



REPUBLIC OF KENYA

Ministry Of Transport, Infrastructure, Housing And Urban Development

State Department Of Infrastructure

Materials Testing And Research Division (MTRD)

Horn Of Africa Gateway Development Project

Project No. P161305

RFB Name: Supply & Delivery Of Motor Vehicles For Regional

Materials Laboratories

RFB No.: KE-SDoI-220201-Go-RFB/ MTRD

October 12, 2021

**Chief Engineer (Materials);
Materials Testing & Research Division,
P.O. Box 11873 – 00400
Nairobi**

**Principal Secretary
State Department of Infrastructure
P.O. Box 30260-00100
Nairobi**

Bidding Documents

Issued On:

October 12, 2021

For

**Supply & Delivery of Motor Vehicles for Regional Materials Laboratories
RFB No.: KE-SDOI-220201-GO-RFB/ MTRD**

**Horn of Africa Gateway Development Project
Project No. P161305**

**Purchaser: Principal Secretary,
State Department of Infrastructure
Ministry of Transport, Infrastructure, Housing and Urban Development and
Public Works, Kenya**

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Letter for Request for bids



REPUBLIC OF KENYA

Ministry of Transport, Infrastructure, Housing, Urban Development & Public Works
State Department of Infrastructure

SPECIFIC PROCUREMENT NOTICE

Purchaser: Principal Secretary, State Department of Infrastructure.
Project: Horn of Africa Gateway Development Project (HoAGDP)
Contract Title: Supply and delivery of Motor Vehicles for MTRD Regional Material Testing Laboratories (RMTLs).
Country: Kenya
Credit No.: CR 67680
RFB No: KE-SDoI-220201-GO-RFB/ MTRD
Issued On: October 12, 2021

1. The Government of the Republic of Kenya has received a credit from the World Bank towards the cost of Horn of Africa Gateway Development Project (HOAGDP) and intends to apply part of the proceeds of this credit under the Contract for Supply and delivery of Motor Vehicles for MTRD Regional Material Testing Laboratories (RMTLs).
2. The State Department of Infrastructure now invites sealed bids from eligible and qualified bidders for supply of the vehicles as per following lots.

Lot	Lot Description	Unit	Qty
1.	Double Cabin Pick Up, 4WD, Above 2800 cc, Diesel	No.	5

3. Bidding will be conducted through National Competitive Bidding (NCB) and is open to all eligible Bidders as defined in the Procurement Regulations. Bidders may bid for one lot or a combination of lots;
4. Interested eligible Bidders may obtain further information at Materials Testing & Research Division offices or inspect the bidding document during office hours from 9.00 am to 4.00 pm East African Time excluding lunch hour from 1 to 2 pm, weekends and holidays at the address given below:

Chief Engineer (Materials),
Materials Testing and Research Division,
Off Machakos Road, Industrial Area,
P.O. Box 11873-00400 Nairobi.

Email: info@mtrd.go.ke or fdc@mtrd.go.ke

5. A hard-copy bidding document in English may be obtained from Supply Chain Management Office of Materials Testing & Research Division upon payment of a non-refundable fee of **One Thousand Kenya Shillings** (KShs. 1000) in **cash at Materials Testing**

& Research Division cash office or Banker's Cheque payable to **Principal Secretary, State Department of Infrastructure**. The bid document may also be downloaded from <http://www.transport.go.ke> or **IFMIS Supplier portal:** <http://www.supplier.treasury.go.ke> or <http://www.mtrd.go.ke> free of charge.

6. Completed bids should be clearly marked with **RFB Name & Number** and deposited in the **Tender Box** situated at Ground floor Works Building, Off Ngong Road or posted to address below so as to reach on or before **10.00 am** on the **November 10, 2021**

**Principal Secretary,
State Department of Infrastructure,
P.O. Box 30260 – 00100,
Nairobi, Kenya**

Electronic Bidding will not be permitted. Late Bids will be rejected. Bids will be publicly opened in the presence of the Bidders' representatives and anyone who chooses to attend at the address below immediately after tender closing on **November 10, 2021**

State Department of Infrastructure,
Works Building, off Ngong Road, Ninth floor, Board Room

7. All bids must be accompanied by a **Bid Security of at least 2% of tender sum** in Kenya Shillings.
8. Attention is drawn to the Procurement Regulations requiring the Borrower to disclose information on the successful bidder's beneficial ownership, as part of the Contract Award Notice, using the Beneficial Ownership Disclosure Form as included in the bidding document.

Head of Supply Chain Management Services Unit
For: Principal Secretary, State Department of Infrastructure.

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SECTION 1: INSTRUCTIONS TO BIDDERS

A. General

1. Scope of Bid

1.1. The Purchaser indicated in the Bidding Data Sheet (BDS), issues these Bidding Documents for the supply of Goods and Related Services incidental thereto as specified in Section VI, Schedule of Requirements. The name and identification number of this National Competitive Bidding (NCB) procurement are specified in the BDS. The name, identification, and number of lots of are provided in the BDS.

1.2. Throughout these Bidding Documents:

- (a) the term “in writing” means communicated in written form (e.g. by mail, e-mail, fax, telex) with proof of receipt;
- (b) if the context so requires, “singular” means “plural” and vice versa; and
- (c) “day” means calendar day.

2. Source of Funds

2.1. The Borrower or Recipient (hereinafter called “Borrower”) specified in the BDS has applied for or received financing (hereinafter called “funds”) from the International Bank for Reconstruction and Development or the International Development Association (hereinafter called “the Bank”) toward the cost of the project named in the BDS. The Borrower intends to apply a portion of the funds to eligible payments under the contract for which these Bidding Documents are issued.

2.2. Payments by the Bank will be made only at the request of the Borrower and upon approval by the Bank in accordance with the terms and conditions of the financing agreement between the Borrower and the Bank (hereinafter called the Loan Agreement), and will be subject in all respects to the terms and conditions of that Loan Agreement. The Loan Agreement prohibits a withdrawal from the loan account for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import, to the knowledge of the Bank, is prohibited by decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations. No party other than the Borrower shall derive any rights from the Loan Agreement or have any claim to the funds.

3. Fraud and Corruption

3.1. The Bank requires that Borrowers (including beneficiaries of Bank loans), as well as bidders, suppliers, contractors, and consultants under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuit of this policy, the Bank:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:

- (i) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the procurement process or in contract execution;
 - (ii) “fraudulent practice” means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;
 - (iii) “collusive practice” means a scheme or arrangement between two or more bidders, with or without the knowledge of the Borrower, designed to establish bid prices at artificial, noncompetitive levels; and
 - (iv) “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the procurement process or affect the execution of a contract;
- (b) will reject a proposal for award if it determines that the Bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for the Contract in question;
 - (c) will sanction a firm or individual, including declaring them ineligible, either indefinitely or for a stated period of time, to be awarded a Bank-financed contract if it at any time determines that they have, directly or through an agent, engaged, in corrupt, fraudulent, collusive or coercive practices in competing for, or in executing, a Bank-financed contract; and
 - (d) will have the right to require that a provision be included in Bidding Documents and in contracts financed by a Bank loan, requiring bidders, suppliers, contractors and consultants to permit the Bank to inspect their accounts and records and other documents relating to the Bid submission and contract performance and to have them audited by auditors appointed by the Bank.

3.2. Furthermore, Bidders shall be aware of the provision stated in Sub-Clause 34.a (iii) of the General Conditions of Contract.

