality Shares (%)

1……..…

2……..…

3…..……..……

4…….

5……..…….

Part 2 (c) Registered Company

Private or Public ……

State the nominal and issued capital of company-

*Nominal in KSh. …….

*Total Issued KSh. …….

Give details of all directors as follows

Name Nationality Shares (%)

1……..…….

2……..…….

3……..

4……..

5……..

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

Capacity of the duly authorized person……

Signature of the duly authorized person……..

<u>*NOTES TO THE TENDERERS ON THE QUESTIONNAIRE</u>

1. *The address and contact person of the Tenderer provided above shall at all times be used for purposes of this tender.*

2. *The details on this Form are essential and compulsory for all Tenderers.* **Failure to provide all the information requested shall lead to the Tenderer's disqualification.**

3. *For foreign Tenderers please give the details of nominal and issued share capital in the currency of the country of origin of the Tenderer.*

SECTION XI A - TENDER 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 …… (*name of the Tenderer*) (*hereinafter called "the Tenderer")* has submitted its Tender dated …… for the supply, installation and commissioning of…… *(please insert KPLC tender no.* a*nd name*) *(hereinafter called "the Tender");*

KNOW ALL PEOPLE by these presents that **WE**…….of …….having our registered office at……. *(hereinafter called "the Bank")*, are bound unto The Kenya Power and Lighting Company Limited (*hereinafter called "KPLC" which expression shall where the context so admits include its successors-in-title and assigns*) in the sum of ……. for which payment well and truly to be made to the said KPLC, the Bank binds itself, its successors, and assignees by these presents.

We undertake to pay you, upon your first written demand declaring the Tenderer to be in breach of the tender requirements and without cavil or argument, the entire sum of this guarantee being …….. (*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 tender guarantee will remain in force up to and including thirty (30) days after the period of tender validity, and any demand in respect thereof should reach the Bank not later than the date below.

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

EITHER

SEALED with the)
COMMON SEAL)

of the said **BANK**	)	_____
this ……day	)	BANK SEAL
of ……20….	)	
	)	
in the presence of :-	)	
	)	
_____	)	
	)	
and in the presence of:-	)	
	)	
_____	)	

OR

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

_____

Name(s) and Capacity (ies) of duly authorised representative(s)/ attorney(s) of the Bank

_____

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

NOTES TO TENDERERS AND BANKS

1. *Please note that no material additions, deletions or alterations regarding the contents of this Form shall be made to the Tender Security to be furnished by the Tenderer. If any are made, the Tender Security shall not be accepted and shall be rejected by KPLC. For the avoidance of doubt, such rejection will be treated as non-submission of the Tender Security where such Security is required in the tender.*

2. *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 three (3) 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 shall be deemed as invalid and the bid rejected.*

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"***

4. *The Tender validity period is ninety (90) days as set out in the Invitation to Tender (at Section I of the Tender document) or as otherwise may be extended by KPLC. Therefore the Tender Security must at all times be valid for at least 30 days beyond the tender validity period.*

SECTION XI B - TENDER SECURITY FORM (SACCO SOCIETY, DEPOSIT TAKING MICRO FINANCE INSTITUTIONS, WOMEN ENTERPRISE FUND & YOUTH ENTERPRISE FUND)

(To Be Submitted On Institutions 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 Tenderer") has undertaken, in pursuance of your Tender Number……..(*reference number of the Tender)* and its Tender dated ……*(insert Tenderer'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 Tenderer shall furnish you with an Institution's guarantee by an acceptable Institution for the sum specified therein as security for compliance of the Tenderer's performance obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Tenderer a Guarantee;

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

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

EITHER
SEALED with the)
COMMON SEAL)
of the said **INSTITUTION**)

	)	
this ……day	)	_____
	)	INSTITUTION SEAL
of ……20….	)	
in the presence of :-	)	
	)	
_____	)	
	)	
and in the presence of:-	)	
	)	
_____	)	

OR

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

_____

Name(s) and Capacity(ies) of duly authorised representative(s)/ attorney(s) of the **Institution**.

