



**KENYA ORDNANCE FACTORIES CORPORATION (KOFC)**

**P.O BOX 6634 – 30100**

**ELDORET**

**OPEN TENDER DOCUMENT**

**FOR**

**FRAME WORK AGREEMENT FOR SUPPLY OF FRESH  
HORTICULTURAL MATERIALS (CABBAGES, POTATTOES,  
CARROTS, KALES, SPINACH AND ONIONS**

**FIRM'S DETAILS**

**NAME.....**

**P O BOX .....**

**TEL NO:.....**

**EMAIL ADDRESS.....**

**SIGNATURE: .....**

**STAMP .....**

TABLE OF CONTENTS

	Page
SECTION I	
INVITATION TO TENDER.....	3
SECTION II	
INSTRUCTIONS TO TENDERERS.....	4
APPENDIX TO INSTRUCTIONS TO TENDERERS.....	18
SECTION III	
GENERAL CONDITIONS OF CONTRACT.....	22
SECTION IV	
SPECIAL CONDITIONS OF CONTRACT.....	28
SECTION V	
TECHNICAL SPECIFICATIONS.....	29
SECTION VI	
STANDARD FORMS.....	30

SECTION I – INVITATION TO TENDER

DATE **01** September 2020

TENDER REF NO.: KOFCC/OT/FPF/001/20/21

**TENDER NAME: FRAME WORK AGREEMENT FOR SUPPLY OF FRESH HORTICULTURAL MATERIALS (CABBAGES, POTATTOES, CARROTS, KALES, SPINACH, ONIONS).**

1.1 The Kenya Ordnance Factories Corporation (KOFCC) invites sealed bids from eligible candidates for supply of Fresh Horticultural Materials (Cabbages, Potatoes, Carrots, Kales, Spinach, Onions) to Kenya Defence Forces Gilgil Food Processing Factory.

1.1 Qualified candidates may obtain further information from the office of **The Procurement Office KOFCC P.O BOX 6634-30100 Eldoret TEL +254 722 209 639 along Eldoret - Kitale road during normal working hours from 0800hrs to 1700hrs.**

1.2 Complete *Frame Work Agreement* tender documents are to be enclosed in plain sealed envelopes marked with **KOFCC/OT/FPF/001/20/21** to be deposited in the Tender Box at KOFCC Eldoret Main gate so as to be received on or before **Thursday 17 September 2020.**

1.3 Prices quoted should be **inclusive** of VAT, must be in Kenya Shillings and shall remain valid for **90 days** from the closing date of the tender.

1.5 Tenders will be opened immediately thereafter in the presence of the Candidates or their representatives who choose to attend at **KOFCC Conference Room at 10:00 am.**

1.6 Please read through this tender document carefully, fill and return both the Original and Duplicate copies of the tender together with all supporting documents.

1.7 Bidders who download the tender documents from website are advised to forward their particulars immediately to [procurementlmtf@kofcpr.co.ke](mailto:procurementlmtf@kofcpr.co.ke) for records and any further clarifications or addenda.