4. Eligible Bidders

4.1. A Bidder, and all parties constituting the Bidder, may have the nationality of any country, subject to the restrictions specified in Section V, Eligible Countries. A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including Related Services.

- 4.2. A Bidder shall not have a conflict of interest. All bidders found to have conflict of interest shall be disqualified. Bidders may be considered to have a conflict of interest with one or more parties in this bidding process, if they:
- (e) are or have been associated in the past, with a firm or any of its affiliates which have been engaged by the Purchaser to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods to be purchased under these Bidding Documents; or
 - (f) Submit more than one bid in this bidding process, except for alternative offers permitted under ITB Clause 13. However, this does not limit the participation of subcontractors in more than one bid;
- 4.3. A Bidder that is under a declaration of ineligibility by the Bank in accordance with ITB Clause 3, at the date of contract award, shall be disqualified. The list of debarred firms is available at the electronic address specified in the BDS. Similarly a Bidder that is under a declaration of ineligibility, suspension or debarment by the Government of *Kenya*, through *Public Procurement Oversight Authority (PPOA)* at the time of contract award, shall be disqualified.
- 4.4. Government-owned enterprises of *Kenya* shall be eligible only if they can establish that they (i) are legally and financially autonomous, (ii) operate under commercial law, and (iii) are not a dependent agency of the Purchaser.
- 4.5. Bidders shall provide such evidence of their continued eligibility satisfactory to the Purchaser, as the Purchaser shall reasonably request.

5. Eligible Goods and Related Services

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

B. Contents of Bidding Documents

6. Sections of Bidding Documents

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

PART 1 Bidding Procedures

- Section 1. Instructions to Bidders (ITB)
- Section 2. Bidding Data Sheet (BDS)
- Section 3. Evaluation and Qualification Criteria
- Section 4. Bidding Forms
- Section 5. Eligible Countries

PART 2 Supply Requirements

- Section 6. Schedule of Requirements

PART 3 Contract

- Section 7. General Conditions of Contract (GCC)
- Section 8. Special Conditions of Contract (SCC)
- Section 9. Contract Forms

6.2. The Invitation for Bids issued by the Purchaser is not part of the Bidding Documents.

6.3. The Purchaser is not responsible for the completeness of the Bidding Documents and their addendum, if they were not obtained directly from the Purchaser.

6.4. The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents. Failure to furnish all information or documentation required by the Bidding Documents may result in the rejection of the bid.

7. Clarification of Bidding Documents

7.1. A prospective Bidder requiring any clarification of the Bidding Documents shall contact the Purchaser in writing at the Purchaser's address specified in the BDS. The Purchaser will respond in writing to any request for clarification, provided that such request is received no later than twenty-one (21) days prior to the deadline for submission of bids. The Purchaser shall forward copies of its response to all those who have acquired the Bidding Documents directly from it, including a description of the inquiry but without identifying its source. Should the Purchaser deem it necessary to amend the Bidding Documents as a result of a clarification, it shall do so following the procedure under ITB Clause 8 and ITB Sub-Clause 22.2.

8. Amendment of Bidding Documents

8.1. At any time prior to the deadline for submission of bids, the Purchaser may amend the Bidding Documents by issuing addendum.

8.2. Any addendum issued shall be part of the Bidding Documents and shall be communicated in writing to all who have obtained the Bidding Documents directly from the Purchaser.

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

C. Preparation of Bids

9. Cost of Bidding

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

10. Language of Bid

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

11. Documents Comprising the Bid

11.1. The Bid shall comprise the following:

- (a) Bid Submission Form and the applicable Price Schedules, in accordance with ITB Clauses 12 and 14;
- (b) Bid Security or Bid-Securing Declaration, in accordance with ITB Clause 19, if required;
- (c) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB Clause 20;
- (d) documentary evidence in accordance with ITB Clauses 16 and 27, that the Goods and Related Services conform to the Bidding Documents;
- (e) documentary evidence in accordance with ITB Clause 17 establishing the Bidder's qualifications to perform the contract if its bid is accepted; and
- (f) any other document **specified in the BDS**.

12. Bid Submission Form and Price Schedules

12.1. The Bidder shall submit the Bid Submission Form using the form furnished in Section IV, Bidding Forms. This form must be completed without any alterations to its format, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.

12.2. The Bidder shall submit the Price Schedules for Goods and Related Services, according to their origin as appropriate, using the forms furnished in Section IV, Bidding Forms

13. Alternative Bids

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

14. Bid Prices and Discounts

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

14.2. All lots and items must be listed and priced separately in the Price Schedules. If a Price Schedule shows items listed but not priced, their prices shall be assumed to be included in the prices of other items. Lots or items not listed in the Price Schedule shall be assumed to be not included in the bid, and provided that the bid is substantially responsive, the corresponding adjustment, as appropriate, shall be applied in accordance with ITB Clause 29.

14.3. The price to be quoted in the Bid Submission Form shall be the total price of the bid, excluding any discounts offered.

14.4. The Bidder shall quote any unconditional discounts and indicate the method for their application in the Bid Submission Form.

14.5. Project is Value Added Tax (VAT) Exempt in Line with The Second Schedule of The VAT Act 2013. Suppliers are urged to familiarize themselves with the Kenyan Tax Laws

14.6. Prices quoted by the Bidder shall be fixed during the Bidder's performance of the Contract and not subject to variation on any account.

14.7. If so indicated in ITB Sub-Clause 1.1, bids are being invited for individual contracts (lots) or for any combination of contracts (packages). Unless otherwise indicated in the BDS, prices quoted shall correspond to 100 % of the items specified for each lot and to 100% of the quantities specified for each item of a lot. Bidders wishing to offer any price reduction (discount) for the award of more than one Contract shall specify the applicable price reduction in accordance with ITB Sub-Clause 14.4 provided the bids for all lots are submitted and opened at the same time.

15. Documents Establishing the Eligibility of the Bidder

15.1. To establish their eligibility in accordance with ITB Clause 4, Bidders shall complete the Bid Submission Form, included in Section IV, Bidding Forms.

16. Documents Establishing the Conformity of the Goods and Related Services

16.1. To establish the conformity of the Goods and Related Services to the Bidding Documents, the Bidder shall furnish as part of its Bid the documentary evidence that the Goods conform to the technical specifications and standards specified in Section VI, Schedule of Requirements.

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

17. Documents Establishing the Qualifications of the Bidder

- 17.1. The documentary evidence of the Bidder's qualifications to perform the contract if its bid is accepted shall establish to the Purchaser's satisfaction:
- (a) that, if required in the BDS, in case of a Bidder not doing business within the **Kenya**, the Bidder is or will be (if awarded the contract) represented by an Agent in the country equipped and able to carry out the Supplier's maintenance, repair and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications; and
 - (b) that the Bidder meets each of the qualification criterion specified in Section III, Evaluation and Qualification Criteria.

18. Period of Validity of Bids

- 18.1. Bids shall remain valid for the period specified in the BDS after the bid submission deadline date prescribed by the Purchaser. A bid valid for a shorter period shall be rejected by the Purchaser as non-responsive.
- 18.2. In exceptional circumstances, prior to the expiration of the bid validity period, the Purchaser may request bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a Bid Security is requested in accordance with ITB Clause 19, it shall also be extended for a corresponding period. A Bidder may refuse the request without forfeiting its Bid Security.