_____

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

NOTES TO SUPPLIERS AND INSTITUTIONS

1. *Please note that no material additions, deletions or alterations regarding the contents of this Form shall be made to the Tender Security to be furnished by the Tenderer. If any are made, the Tender Security shall not be accepted and shall be rejected by KPLC. For the avoidance of doubt, such rejection will be treated as non-submission of the Tender Security where such Security is required in the tender.*

2. *It is the responsibility of the Tenderer to sensitize its issuing institution 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 institution within this period, such Tenderer's Tender Security shall be deemed as invalid and the bid rejected.

3. ***The issuing institution should address its response or communication regarding the Tender Security to KPLC at the following e-mail address – "guarantees@ kplc.co.ke"***

4. *The Tender validity period is ninety (90) days as set out in the Invitation to Tender (at Section I of the Tender document) or as otherwise may be extended by KPLC. Therefore the Tender Security must at all times be valid for at least 30 days beyond the tender validity period.*

SECTION XI C - TENDER SECURITY – (LETTERS OF CREDIT)

The Mandatory Conditions to be included in the Letters are in two parts, A and B.

Part A

Form of Documentary credit - "Irrevocable Standby"

Applicable rules - "Must be UCP Latest Version" i.e. UCP 600 (2007 REVISION) ICC Publication No. 600.

Place of expiry - At the counters of the advising bank.

The SBLC should be available – "By Payment"

Drafts should be payable at - "SIGHT"

Documents required -

1. Beneficiary's signed and dated statement demanding for payment under the letter of credit no…….. (*Insert LC No*.) as…….(*Name of applicant*) (hereinafter called the "Tenderer") indicating that the "Tenderer" has defaulted in the obligations of the Tenderer as stated by the Beneficiary.

2. The Original Letter of Credit and all amendments, if any.

Additional Conditions -

1. All charges levied by any bank that is party to this documentary credit are for the account of the applicant.

2. There should be no conditions requiring compliance with the specific regulations or a particular country's Law and regulations.

Charges - All bank charges are for the account of the applicant.

*****Confirmation instructions – (See notes below)

Part B

The proceeds of these Letters are payable to KPLC -

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 rejects a correction of an arithmetic error

c) if the Tenderer fails to enter into a written contract in accordance with the Tender Document

d) if the successful Tenderer fails to furnish the performance security in accordance with the Tender Document.

e) if the Tenderer fails to extend the validity of the tender security where KPLC has extended the tender validity period in accordance with the Tender Document.

NOTES TO TENDERERS AND BANKS.

1. *Please note that should the Tender Security (LC) omit any of the above conditions the LC shall not be accepted and shall be rejected by KPLC. For the avoidance of doubt, such rejection will be treated as non-submission of the LC where such LC is required in the Tender.*

2. *It is the responsibility of the Tenderer to sensitize its issuing bank on the need to respond directly and expeditiously to any 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 Tenderer's Tender Security shall be deemed as invalid and the bid rejected.*

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"***

4. *The Tender validity period is ninety (90) days as set out in the Invitation to Tender (at Section I of the Tender document) or as otherwise may be extended by KPLC. Therefore the Tender Security must at all times be valid for at least 30 days beyond the tender validity period.*

5. *All Guarantees issued by foreign banks must be confirmed by a local bank in Kenya.*

SECTION XII A - MANUFACTURER'S AUTHORIZATION FORM

(To Be Submitted On Manufacturer's Letterhead)

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

WHEREAS WE ……(*name of the manufacturer*) who are established and reputable manufacturers of ……
(*name and description of the goods*) having factories at ….…..…..*(full address and physical location of factory(ies) where goods to be supplied are manufactured)* do hereby confirm that ……
(*name and address of Supplier*) is authorized by us to transact in the goods required against your Tender …… (*insert reference number and name of the Tender*) in respect of the above goods manufactured by us.

DATED THIS…….. DAY OF…….20……

_____
Signature of duly authorised person for and on behalf of the Manufacturer.

_____
Name and Capacity of duly authorised person signing on behalf of the Manufacturer

NOTES TO TENDERERS AND MANUFACTURERS

Only a competent person in the service of the Manufacturer should sign this letter of authority.

SECTION XIIB - MANUFACTURER'S WARRANTY FORM

To Be Submitted On Manufacturer's Letterhead)

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

RE: MANUFACTURER'S WARRANTY FOR GOODS REQUIRED UNDER TENDER NO …….. TO BE SUPPLIED BY …….(*indicate your name or the supplier you have authorized)*

WE HEREBY WARRANT THAT:

a) The goods to be supplied under the contract are new, unused, of the most recent or current specification and incorporate all recent improvements in design and materials unless provided otherwise in the Tender.
b) The goods 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 of the goods under the conditions obtaining in Kenya.