**MN MWANGI**

Colonel

for Managing Director

Contents

<u>1.2</u>	<u>Identified and invited eligible candidates may obtain further information from the office of:</u>	<u>3</u>
<u>SECTION II - INSTRUCTIONS TO TENDERERS</u>		
<u>2.1</u>	<u>Eligible tenderers</u>	<u>5</u>
<u>2.2</u>	<u>Cost of tendering</u>	<u>5</u>
<u>2.3</u>	<u>Contents of tender documents</u>	<u>6</u>
<u>2.4</u>	<u>Clarification of Documents</u>	<u>6</u>
<u>2.5</u>	<u>Amendment of documents</u>	<u>7</u>
<u>2.6</u>	<u>Language of tender</u>	<u>6</u>
<u>2.7</u>	<u>Documents Comprising the Tender</u>	<u>7</u>
<u>2.8</u>	<u>Mandatory Tender Documents</u>	<u>7</u>
<u>2.9</u>	<u>Form of Tender</u>	<u>7</u>
<u>2.10</u>	<u>Tender Prices</u>	<u>7</u>
<u>2.11</u>	<u>Tender Currencies</u>	<u>8</u>
<u>2.12</u>	<u>Tenderers Eligibility and Qualifications</u>	<u>8</u>
<u>2.13</u>	<u>Tender Security</u>	<u>8</u>
<u>2.14</u>	<u>Validity of Tenders</u>	<u>9</u>
<u>2.15</u>	<u>Format and Signing of Tender</u>	<u>9</u>
<u>2.16</u>	<u>Sealing and Marking of Tenders</u>	<u>9</u>
<u>2.17</u>	<u>Deadline for Submission of Tenders</u>	<u>10</u>
<u>2.18</u>	<u>Modification and withdrawal of tenders</u>	<u>10</u>
<u>2.19</u>	<u>Opening of Tenders</u>	<u>11</u>
<u>2.20</u>	<u>Clarification of tenders</u>	<u>11</u>
<u>2.21</u>	<u>Preliminary Examination and Responsiveness</u>	<u>11</u>
<u>2.22</u>	<u>Conversion to other currencies</u>	<u>12</u>
<u>2.23</u>	<u>Evaluation and comparison of tenders</u>	<u>12</u>
<u>2.24</u>	<u>Contacting the KOFC</u>	<u>13</u>
<u>2.25</u>	<u>Award of Contract</u>	<u>13</u>
<u>2.26</u>	<u>Notification of award</u>	<u>14</u>
<u>2.27</u>	<u>Signing of Contract</u>	<u>14</u>
<u>2.28</u>	<u>Performance Security</u>	<u>15</u>
<u>2.29</u>	<u>Corrupt or Fraudulent Practices</u>	<u>15</u>

## SECTION II - INSTRUCTIONS TO TENDERERS

### **2.1 Eligible tenderers**

2.1.1. This Invitation to tender is open to all tenderers eligible as described in the instructions to tenderers. Successful tenderers shall provide the services for the stipulated duration from the **date** of commencement (hereinafter referred to as the term) specified in the tender documents.

2.1.2. The KOFC's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender unless where specially allowed under section 33 of the Act.

2.1.3. Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the KOFC to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the services under this Invitation for tenders.

2.1.4. Tenderers involved in corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

### **2.2 Cost of tendering**

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

2.2.2 The price to be charged for the tender document shall not exceed Ksh 1000/= **(Not Applicable to this tender)**

2.2.3 The KOFC shall allow the tenderer to review the tender document free of charge before purchase.

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

2.1.5. The tender document comprises of the documents listed below and addenda issued in accordance with clause 6 of these instructions to tenders

- i) Instructions to tenderers
- ii) General Conditions of Contract
- iii) Special Conditions of Contract
- iv) Schedule of Requirements
- v) Details of service
- vi) Form of tender
- vii) Price schedules
- viii) Contract form
- ix) Confidential business questionnaire form
- x) Tender security form

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

### **2.4 Clarification of Documents**

2.1.6. A prospective candidate making inquiries of the tender document may notify the KOFC in writing or by post, or email at the entity's address indicated in the Invitation for tenders. *The KOFC will respond in writing to any request for clarification of the tender documents, which it receives no later than seven (7) days prior to the deadline for the submission of tenders, prescribed by the KOFC.* Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers who have received the tender documents.

2.1.7. The KOFC shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.

### **2.6 Language of tender**

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

## **2.5 Amendment of documents**

2.1.8. At any time prior to the deadline for submission of tenders, the KOF.C, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by issuing an addendum.

2.1.9. All prospective tenderers who have obtained the tender documents will be notified of the amendment by post, fax or email and such amendment will be binding on them.

2.5.3. In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, the KOF.C, at its discretion, may extend the deadline for the submission of tenders.