19. Bid Security

- 19.1. The Bidder shall furnish as part of its bid, a Bid Security or a Bid-Securing Declaration, if required, as specified in the BDS.
- 19.2. The Bid Security shall be in the amount specified in the BDS and denominated in the currency of the *Kenya* or a freely convertible currency, and shall:
- (a) at the bidder's option, be in the form of either a letter of credit, or a bank guarantee from a banking institution, or a bond issued by a surety;
 - (b) be issued by a reputable institution selected by the bidder. If the institution issuing the bond is located outside **Kenya**, it shall have a correspondent financial institution located in **Kenya** to make it enforceable.
 - (c) be substantially in accordance with one of the forms of Bid Security included in Section IV, Bidding Forms, or other form approved by the Purchaser prior to bid submission;
 - (d) be payable promptly upon written demand by the Purchaser in case the conditions listed in ITB Clause 19.5 are invoked;
 - (e) be submitted in its original form; copies will not be accepted;
 - (f) remain valid for a period of 28 days beyond the validity period of the bids, as extended, if applicable, in accordance with ITB Clause 18.2.
- 19.3. If a Bid Security or a Bid- Securing Declaration is required in accordance with ITB Sub-Clause 19.1, any bid not accompanied by a substantially responsive Bid Security or Bid Securing Declaration in accordance with ITB Sub-Clause 19.1, shall be rejected by the Purchaser as non-responsive.
- 19.4. The Bid Security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's furnishing of the Performance Security pursuant to ITB Clause 40.
- 19.5. The Bid Security may be forfeited or the Bid Securing Declaration executed:
- (a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Bid Submission Form, except as provided in ITB Sub-Clause 18.2; or
 - (b) if the successful Bidder fails to:
 - (i) sign the Contract in accordance with ITB Clause 39;
 - (ii) Furnish a Performance Security in accordance with ITB Clause 40.
- 19.6. The Bid Security or Bid- Securing Declaration of a JV must be in the name of the JV that submits the bid. If the JV has not been legally constituted at the time of bidding, the Bid Security or Bid-Securing Declaration shall be in the names of all future partners as named in the letter of intent mentioned.

20. Format and Signing of Bid

- 20.1. The Bidder shall prepare one original of the documents comprising the bid as described in ITB Clause 11 and clearly mark it "ORIGINAL." In addition, the Bidder shall submit copies of the bid, in the number specified in the BDS and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.
- 20.2. The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder.
- 20.3. Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Bid.

D. Submission and Opening of Bids

21. Submission, Sealing and Marking of Bids

- 21.1. Bidders may always submit their bids by mail or by hand. When so specified in the BDS, bidders shall have the option of submitting their bids electronically.
- 21.2. Bidders submitting bids by mail or by hand, shall enclose the original and each copy of the Bid, including alternative bids, if permitted in accordance with ITB Clause 13, in separate sealed envelopes, duly marking the envelopes as "ORIGINAL" and "COPY." These envelopes containing the original and the copies shall then be enclosed in one single envelope. The rest of the procedure shall be in accordance with ITB sub-Clauses 20.2 and 20.3.
- 21.3. Bidders submitting bids electronically shall follow the electronic bid submission procedures specified in the BDS.
- 21.4. The inner and outer envelopes shall:
- a. Bear the name and address of the Bidder;
 - b. be addressed to the Purchaser in accordance with ITB Sub-Clause 22.1;
 - c. bear the specific identification of this bidding process indicated in ITB Sub-Clause 1.1 and any additional identification marks as specified in the BDS; and
 - d. Bear a warning not to open before the time and date for bid opening, in accordance with ITB Sub-Clause 25.1.
- 21.5. If all envelopes are not sealed and marked as required, the Purchaser will assume no responsibility for the misplacement or premature opening of the bid.

22. Deadline for Submission of Bids

- 22.1. Bids must be received by the Purchaser at the address and no later than the date and time specified in the BDS.
- 22.2. The Purchaser may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Documents in accordance with ITB Clause 8, in which case all rights and obligations of the Purchaser and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

23. Late Bids

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

24. Withdrawal, Substitution, and Modification of Bids

24.1. A Bidder may withdraw, substitute, or modify its Bid after it has been submitted by sending a written notice in accordance with ITB Clause 10, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB Sub-Clause 20.2, (except that no copies of the withdrawal notice are required). The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:

- a. submitted in accordance with ITB Clauses 20 and 21 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked "Withdrawal," "Substitution," or "Modification;" and
- b. Received by the Purchaser prior to the deadline prescribed for submission of bids, in accordance with ITB Clause 22.

24.2. Bids requested to be withdrawn in accordance with ITB Sub-Clause 24.1 shall be returned unopened to the Bidders.

24.3. No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Bid Submission Form or any extension thereof.

25. Bid Opening

25.1. The Purchaser shall conduct the bid opening in public at the address, date and time specified in the BDS. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB Sub-clause 21.1, shall be as specified in the BDS.

25.2. First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Bid being substituted, and the substituted Bid shall not be opened, but returned to the Bidder. No Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at bid opening. Envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Bid. No Bid modification shall

be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Bid opening. Only envelopes that are opened and read out at Bid opening shall be considered further.

25.3. All other envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the Bid Prices, including any discounts and alternative offers; the presence of a Bid Security or Bid-Securing Declaration, if required; and any other details as the Purchaser may consider appropriate. Only discounts and alternative offers read out at Bid opening shall be considered for evaluation. No Bid shall be rejected at Bid opening except for late bids, in accordance with ITB Sub-Clause 23.1.

25.4. The Purchaser shall prepare a record of the Bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per lot if applicable, including any discounts, and alternative offers if they were permitted; and the presence or absence of a Bid Security or Bid-Securing Declaration, if one was required. The Bidders' representatives who are present shall be requested to sign the attendance sheet. A copy of the record shall be distributed to all Bidders who submitted bids in time, and posted online when electronic bidding is permitted.

E. Evaluation and Comparison of Bids

26. Confidentiality

26.1. Information relating to the examination, evaluation, comparison, and post-qualification of bids, and recommendation of contract award, shall not be disclosed to bidders or any other persons not officially concerned with such process until publication of the Contract Award.

26.2. Any effort by a Bidder to influence the Purchaser in the examination, evaluation, comparison, and post-qualification of the bids or contract award decisions may result in the rejection of its Bid.

26.3. Notwithstanding ITB Sub-Clause 26.2, from the time of bid opening to the time of Contract Award, if any Bidder wishes to contact the Purchaser on any matter related to the bidding process, it should do so in writing.

27. Clarification of Bids

27.1. To assist in the examination, evaluation, comparison and post-qualification of the bids, the Purchaser may, at its discretion, ask any Bidder for a clarification of its Bid. Any clarification submitted by a Bidder in respect to its Bid and that is not in response to a request by the Purchaser shall not be considered. The Purchaser's request for clarification and the response shall be in writing. No change in the prices or substance of the Bid shall be sought, offered, or permitted, except to confirm the correction of

arithmetic errors discovered by the Purchaser in the Evaluation of the bids, in accordance with ITB Clause 29.

28. Responsiveness of Bids

28.1. The Purchaser's determination of a bid's responsiveness is to be based on the contents of the bid itself.

28.2. A substantially responsive Bid is one that conforms to all the terms, conditions, and specifications of the Bidding Documents without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that:

- a. affects in any substantial way the scope, quality, or performance of the Goods and Related Services specified in the Contract; or
- b. limits in any substantial way, inconsistent with the Bidding Documents, the Purchaser's rights or the Bidder's obligations under the Contract; or
- c. if rectified would unfairly affect the competitive position of other bidders presenting substantially responsive bids.