The Warranty will remain valid for one (1) year after the goods, or any portion thereof as the case may be, have been delivered to the final destination indicated in the contract.

DATED THIS…….. DAY OF…….20……

_____

Signature of duly authorised person for and on behalf of the Manufacturer.

_____

Name and Capacity of duly authorised person signing on behalf of the Manufacturer

NOTES TO TENDERERS AND MANUFACTURERS

1. *Only a competent person in the service of the Manufacturer should sign this letter of authority.*

2. *Provide full contact details including physical address, e-mail, telephone numbers and the website on the Warranty.*

SECTION XIII - 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 authorised person signing the Tender

_____
Name and Capacity of duly authorised person signing the Tender

_____
Stamp or Seal of Tenderer

SECTION XIV – DRAFT LETTER OF NOTIFICATION OF AWARD

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

Dear Sirs/ Madams,

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

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

……
……

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

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

We 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

CHIEF MANAGER, SUPPLY CHAIN & LOGISTICS

Enclosures

SECTION XV – 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 eighteen (18) 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 Disposal Act, 2005 *(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

CHIEF MANAGER, SUPPLY CHAIN & LOGISTICS

SECTION XVI - 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

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

WHEREAS KPLC invited tenders for certain goods, that is to say for **…… (*KPLC insert description of goods*)** under Tender Number**…….. (*KPLC insert tender number*)**

AND WHEREAS KPLC has accepted the Tender by the Supplier for the goods in the sum of **……(*KPLC specify the total amount in words which should include any payable taxes, duties and insurance where applicable e.g. Value Added Tax)*** (*hereinafter called "the Contract Price"*).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS: -

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract and the Tender Document.

2. Unless the context or express provision otherwise requires: -
   a) reference to "this Agreement" includes its recitals, any schedules and documents mentioned hereunder and any reference to this Agreement or to any other document includes a reference to the other document as varied supplemented and or replaced in any manner from time to time.
   b) any reference to any Act shall include any statutory extension, amendment, modification, re-amendment or replacement of such Act and any rule, regulation or order made there-under.
   c) words importing the masculine gender only, include the feminine gender

or (as the case may be) the neutral gender.

d) words importing the singular number only include the plural number and vice-versa and where there are two or more persons included in the expression the *"Supplier"* the covenants, agreements obligations expressed to be made or performed by the Supplier shall be deemed to be made or performed by such persons jointly and severally.

e) where there are two or more persons included in the expression the *"Supplier"* any act default or omission by the Supplier shall be deemed to be an act default or omission by any one or more of such persons.

3. In consideration of the payment to be made by KPLC to the Supplier as hereinafter mentioned, the Supplier hereby covenants with KPLC to supply the goods and remedy any defects thereon in conformity in all respects with the provisions of the Contract.

4. KPLC hereby covenants to pay the Supplier in consideration of the proper supply of the goods and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

5. The following documents shall constitute the Contract between KPLC and the Supplier and each shall be read and construed as an integral part of the Contract: -

a) this Contract Agreement
b) the Special Conditions of Contract as per the Tender Document
c) the General Conditions of Contract as per the Tender Document
d) the Price Schedules submitted by the Supplier and agreed upon with KPLC
e) the Technical Specifications 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 Supplier
i) the Declaration Form signed by the Supplier/ successful Tenderer
j) the Warranty

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 Supplier.
b) Issuance of the Performance Bond by the Supplier and confirmation of its authenticity by KPLC.
c) Issuance of the Official Order by KPLC to the Supplier.
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 -
   a) sixty (60) days after the last date of the agreed delivery 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 Supplier to ensure that its Performance Security is valid at all times during the period of contract validity and further is in the full amount as contracted.

10. Any amendment, change, addition, deletion or variation howsoever to this Contract shall only be valid and effective where expressed in writing and signed by both parties.

11. No failure or delay to exercise any power, right or remedy by 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 shall operate as a complete waiver of that other right, power or remedy.