## **2.7 Documents Comprising the Tender**

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

- (a) A Tender Form and a Price Schedule completed in accordance with Section VI, Part (i) and (ii) below.
- (b) Documentary evidence established in accordance with Clause 2.12 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
- (c) Tender security furnished in accordance with Clause 2.13
- (d) Confidential business questionnaire

## **2.8 Mandatory Tender Documents**

2.8.1 Tenderers are hereby requested to fill and attach the documents as provided in the Appendix to Instruction to tenderers.

## **2.9 Form of Tender**

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

## **2.10 Tender Prices**

2.10.1 The tenderer shall indicate on the Price schedule the unit prices where applicable and total tender prices of the goods it proposes to provide under the contract.

2.10.2 Prices indicated on the Price Schedule shall be the cost of the goods quoted including all customs duties and any other taxes payable.

2.10.3 Prices quoted by the tenderer shall remain fixed during the term of the contract unless otherwise agreed by the parties. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.23.

2.10.4 Contract price variations shall not be allowed for contracts not exceeding one year (12 months).

2.10.5 Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price.

2.10.6 Price variation requests shall be processed by the KOFC within 30 days of receiving the request.

## **2.11 Tender Currencies**

2.11.1 Prices shall be quoted in Kenya Shillings unless otherwise specified in the appendix to Instructions to Tenderers.

## **2.12 Tenderers Eligibility and Qualifications**

2.12.1 Pursuant to Clause 2.1 the tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.

2.12.2 The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall establish to the KOFC's satisfaction that the tenderer has the financial and technical capability necessary to perform the contract.

## **2.13 Tender Security**

2.13.1 The tenderer shall furnish, as part of its tender, a tender security for the amount and form specified in the Invitation to Tender.

2.13.2 The tender security shall be in the amount not exceeding 2 per cent of the tender price.

2.13.3 The tender security is required to protect the KOFC against the risk of tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 2.13.7

2.13.4 The tender security shall be denominated in **Kenya Shillings** or in another freely convertible currency and shall be in the form of either:

- a) A Bank Guarantee.
- b) Cash.
- c) Such insurance guarantee approved by the Authority.
- d) Letter of credit.

2.13.5 Any tender not secured in accordance with paragraph 2.13.1 and 2.13.3 will be rejected by the KOFC as non-responsive, pursuant to paragraph 2.21.

2.13.6 Unsuccessful tenderer's security will be discharged or returned as promptly as possible but, not later than thirty (30) days after the expiration of the period of tender validity prescribed by the KOFC.



2.13.7 The successful tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 2.27, and furnishing the performance security, pursuant to paragraph 2.28.

2.13.8 The tender security may be forfeited:

- (a) If a tenderer **withdraws** its tender **during** the period of tender validity specified by the KOFC on the Tender Form; or
- (b) In the case of a successful tenderer, if the tenderer fails:
  - (i) To sign the contract in accordance with paragraph 2.27.
  - (ii) To furnish performance security in accordance with paragraph 2.28.
  - (c) If the tenderer rejects, correction of an error in the tender.

## 2.14 Validity of Tenders

2.14.1 Tenders shall remain valid for **90 days** or as specified in the invitation to tender after date of tender opening prescribed by the KOFC, pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the KOFC as non-responsive.

2.14.2 In exceptional circumstances, the KOFC may solicit the tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 2.13 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

## 2.15 Format and Signing of Tender

2.15.1 The tenderer shall prepare two copies of the tender, clearly / marking each "**ORIGINAL TENDER**" and "**COPY OF TENDER**," as appropriate. In the event of any discrepancy between them, the original shall govern.

2.15.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. All pages of the tender, except for unamended printed literature, shall be initialed by the person or persons signing the tender.