28.3. If a bid is not substantially responsive to the Bidding Documents, it shall be rejected by the Purchaser and may not subsequently be made responsive by the Bidder by correction of the material deviation, reservation, or omission.

29. Non conformities, Errors, and Omissions

- 29.1. Provided that a Bid is substantially responsive, the Purchaser may waive any non-conformities or omissions in the Bid that do not constitute a material deviation.
- 29.2. Provided that a bid is substantially responsive, the Purchaser may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the bid related to documentation requirements. Such omission shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.
- 29.3. Provided that the Bid is substantially responsive, the Purchaser shall correct arithmetical errors on the following basis:
- a. if there is a discrepancy between the unit price and the line item total that is obtained by multiplying the unit price by the quantity, the unit price shall prevail and the line item total shall be corrected, unless in the opinion of the Purchaser there is an obvious misplacement of the decimal point in the unit price, in which case the line item total as quoted shall govern and the unit price shall be corrected;
 - b. if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
 - c. if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.
- 29.4. If the Bidder that submitted the lowest evaluated Bid does not accept the correction of errors, its Bid shall be disqualified and its Bid Security may be forfeited or its Bid-Securing Declaration executed.

30. Preliminary Examination of Bids

- 30.1. The Purchaser shall examine the bids to confirm that all documents and technical documentation requested in ITB Clause 11 have been provided, and to determine the completeness of each document submitted.
- 30.2. The Purchaser shall confirm that the following documents and information have been provided in the Bid. If any of these documents or information is missing, the offer shall be rejected.
- a. Bid Submission Form, in accordance with ITB Sub-Clause 12.1;
 - b. Price Schedules, in accordance with ITB Sub-Clause 12.2;
 - c. Bid Security or Bid Securing Declaration, in accordance with ITB Clause 19 if applicable.

31. Examination of Terms and Conditions; Technical Evaluation

- 31.1. The Purchaser shall examine the Bid to confirm that all terms and conditions specified in the GCC and the SCC have been accepted by the Bidder without any material deviation or reservation.
- 31.2. The Purchaser shall evaluate the technical aspects of the Bid submitted in accordance with ITB Clause 16, to confirm that all requirements specified in Section VI, Schedule of Requirements of the Bidding Documents have been met without any material deviation or reservation.
- 31.3. If, after the examination of the terms and conditions and the technical evaluation, the Purchaser determines that the Bid is not substantially responsive in accordance with ITB Clause 28, it shall reject the Bid.

32. Evaluation of Bids

- 32.1. The Purchaser shall evaluate each bid that has been determined, up to this stage of the evaluation, to be substantially responsive.
- 32.2. To evaluate a Bid, the Purchaser shall only use all the factors, methodologies and criteria defined in ITB Clause 32. No other criteria or methodology shall be permitted.
- 32.3. To evaluate a Bid, the Purchaser shall consider the following:
- a. the Bid Price as quoted in accordance with clause 14;
 - b. price adjustment for correction of arithmetic errors in accordance with ITB Sub-Clause 29.3;
 - c. price adjustment due to discounts offered in accordance with ITB Sub-Clause 14.4;
 - d. adjustments due to the application of the evaluation criteria **specified in the BDS** from amongst those set out in Section III, Evaluation and Qualification Criteria;
- 32.4. The Purchaser's evaluation of a bid may require the consideration of other factors, in addition to the Bid Price quoted in accordance with ITB Clause 14. These factors may be related to the characteristics, performance, and terms and conditions of purchase of the Goods and Related Services. The effect of the factors selected, if any, shall be expressed in monetary terms to facilitate comparison of bids, unless otherwise specified in Section III, Evaluation and Qualification Criteria. The factors, methodologies and criteria to be used shall be as specified in ITB Sub-Clause 32.3 (d).
- 32.5. If so specified in the BDS, these Bidding Documents shall allow Bidders to quote separate prices for one or more lots, and shall allow the Purchaser to award one or multiple lots to more than one Bidder. The methodology of evaluation to determine the lowest-evaluated lot combinations, is specified in Section III, Evaluation and Qualification Criteria.

33. Comparison of Bids

33.1. The Purchaser shall compare all substantially responsive bids to determine the lowest-evaluated bid, in accordance with ITB Clause 32.

34. Post-qualification of the Bidder

34.1. The Purchaser shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid is qualified to perform the Contract satisfactorily.

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

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

35. Purchaser's Right to Accept Any Bid, and to Reject Any or All Bids

35.1. The Purchaser reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders.

F. Award of Contract

36. Award Criteria

36.1. The Purchaser shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Documents, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

37. Purchaser's Right to Vary Quantities at Time of Award

37.1. At the time the Contract is awarded, the Purchaser reserves the right to increase or decrease the quantity of Goods and Related Services originally specified in Section VI, Schedule of Requirements, provided this does not exceed the percentages specified in the BDS, and without any change in the unit prices or other terms and conditions of the bid and the Bidding Documents.

38. Notification of Award

38.1. Prior to the expiration of the period of bid validity, the Purchaser shall notify the successful Bidder, in writing, that its Bid has been accepted.

38.2. Until a formal Contract is prepared and executed, the notification of award shall constitute a binding Contract.

38.3. Upon the successful Bidder's furnishing of the signed Contract Form and performance security pursuant to ITB Clause 40, the Purchaser will promptly notify

each unsuccessful Bidder and will discharge its bid security, pursuant to ITB Clause 19.4.

39. Signing of Contract

39.1. Promptly after notification, the Purchaser shall send the successful Bidder the Agreement and the Special Conditions of Contract.

39.2. Within twenty-eight (28) days of receipt of the Agreement, the successful Bidder shall sign, date, and return it to the Purchaser.

40. Performance Security

40.1. Within twenty eight (28) days of the receipt of notification of award from the Purchaser, the successful Bidder, if required, shall furnish the Performance Security in accordance with the GCC, using for that purpose the Performance Security Form included in Section IX Contract forms, or another Form acceptable to the Purchaser. The Purchaser shall promptly notify the name of the winning Bidder to each unsuccessful Bidder and discharge the Bid Securities of the unsuccessful bidders pursuant to ITB Sub-Clause 19.4.

40.2. Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security or execution of the Bid-Securing Declaration. In that event the Purchaser may award the Contract to the next lowest evaluated Bidder, whose offer is substantially responsive and is determined by the Purchaser to be qualified to perform the Contract satisfactorily.