12. Notwithstanding proper completion of delivery or parts thereof, all the provisions of this Contract shall continue in full force and effect to the extent that any of them remain to be implemented or performed unless otherwise expressly agreed upon by both parties.

13. Any notice required to be given in writing to any Party herein shall be deemed to have been sufficiently served, if where delivered personally, one day after such delivery; notices by electronic mail and facsimile shall be deemed to be served one day after the date of such transmission and delivery respectively (*and proof of service shall be by way of confirmation report of such transmission and or delivery*), 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 (Kenyan) 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, Facsimile + 254-20-3514485. The address for the Supplier shall be the Supplier's address as stated by it in the Confidential Business Questionnaire provided in the Tender Document.

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

SIGNED FOR and on BEHALF
of **KPLC**

_____
COMPANY SECRETARY

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

_____ _____
DIRECTOR *Affix Supplier's Seal here*

_____
DIRECTOR'S FULL NAMES

and in the presence of:-

_____
DIRECTOR/ COMPANY SECRETARY

_____
DIRECTOR/ COMPANY SECRETARY'S FULL NAMES

*OR

SIGNED BY and on BEHALF
of the **SUPPLIER**

_____
SIGNATURE OF THE SUPPLIER

_____
FULL NAMES OF THE SUPPLIER

***NOTES TO THE SUPPLIER**

1. *Please note that the alternative is applicable IF AND ONLY IF the Supplier is not a registered company but has tendered, and, is trading as a sole proprietor or a partnership as provided in the Confidential Business Questionnaire or is registered as a business name.*

2. *In all other cases, the Supplier is required to execute the contract as first provided.*

DRAWN BY: -
Beatrice Meso,
Advocate,
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
Facsimile: + 254-20-3514485

SECTION XVII 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 of……. (*amount of the guarantee in words and figures*) and we undertake to pay you, upon your first written demand declaring the Supplier to be in default under the Contract and without cavil or argument, any sum or sums within the limits of ……...
(*amount of guarantee*) as aforesaid, without you needing to prove or to show grounds or reasons for your demand or the sum specified therein.

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

EITHER

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

this ……day	)	_____
	)	BANK SEAL
of ……20….	)	
in the presence of :-	)	
	)	
_____	)	
	)	
and in the presence of:-	)	
	)	
_____	)	

OR

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

_____

Name(s) and Capacity(ies) 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 three (3) 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"***

SECTION XVII B - PERFORMANCE SECURITY (LC)

Mandatory Conditions that should appear on the Performance Security (LC).

Form of Documentary credit - "Irrevocable Standby"

Applicable rules - "Must be UCP Latest Version" i.e. UCP 600 (2007 REVISION) ICC Publication No. 600.

Place of expiry - At the counters of the advising bank.

The SBLC should be available – "By Payment"

Drafts should be payable at - "SIGHT"

Documents required -

1. Beneficiary's signed and dated statement demanding for payment under the letter of credit no…….. (*Insert LC No*.) as…….(*Name of Applicant*) (hereinafter called the "Supplier") indicating that the "Supplier" has defaulted in the performance and adherence to and performance of the contract between the Beneficiary and the Supplier.

2. The Original Letter of Credit and all amendments, if any.

Additional Conditions -

1. All charges levied by any bank that is party to this documentary credit are for the account of the Applicant.

2. (Include) that there should be no conditions requiring compliance with the specific regulations or a particular country's laws and regulations.

Charges - All bank charges are for the account of the Applicant.

Confirmation instructions – (See notes below)

NOTES TO SUPPLIERS AND BANKS

1. Please note that should the Performance Security (LC) omit any of the above conditions the LC shall not be accepted and shall be rejected by KPLC. For the avoidance of doubt, such rejection will be treated as non-submission of the LC where such LC is required in the tender and Contract.

2. KPLC may seek authentication of the Performance Security (LC) 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 three (3) 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 (LC) 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"***
4. *All Guarantees issued by foreign banks must be confirmed by a local bank in Kenya.*

SECTION XVIII - SUPPLIER EVALUATION FORM

(This form is for information only and not to be filled in by any bidder. It is for official use by KPLC to evaluate performance of Suppliers during the contract period)

Name of Firm……...Date……
Category of Product/Service (e.g. Conductors ……
Period of evaluation…….....