2.15.3 The tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

## 2.16 Sealing and Marking of Tenders

2.16.1 The tenderer shall seal the original and each copy of the tender in separate envelopes, duly marking the envelopes as "**ORIGINAL**" and "**COPY**." The

envelopes shall then be sealed in an outer envelope. The inner and outer envelopes shall:

(a) Be addressed to the KOFC at the address given in the invitation to tender.  
(b) Bear tender number and name in the invitation to tender and the words: **“DO NOT OPEN BEFORE Thursday 17 September 2020 at 1000hrs.”**

2.16.2 The inner envelopes shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared “late”.

2.16.3 If the outer envelope is not sealed and marked as required by paragraph 2.16.1, the KOFC will assume no responsibility for the tender’s misplacement or premature opening.

## **2.17 Deadline for Submission of Tenders**

2.17.1 Tenders must be received by the KOFC at the address specified under paragraph 2.16.1 no later than **Thursday 17 September 2020 at 1000hrs (10 am)**.

2.17.2 The KOFC may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 6, in which case all rights and obligations of the KOFC and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

2.17.3 Bulky tenders which will not fit in the tender box shall be received by the KOFC as provided for in the appendix.

## **2.18 Modification and withdrawal of tenders**

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

2.18.2 The Tenderer’s modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 2.16. A withdrawal notice may also be sent by cable, but followed by a signed confirmation copy, postmarked NOT LATER THAN the deadline for submission of tenders.

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

2.18.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the Tenderer’s forfeiture of its tender security, pursuant to paragraph 2.13.8.

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

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

## **2.19 Opening of Tenders**

2.19.1 The KOFC will open all tenders in the presence of tenderers' representatives who choose to attend on **Thursday 17 September 2020 at 1000hrs (10 am)**, and in the location specified in the invitation to tender. The tenderers' representatives who are present shall sign a register evidencing their attendance.

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

2.19.3 The KOFC will prepare minutes of the tender opening which will be submitted to the tenderers that signed the tender opening register and will have made the request.

## **2.20 Clarification of tenders**

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

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

## **2.21 Preliminary Examination and Responsiveness**

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

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

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

2.21.4 Prior to the detailed evaluation, pursuant to paragraph 2.23, the KOFC will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one which conforms to all the terms and conditions of the tender documents without material deviations. The KOFC's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

2.21.5 If a tender is not substantially responsive, it will be rejected by the KOFC and may not subsequently be made responsive by the tenderer by correction of the non-conformity.

## **2.22 Conversion to other currencies**

2.22.1 Where other currencies are used, the KOFC will convert those currencies to Kenya shillings using the selling exchange rate on the date of tender closing provided by the Central Bank of Kenya.

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

2.23.1 The KOFC will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.21.

2.23.2 The comparison shall be of the price including all costs as well as duties and taxes payable on all the materials to be used in the provision of the services.

2.23.3 The KOFC's evaluation of a tender will take into account, in addition to the tender price, the following factors, in the manner and to the extent indicated in paragraph 2.23.4 and in the technical specifications:

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

2.23.4 Pursuant to paragraph 2.23.3 the following evaluation methods will be applied:

### **(a) Operational Plan.**

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

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

Tenderers shall state their tender price for the payment on a schedule outlined in the special conditions of contract. *Tenders will be evaluated on the basis of this base price.* Tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in tender price they wish to offer

for such alternative payment schedule. The KOFC may consider the alternative payment schedule offered by the selected tenderer.

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

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

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

## **2.24 Contacting the KOFC**

2.24.1 Subject to paragraph 2.19, no tenderer shall contact the KOFC on any matter relating to its tender, from the time of the tender opening to the time the contract is awarded.

2.24.2 Any effort by a tenderer to influence the KOFC in its decisions on tender evaluation tender comparison or contract award may result in the rejection of the tenderer's tender.

## **2.25 Award of Contract**

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

2.25.1 The KOFC will determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.

2.25.2 The determination will take into account the tenderer's financial and technical capabilities. It will be based upon an examination of the documentary evidence of the tenderer's qualifications submitted by the tenderer, pursuant to paragraph 2.12, as well as such other information as the KOFC deems necessary and appropriate.