SECTION 2: BIDDING DATA SHEET (BDS)

The following specific data for the goods to be procured shall complement, supplement, or amend the provisions in the Instructions to Bidders (ITB). Whenever there is a conflict, the provisions herein shall prevail over those in ITB.				
ITB Clause Reference	A. General			
ITB 1.1	The Purchaser is Principal Secretary, State Department of Infrastructure.			
ITB 1.1	RFB Name and Number of the NCB are Supply and delivery of Motor Vehicles for Regional Material Laboratories & RFB No. KE-SDOI-220201-GO-RFB/MTRD			
	Lot	Lot Description	Unit	Qty
	1	Double Cabin Pick Ups, 4WD, above 2800 cc Diesel.	No.	5
ITB 2.1	The Borrower is Government of the Republic of Kenya			
ITB 2.1	The name of the Project is Horn of Africa Gateway Development Project			
ITB 4.3	A list of debarred firms is available at http://www.worldbank.org/debarr			
	B. Contents of Bidding Documents			
ITB 7.1	For Clarification of bid purposes only, the Purchaser's address is Chief Engineer (Materials) Materials Testing & Research Division P.O. Box 11873-00400 Nairobi. Kenya Tel +254 020 2554950 E-mail info@mtrd.go.ke or pdc@mtrd.go.ke			
	C. Preparation of Bids			
ITB 10.1	The language of the bid is English			
ITB 11.1 (f)	No additional documents shall be required			
ITB 13.1	Alternative Bids shall not be considered.			
ITB 14.7	Prices quoted for lot shall correspond at least to 100% percent of the quantities specified for this item.			
ITB 16.3	Period of time the Goods are expected to be functioning for the purpose of spare parts As specified in technical specifications.			
1. ITB 17.1 (a)	After sales service is required.			
ITB 18.1	The bid validity period shall be 120 days from date of tender opening			
ITB 19.1	Bid shall include a Bid Security issued by bank included in Section 4: Bidding Forms.			
ITB 19.2	The amount of the Bid Security shall be at least 2% of tender sum.			
ITB 20.1	In addition to the original of the bid, the number of copies is one (1)			
	D. Submission and Opening of Bids			
ITB 21.1	Bidders shall not have the option of submitting their bids electronically.			
ITB 22.1	For bid submission purposes, the Purchaser's address is Principal Secretary,			

	<p style="text-align: center;">State Department of Infrastructure, Works Building, Off Ngong Road, P.O. Box 30260 – 00100, Nairobi, Kenya</p> <p>The deadline for the submission of bids is Date As in the Invitation for Bids Time As in the Invitation for Bids</p>
ITB 25.1	The bid opening shall take place at Board Room; State Department of Infrastructure Works Building, Ngong Road, 9th Floor
ITB 25.1	If electronic bid submission is permitted in accordance with ITB sub-clause 23.1, the specific bid opening procedures shall be Not Applicable
	E. Evaluation and Comparison of Bids
ITB 32.3(d)	The adjustments shall be determined using the following criteria, from amongst those set out in Section III, Evaluation and Qualification Criteria (a) Deviation in Delivery schedule: Not Applicable. (b) The cost of major replacement components, mandatory spare parts, and service: Not Applicable. (c) The performance and productivity of the equipment offered: Not Applicable.
ITB 32.5	Bidders shall not be allowed to quote separate prices for the item.
	F. Award of Contract
ITB 37.1	The maximum percentage by which quantities may be increased is 100% for item 1. The maximum percentage by which quantities may be decreased is 100% for item 1.

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SECTION 3: EVALUATION AND QUALIFICATION CRITERIA

1. Evaluation Criteria (ITB 32.3 (d))

The Purchaser's evaluation of a bid may take into account, in addition to the Bid Price quoted in accordance with ITB Clause 14.6, one or more of the following factors as specified in ITB Sub-Clause 32.3(d) and in BDS referring to ITB 32.3(d), using the following criteria and methodologies.

(a) Delivery schedule: ***The Goods specified in the List of Goods are required to be delivered within the acceptable time range (after the earliest and before the final date, both dates inclusive) specified in Section VI, Delivery Schedule. No credit will be given to deliveries before the earliest date, and bids offering delivery after the final date shall be treated as non-responsive.***

(b) Cost of major replacement components, mandatory spare parts, and service: ***Not applicable***

(c) Performance and productivity of the equipment. ***Not applicable***

(g) Specific additional criteria: ***None***

2. Multiple Contracts (ITB 32.5)

The Purchaser shall award multiple contracts to the Bidder that offers the lowest evaluated combination of bids (one contract per bid) and meets the post-qualification criteria (this Section III, Sub-Section ITB 34.2 Post-Qualification Requirements)

The Purchaser shall:

- (c) evaluate only lots or contracts that include at least the percentages of items per lot and quantity per item as specified in ITB Sub Clause 14.7
- (d) take into account:
 - (i) the lowest-evaluated bid for each lot and
 - (ii) the price reduction per lot and the methodology for its application as offered by the Bidder in its bid.

3. Post-qualification Requirements (ITB 34.2)

After determining the lowest-evaluated bid in accordance with ITB Sub-Clause 33.1, the Purchaser shall carry out the post-qualification of the Bidder in accordance with ITB Clause 34, using only the requirements specified. Requirements not included in the text below shall not be used in the evaluation of the Bidder's qualifications.

- (a) Financial Capability: The Bidder shall furnish documentary evidence that it meets the following financial requirement(s): ***Annual turnover of at least KES 25 million or USD 250,000 or an equivalent amount a freely convertible currency acceptable to the purchaser per annum as evidenced by audited accounts for each of the last 5-years;***
- (b) Experience and Technical Capacity: The Bidder shall furnish documentary evidence to demonstrate that it meets the following experience requirement(s): ***At least 2-year general and 1-year specific experience in sales and support assignments with documentary evidence of successful completion of at least one (1) similar contract of minimum value of USD 250,000 within last 3-years;***
- (c) The Bidder shall furnish documentary evidence to demonstrate that the Goods it offers meets all the requirements in the technical specifications: **as specified in technical specifications.**

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SECTION 4: BIDDING FORMS

1. Bidder Information Form

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

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

RFB NO.: **KE-SDOI-220201-GO-RFB/ MTRD**

Page _____ of _____ pages

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

2. Joint Venture Partner Information Form

[The Bidder shall fill in this Form in accordance with the instructions indicated below].

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

RFB NO.: **KE-SDOI-220201-GO-RFB/ MTRD**

Page _____ of _____ pages

1. Bidder's Legal Name: <i>[insert Bidder's legal name]</i>
2. JV's Party legal name: <i>[insert JV's Party legal name]</i>
3. JV's Party Country of Registration: <i>[insert JV's Party country of registration]</i>
4. JV's Party Year of Registration: <i>[insert JV's Party year of registration]</i>
5. JV's Party Legal Address in Country of Registration: <i>[insert JV's Party legal address in country of registration]</i>
6. JV's Party Authorized Representative Information Name: <i>[insert name of JV's Party authorized representative]</i> Address: <i>[insert address of JV's Party authorized representative]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers of JV's Party authorized representative]</i> Email Address: <i>[insert email address of JV's Party authorized representative]</i>
7. Attached are copies of original documents of: <i>[check the box(es) of the attached original documents]</i> <input type="checkbox"/> Articles of Incorporation or Registration of firm named in 2, above, in accordance with ITB Sub-Clauses 4.1 and 4.2. <input type="checkbox"/> In case of government owned entity from Kenya , documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB Sub-Clause 4.5.