Evaluation		**Re-Evaluation**	
Tick as appropriate			

Parameters for supplier evaluation	**Maximum Scores**	**Remarks**	**Action Taken**
A. CUSTOMER SATISFACTION			
A1. Adherence to requirements(quality)			
• Adherence to Specifications			
• Number of rejections			
• Number of complaints from Users			
B. CUSTOMER CONNECTIVITY			
B1. Adherence to delivery period			
• Number of delays			
• Non delivery/More than 3 delays			
C.COMMUNICATION/RESPONSIVENESS			
Total Score			
Score last period			

PERFORMANCE LEVEL DEFINATION;

≥75% - KP1 GREEN
50% - KP2 AMBER
25% - KP3 YELLOW
≥25% - KP4 RED

RATING	**RATING PER YEAR**	**MAX. SCORE**	**ACTUAL SCORE**
A1.Adherence to requirements			
• Adherence to Specifications	Compliant	5 marks	
	Not compliant	0 marks	
• Number of rejections	None	5 marks	
	1-2 Rejections	3 marks	
	3 or more	0	

• Number of complaints from Users	None	5 marks	
	1-2 User complaints	3 Marks	
	3 or more	0 marks	
B1. Adherence to delivery period			
• No delay	None	5 marks	
• Number of delays	1-2 Delays	3 Marks	
• Non delivery/More than 3 delays	Failure	0 marks	
C. Communication			
• Easily accessible		5 Marks	
• Partially		3 Marks	
• Not accessible		0 Marks	
D. Responsiveness			
• Replacement of faulty goods	within 7 days	5 Marks	
	within 14 days	3 Marks	
	beyond 14 days	0 Marks	
Total score		**30 marks**	

Score in Percentage % ……

WORKINGS

Actual score x 100% 30	……x 100% = …… 30

RATING: 75% - V Good, 50% - Good, 25% - Fair, Below 25% - Poor

OBSERVATIONS:

RECOMMENDATION

		Status	**Tick as appropriate**
1	Grant supplier preferred status	**KP1**	
2	Work with supplier or develop and improve supplier	**KP2 & KP3**	
3	Abandon / switch suppliers	**KP4**	

Name:……Sign:……..Date:……...

Name:……Sign:……..Date:……...

Name:……Sign:……..Date:……...

SECTION XIX - THE TECHNICAL SPECIFICATIONS

Technical specifications describe the basic requirements for goods. In addition to the information and documentation in the Tender Document regarding the technical aspects of this tender, all Tenderers shall comply with the following -

PART A - GENERAL REQUIREMENTS

1. Technical documentation shall be in English language. The specific items on offer shall be marked clearly for the goods they intend to supply. The type reference or model number(s) of the item(s) on offer must be clearly indicated in the bid.

2. The Tenderer shall submit the Schedule of Guaranteed Technical Particulars (GTP) completed and signed by the Manufacturer. In submitting the GTP, cross-references should be made to the documents submitted.

3. Deviations from the tender specifications, if any, shall be explained in detail in writing, with supporting data including calculation sheets, detailed drawings and certified test reports and submitted together with the Tender. In submitting the deviations, cross-references should be made to the documents submitted. KPLC reserves the right to reject the goods if such deviations shall be found critical to the use and operation of the goods.

4. Detailed contact information including title, e-mail, facsimile, telephone or any other form of acceptable communication of the testing and standards body used shall be provided.

5. Where Type Test Certificates and their Reports and or Test Certificates and their Reports are translated into English, all pages of the translations must be signed and stamped by the testing authority.

6. A Copy of the manufacturer's valid quality management system certification i.e. ISO 9001 shall be submitted for evaluation. For locally manufactured goods, valid KEBS Diamond Mark of Quality Certificate or KEBS Standardisation Mark Certificate will also be accepted.

7. In all cases where the level of galvanizing and painting is not specifically stated in the detailed Technical Specifications, the general requirement shall be for a uniform coating of thickness not less than 80 microns.

8. Suppliers are required to provide information on proper representative(s) and or workshop for back-up service and or repair and maintenance including their names, telephone, facsimile, e-mail, physical and postal addresses, along with their offers

PART B – DETAILED TECHNICAL SPECIFICATIONS (DTS)

The Detailed Technical Specifications are as attached on the next page.