3. Bid Submission Form

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

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

RFB NO.: **KE-SDOI-220201-GO-RFB/ MTRD**

Invitation for Bid No.: *[insert No of IFB]*

Alternative No.: *[insert identification No if this is a Bid for an alternative]*

To: *[insert complete name of Purchaser]*

We, the undersigned, declare that:

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

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

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

- (e) Our bid shall be valid for the period of time specified in ITB Sub-Clause 18.1, from the date fixed for the bid submission deadline in accordance with ITB Sub-Clause 22.1, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

- (f) If our bid is accepted, we commit to obtain a performance security in accordance with ITB Clause 40 and GCC Clause 16 for the due performance of the Contract;
- (g) We have no conflict of interest in accordance with ITB Sub-Clause 4.2;
- (h) Our firm, its affiliates or subsidiaries—including any subcontractors or suppliers for any part of the contract—has not been declared ineligible by the Bank, under **Kenya** laws or official regulations, in accordance with ITB Sub-Clause 4.3;
- (i) The following commissions, gratuities, or fees have been paid or are to be paid with respect to the bidding process or execution of the Contract: *[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity]*

Name of Recipient	Address	Reason	Amount
_____	_____	_____	_____
_____	_____	_____	_____

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

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

Signed: *[insert signature of person whose name and capacity are shown]*

In the capacity of *[insert legal capacity of person signing the Bid Submission Form]*

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

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

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

4. Price Schedule Forms

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

Price Schedule: Goods

				Date: _____ RFB NO.: _____ Alternative No: _____ Page N° _____ of _____		
1	2	3	4	5	6	7
Line Item N°	Description of Goods	Delivery Date	Quantity and physical unit	Unit price DDP	Total price per line item (Col. 4 x 5)	Country of Origin
<i>[insert number of the item]</i>	<i>[insert name of Good]</i>	<i>[insert quoted Delivery Date]</i>	<i>[insert number of units to be supplied and name of the physical unit]</i>	<i>[insert unit price]</i>	<i>[insert total price per line item]</i>	
			Total Price: Goods			

Price and Completion Schedule - Related Services						
					Date: _____ RFB NO.: _____ Alternative No: _____ Page N° _____ of _____	
1	2	3	4	5	6	7
Service N°	Description of Services	Country of Origin	Delivery Date at place of Final destination	Quantity and physical unit	Unit price	Total Price per Service (Col. 5 x 6 or estimate)
<i>[insert number of the Service]</i>	<i>[insert name of Services]</i>	<i>[insert country of origin of the Services]</i>	<i>[insert delivery date at place of final destination per Service]</i>	<i>[insert number of units to be supplied and name of the physical unit]</i>	<i>[insert unit price per item]</i>	<i>[insert total price per item]</i>
				Total Price: Related Services		
Name of Bidder: <i>[insert complete name of Bidder].</i>				Signature	of	Bidder:
<i>[signature of person signing the Bid]</i>						
Date: <i>[insert date]</i>						

5. Bid Security (Bank Guarantee)

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

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

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

Date: *[insert date]*

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

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

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

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

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

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

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

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

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

6. Bid-Securing Declaration

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

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

RFB NO.: **KE-SDOI-220201-GO-RFB/ MTRD**

Alternative No.: *[insert identification No if this is a Bid for an alternative]*

To: *[insert complete name of Purchaser]*

We, the undersigned, declare that:

1. We understand that, according to your conditions, bids must be supported by a Bid-Securing Declaration.
2. We accept that we will automatically be suspended from being eligible for bidding in any contract with the Purchaser for the period of time of *[insert number of months or years]* starting on *[insert date]*, if we are in breach of our obligation(s) under the bid conditions, because we:
 - (a) have withdrawn our Bid during the period of bid validity specified by us in the Bidding Data Sheet; or
 - (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the ITB.
3. We understand this Bid Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of (i) our receipt of a copy of your notification of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of our Bid.
4. We understand that if we are a Joint Venture, the Bid Securing Declaration must be in the name of the Joint Venture that submits the bid. If the Joint Venture has not been legally constituted at the time of bidding, the Bid Securing Declaration shall be in the names of all future partners as named in the letter of intent.

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

Name: *[insert complete name of person signing the Bid Securing Declaration]*

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

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

SECTION 5: ELIGIBLE COUNTRIES**Eligibility for the Provision of Goods, Works and Services in Bank-Financed Procurement**

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

2. For the information of borrowers and bidders, at the present time firms, goods and services from the following countries are excluded from this bidding:
 - (a) With reference to paragraph 1.8 (a) (i) of the Guidelines:
 - (b) With reference to paragraph 1.8 (a) (ii) of the Guidelines:

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SECTION 6: SCHEDULE OF REQUIREMENTS

1. List of Related Services and Completion Schedule

<i>[This table shall be filled in by the Purchaser. The Required Completion Dates should be realistic, and consistent with the required Goods Delivery Dates]</i>					
Service N°	Description of Service	Quantity ¹ (days)	Physical Unit	Place where Services shall be performed	Final Completion Date(s) of Services
1	Training of drivers	5	No.	MTRD Head office, off Machakos Road Nairobi	45

2. Technical Specifications

2.1. General specifications: The Goods and Related Services shall comply with following Technical Specifications and Standards:

- i. These specifications describe the basic requirements for vehicles. Tenderers are requested to submit with their offers the detailed specifications, drawings, catalogues, etc. for the products they intend to supply. **Tenders without brochure or catalogue shall be deemed unresponsive;**
- ii. Tenderers must indicate on the specifications sheets whether the vehicles offered comply with each specified requirement. The tenderers response of **“yes” or “will do” or “complies” or “meets requirements”** is unlikely to convey credibility of the response and hence tender may be deemed unresponsive;
- iii. All the dimensions and capacities of the vehicles to be supplied shall not be less than those required in these specifications. Deviations from the basic requirements, if any, shall be explained in detail in writing with the offer, with supporting data such as calculation sheets, etc. The procuring entity reserves the right to reject the products, if such deviations shall be found critical to the use and operation of the products.

2.2. General Vehicle Specifications

- i. The tenderer shall register and deliver vehicles with number plates fitted.
- ii. The tenderer shall engrave the registration number of the vehicle on the front and rear windscreens, side windows, light lenses and wing mirrors. The engraving shall be clear but discrete and placed so it does not impede the driver’s vision. The engraving shall be 10 to 12 mm in height. The sign writing on vehicles shall be identical in style, size and placement and the letters shall be black Gill-Sans Italic font of 10 mm height.

- iii. The tenderer shall fit an approved security system on vehicles which will immobilize the vehicle, will sound a loud audible alarm if the vehicle is opened or tampered with, is operated remotely by means of a radio tag and will not allow the vehicle to start without the tag being used.

2.3. Specific Vehicle Specifications

Item	Description	Tenderer Offer
a. Vehicle model	The double cab shall be (i) supplied new; (ii) of the latest design; robust construction; current production designed for export specifications; suitable for operating in tropical conditions; operating on both "on and off" road conditions and for personnel and cargo transportation.	
b. Dimensions & Weight	The double cab shall have overall: (i) length of approx. 5,000 mm; (ii) width of min. 1,700 mm and height of approx. 1,800 mm. The double cab shall have Wheelbase of approx. 3,000 mm; Ground Clearance of min. 250 mm; Maximum GVW. of approx. 2,700 Kg; Kerb weight of approx. 1,800 Kg and Turning radius of approx. 6,500 mm	
c. Engine	The double cab shall have: (i) four strokes and water cooled diesel engine; piston displacement range above 2800 cc; minimum four cylinders; minimum 100 kw/4000 rpm power output/rpm; minimum 300 nm/2400 rpm developed torque /rpm; natural/ turbo charged engine aspiration; with disposable/oil bath air filter type; disposable oil and fuel filter type; fuel tank capacity of above 70 litres and average fuel consumption (on full load) at <ul style="list-style-type: none"> i. Urban driving ii. Steady 50 Km/h iii. Steady 80 Km/h 	
d. Clutch & Transmission	The double cab shall have: (i) dry single plate or diaphragm type with hydraulic actuation Clutch; Manual synchromesh gearbox and minimum 5F/1R, total Speeds	
e. Brakes & Tyres	The double cab shall have: (i) Assisted hydraulic, dual brake system; Drum or disc brake for front and rear brakes; mechanical parking brake to act on transmission or rear wheels; locally available all terrain tyres and optimum tyre size	

f. Suspension & Steering	The double cab shall have: (i) front and rear suspension with telescopic dampers; (ii) assisted steering and (iii) right hand drive (RHD) steering	
g. Pick-up body	The double cab shall (i) be roomy cab to seat 5 adults comfortably including driver with driver's seat adjustable; (ii) have front row adjustable seats for two with safety (seat) belts conforming to KEBS 06-664: 1985 standard provided; (iii) Second row to seat 3 adults comfortably fitted with seat belts conforming to KEBS 06-664: 1985 standard; (iv) Robust body with secure lower hinged tailgate; (v) Rear pick-up body to have hardtop canopy; (vi) with 3 access points (sides and rear); (vii) smoothly finished to complement the duco design of the vehicle; (viii) Side access to be of Lift Up Solid Windows; (ix) be provided with "Rotary Lock System" in stainless steel for Lift Up Side Solid Windows and rear door that improves security and simplifies operation; and have high mounting LED brake light on the rear and interior LED. light.	
h. Body and Finish	The double cab shall (i) have all exterior body panels made non-corrosive, and all external steel fitting to be galvanized or painted; (ii) anti-rust compound applied to underbody for sea side operation; and (iii) have body finish, high gloss color, branding and signage to be specified by the user.	
i. Electrical System/Instruments	The double cab shall (i) have a 12 VDC system voltage, negative earth, with alternator charging; (ii) Full lighting to conform to Cap 403, subs 23-Kenya Traffic Act; and (iii) Standard instruments and gauges (or warning lights) for charging circuit, oil pressure, coolant temperature etc.	
j. Accessories:	The double cab shall be provided with two Sun visors, Spare; two External mirrors; one Internal rear-view mirrors; wheel & external carrier; high raise jack with jacking points and wheel brace; and manufacturer's standard tools. The vehicle shall also be (i) fitted with radio CD player/ flash disk/ equivalent system; (ii) air conditioning system; (iii) air bags; and central locking system	
k. Manuals	The double cab shall be provided with (i) All literature in English language; one repair manuals/CD per vehicle; one parts catalogue/CD per vehicle; one drivers handbook; and service schedule per vehicle	
l. Mandatory Requirements	The double cab shall be provided (i) registered by NTSA; and (ii) inspected by the Chief Mechanical and Transport Engineer prior to delivery.	

	The supplier shall clearly state (i) Firms status whether Franchise holder or Dealer or Agent; (ii) availability of spares - indicate motor vehicle dealers who stock spare parts; (iii) Names and addresses of dealers/agents where back-up service can be obtained indicating the location of the workshop facilities; and (iv) whether the body construction and all fitments conform to Kenya Traffic Act CAP 403.	
m. Warranty and Free services	The bidder shall (i) provide a specimen of vehicle warranty with their bids; (ii) provide Statement of warranty for each vehicle; and provide vehicle warranty of not less than 12 Months or 100,000 Km whichever comes first	

3. Drawings

These Bidding Documents includes *no* drawings.

[If documents shall be included, insert the following list of drawings]

List of Drawings		
Drawing Nr.	Drawing Name	Purpose

4. Inspections and Tests

The following inspections and tests shall be performed:

List of inspections and Tests		
List Item No	Brief Description of item	Inspection and/or Test
Lot 1	Double Cabin Pick Up, 4WD, Above 2800 cc, Diesel	Standard new vehicle inspection by the Chief Mechanical and Transport Engineer.

PART 3: CONTRACT

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SECTION 7: GENERAL CONDITION OF CONTRACT

1. Definitions

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

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

2. Contract Documents

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

3. Fraud and Corruption

3.1. The Bank requires that Borrowers (including beneficiaries of Bank loans), as well as Bidders, Suppliers, Contractors, and Consultants under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuit of this policy, the Bank:

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

4. Interpretation

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

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

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

4.4. Non waiver:

- (a) Subject to GCC Sub-Clause 4.4(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party

under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

- (b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

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

5. Language

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

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

6. Joint Venture, Consortium or Association

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

7. Notices

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

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

8. Governing Law

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

9. Settlement of Disputes

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

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

10. Scope of Supply

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

11. Delivery and Documents

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

12. Supplier's Responsibilities

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

13. Contract Price

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

14. Terms of Payment

14.1. The Contract Price, including any Advance Payments, if applicable, shall be paid as specified in the **SCC**.

14.2. The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GCC Clause 11 and upon fulfillment of all other obligations stipulated in the Contract.

14.3. Payments shall be made promptly by the Purchaser, but in no case later than sixty (60) days after submission of an invoice or request for payment by the Supplier, and after the Purchaser has accepted it.

14.4. In the event that the Purchaser fails to pay the Supplier any payment by its due date or within the period set forth in the **SCC**, the Purchaser shall pay to the Supplier interest on the amount of such delayed payment at the rate shown in the **SCC**, for the period of delay until payment has been made in full, whether before or after judgment or arbitrage award.

15. Taxes and Duties

15.1. Project is Value Added Tax (VAT) Exempt in Line with The Second Schedule of The VAT Act 2013. Suppliers are urged to familiarize themselves with the Kenyan Tax Laws.

16. Performance Security

16.1. If required as specified in the **SCC**, the Supplier shall, within twenty-eight (28) days of the notification of contract award, provide a performance security for the performance of the Contract in the amount specified in the **SCC**.

- 16.2. The proceeds of the Performance Security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.
- 16.3. As specified in the SCC, the Performance Security, if required, shall be in one of the format stipulated by the Purchaser in the **SCC**, or in another format acceptable to the Purchaser.
- 16.4. The Performance Security shall be discharged by the Purchaser and returned to the Supplier not later than twenty-eight (28) days following the date of Completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless specified otherwise in the **SCC**.

17. Copyright

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

18. Confidential Information

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

- (d) Otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

18.4. The above provisions of GCC Clause 18 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.

18.5. The provisions of GCC Clause 18 shall survive completion or termination, for whatever reason, of the Contract.

19. Subcontracting

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

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

20. Specifications and Standards

20.1. Technical Specifications and Drawings

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

21. Packing and Documents

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

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

22. Insurance

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

23. Inspections and Tests

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

23.2. The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the Goods' final destination, or in another place in the *Kenya* as specified in the **SCC**. Subject to GCC Sub-Clause 23.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.

23.3. The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 23.2, provided that the Purchaser bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

23.4. Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Purchaser. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Purchaser or its designated representative to attend the test and/or inspection.

23.5. The Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.

23.6. The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.

- 23.7. The Purchaser may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a notice pursuant to GCC Sub-Clause 23.4.
- 23.8. The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report pursuant to GCC Sub-Clause 23.6, shall release the Supplier from any warranties or other obligations under the Contract.

24. Liquidated Damages

- 24.1. Except as provided under GCC Clause 28, if the Supplier fails to deliver any or all of the Goods by the Date(s) of delivery or perform the Related Services within the period specified in the Contract, the Purchaser may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the **SCC** of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those **SCC**. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to GCC Clause 31.

25. Warranty

- 25.1. The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.
- 25.2. Subject to GCC Sub-Clause 20.1(b), the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.
- 25.3. Unless otherwise specified in the **SCC**, the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the **SCC**, or for eighteen (18) months after the date of shipment from the port or place of loading in the country of origin, whichever period concludes earlier.
- 25.4. The Purchaser shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Supplier to inspect such defects.

- 25.5. Upon receipt of such notice, the Supplier shall, within the period specified in the **SCC**, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.
- 25.6. If having been notified, the Supplier fails to remedy the defect within the period specified in the **SCC**, the Purchaser may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.
- 26. Patent Indemnity**
- 26.1. The Supplier shall, subject to the Purchaser's compliance with GCC Sub-Clause 26.2, indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:
- (a) the installation of the Goods by the Supplier or the use of the Goods in the country where the Site is located; and
 - (b) the sale in any country of the products produced by the Goods. Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Contract.
- 26.2. If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in GCC Sub-Clause 26.1, the Purchaser shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.
- 26.3. If the Supplier fails to notify the Purchaser within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf.
- 26.4. The Purchaser shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.
- 26.5. The Purchaser shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative

proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Purchaser.

27. Change in Laws and Regulations

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

28. Force Majeure

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

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

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

29. Change Orders and Contract Amendments

29.1. The Purchaser may at any time order the Supplier through notice in accordance GCC Clause 7, to make changes within the general scope of the Contract in any one or more of the following:

- (a) Drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;

- (b) The method of shipment or packing;
- (c) The place of delivery; and
- (d) The Related Services to be provided by the Supplier.

29.2. If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier's receipt of the Purchaser's change order.

29.3. Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.

29.4. Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

30. Extensions of Time

30.1. If at any time during performance of the Contract, the Supplier or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 11, the Supplier shall promptly notify the Purchaser in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.

30.2. Except in case of Force Majeure, as provided under GCC Clause 28, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 24, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 30.1.

31. Termination

31.1. Termination for Default

- (a) The Purchaser, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate the Contract in whole or in part:
 - (i) if the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GCC Clause 30;
 - (ii) if the Supplier fails to perform any other obligation under the Contract; or
 - (iii) if the Supplier, in the judgment of the Purchaser has engaged in fraud and corruption, as defined in GCC Clause 3, in competing for or in executing the Contract.

- (b) In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC Clause 31.1(a), the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

31.2. Termination for Insolvency.

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

31.3. Termination for Convenience.

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

32. Assignment

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

SECTION 8: SPECIAL CONDITIONS OF CONTRACT

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

GCC 1.1(i)	The Purchaser is Principal Secretary, State Department of Infrastructure
GCC 1.1 (n)	The Project Site(s)/Final Destination(s) is Materials Testing and Research Division, Machakos Road, Industrial Area, Nairobi
GCC 5.1	The language shall be English
GCC 7.1	For notices , the Purchaser's address shall be: Chief Engineer (Materials) Materials Testing and Research Division P. O. Box 11873-00400 Nairobi, Kenya Tel: +254 020 2554950 E-mail: info@mtrd.go.ke or pdcc@mtrd.go.ke
GCC 11.1	Details of Shipping and other Documents to be furnished by the Supplier are <ul style="list-style-type: none"> (a) Three (3) copies of the Supplier's invoice showing Goods' description, quantity, unit price, and total amount; (b) Original and 3 (three) copies of the negotiable, clean, on-board bill of lading marked "freight prepaid" and three (3) copies of nonnegotiable bill of lading; (c) Insurance certificate; (d) Manufacturer's or Supplier's warranty certificate; (e) Inspection certificate, issued by the nominated inspection agency, and the Supplier's factory inspection report; and (f) Certificate of origin. <p>The above documents shall be received by the Purchaser before arrival of the Goods and, if not received, the Supplier will be responsible for any consequent expenses.</p>
GCC 14.1	GCC 14.1—The method and conditions of payment to be made to the Supplier under this Contract shall be as follows: <ul style="list-style-type: none"> i. Advance Payment: Not Applicable ii. On Delivery: Not Applicable iii. On Acceptance: one hundred percent (100%) of the Contract Price shall be paid to the Supplier within forty five (45) days after the date of the acceptance certificate for the respective delivery issued by the Purchaser.

GCC 14.4	The payment-delay period after which the Purchaser shall pay interest to the supplier shall be 45 days . The interest rate that shall be applied is <i>the prevailing interest rates at the Central Bank of Kenya</i>
GCC 16.1	A Performance Security <i>shall be required</i> The performance security shall be 10% of the Contract Price
GCC 16.3	If required, the Performance Security shall be in the form of <i>a Bank Guarantee</i> .
GCC 16.4	Discharge of the Performance Security shall take place <i>as indicated in sub clause GCC 16.4</i>
GCC 21.2	The packing, marking and documentation within and outside the packages shall be: <i>Supply and delivery of Motor Vehicles for Regional Material Laboratories RFB NO.: KE-SDOI-220201-GO-RFB/ MTRD.</i>
GCC 23.1	The inspections and tests shall be <i>as required by Chief Mechanical & Transport Engineer (CMTE).</i>
GCC 23.2	The Inspections and tests shall be conducted at: <i>Chief Mechanical & Transport Engineer (CMTE), Off Machakos Road Industrial Area, Nairobi, Kenya</i>
GCC 24.1	The liquidated damage shall be 0.05% per week The maximum amount of liquidated damages shall be <i>ten (10%) percent of contract price.</i>
GCC 25.3	The period of validity of the Warranty shall be <i>as specified in the technical specifications</i> For purposes of the Warranty, the place(s) of final destination(s) shall be: <i>Materials Testing and Research Division, Machakos Road Industrial Area, Nairobi, Kenya</i>
GCC 25.5	The period for repair or replacement shall be 30 days .

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SECTION 9: CONTRACT FORMS**1. Contract Agreement**

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

THIS CONTRACT AGREEMENT is made

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

BETWEEN

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

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

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall constitute the Contract between the Purchaser and the Supplier, and each shall be read and construed as an integral part of the Contract:
 - (a) This Contract Agreement
 - (b) Special Conditions of Contract
 - (c) General Conditions of Contract
 - (d) Technical Requirements (including Schedule of Requirements and Technical Specifications)
 - (e) The Supplier’s Bid and original Price Schedules

(f) The Purchaser's Notification of Award

(g) *[Add here any other document(s)]*

3. This Contract shall prevail over all other Contract documents. In the event of any discrepancy or inconsistency within the Contract documents, then the documents shall prevail in the order listed above.
4. In consideration of the payments to be made by the Purchaser to the Supplier as hereinafter mentioned, the Supplier hereby covenants with the Purchaser to provide the Goods and Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
5. The Purchaser hereby covenants to pay the Supplier in consideration of the provision of the Goods and Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

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

For and on behalf of the Purchaser

Signed: *[insert signature]*

in the capacity of *[insert title or other appropriate designation]*

in the presence of *[insert identification of official witness]*

For and on behalf of the Supplier

Signed: *[insert signature of authorized representative(s) of the Supplier]*

in the capacity of *[insert title or other appropriate designation]*

in the presence of *[insert identification of official witness]*

2. Performance Security

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

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

RFB NO.: and title: *[insert no. and title of bidding process]*

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

Beneficiary: *[insert complete name of Purchaser]*

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

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

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

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

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

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

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

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

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