2.25.3 An affirmative determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the Tenderer's tender, in which event the KOFC will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

(b) **Award Criteria**

2.25.3 Subject to paragraph 2.29 the KOFC will award the contract to the successful tenderer whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

2.25.4 The KOFC reserves the right to accept or reject any tender and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the KOFC's action. If the KOFC determines that none of the tenderers is responsive; the KOFC shall notify each tenderer who submitted a tender.

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

**2.26 Notification of award**

2.26.1 Prior to the expiration of the period of tender validity, the KOFC will notify the successful tenderer in writing that its tender has been accepted.

2.26.2 The notification of award will signify the formation of the Contract subject to the signing of the contract between the tenderer and the KOFC pursuant to clause 2.27. Simultaneously the other tenderers shall be notified that their tenders have not been successful.

2.26.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 2.28, the KOFC will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.13.

**2.27 Signing of Contract**

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

2.27.2 Within fourteen (14) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the KOFC.

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

## **2.28 Performance Security**

2.28.1 Within thirty (30) days of the receipt of notification of award from the KOFC, the successful tenderer shall furnish the performance security in accordance with the Conditions of Contract in a form acceptable to the KOFC.

2.28.2 Failure of the successful tenderer to comply with the requirement of paragraph 2.27 or paragraph 2.28.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the KOFC may make the award to the next lowest evaluated or call for new tenders.

## **2.29 Corrupt or Fraudulent Practices**

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

2.29.2 The KOFC will reject a proposal for award if it determines that the tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.

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

## APPENDIX TO INSTRUCTIONS TO TENDERERS

The following information regarding the particulars of the tender shall complement, supplement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provision of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers.

### **1. Pursuant to Paragraph 2.1, 2.2, 2.13, 2.14 – The Kenya Ordinance Factories invites sealed tenders from identified eligible candidates for Supply of FRESH HORTICULTURAL RAW MATERIALS (CABBAGES, POTATOES, CARROTS, KALES, SPINACH, and ONIONS)**

#### **2. Pursuant to Paragraph 2.3.- Tender Document**

The tender document comprises the documents listed below and addenda issued in accordance with these Instructions to Tenderers

- a. Invitation for Tenders
- b. Instructions to tenderers
- c. Appendix to Instructions to Tenderers
- d. General Conditions of Contract
- e. Special Conditions of Contract
- f. Technical Specifications
- g. Tender Form and Price Schedules

#### **3. Pursuant to Paragraph 2.4 - Clarification of Documents**

Replies to any clarifications sought by the tenderer will be done in writing within a reasonable time after receiving the request to enable the tenderer to make timely submission of its tender.

#### **4. Pursuant to Paragraph 2.10 and 2.14 – Price and Validity of Tenders**

- a) The validity period of the tender shall be **90 days** from the date of opening of the tender. A tender valid for a shorter period shall be rejected as non – responsive.
- b) Prices quoted shall be **per unit** and inclusive of taxes.
- c) Prices should include all costs for **delivery and discounts where granted**.

#### **5. Pursuant to Paragraph 2.13 -Tender Security**

Tenderers **SHALL NOT** be required to submit tender security in order to be considered responsive.



**6. Pursuant to Paragraph 2.17, 2.19, 2.21 -Tender Opening**

Completed tender documents are to be enclosed in plain sealed envelopes marked with **TENDER NO. KOFC/OT/FPF/001/20-21** and be deposited in the Tender Box situated at **Kenya Ordnance Factories Corporation Main Gate located along Eldoret - Kitale road** so as to be received on or before **Thursday 17 September 2020 at 1000hrs (10.00 am)**. East Africa Time on the address given below: -

The Managing Director  
Kenya Ordnance Factories  
P O. BOX 6634 30100 ELDORET  
TEL NO.0722 209 639

**7. Pursuant to Paragraph 2.7, 2.12 – Documentation, Tenderers and Goods Eligibility**

**(a) Business Registration**

Tenderers shall be required to submit documentary evidence of registration or certificate of Incorporation in the country of operation.

**8. Pursuant to Paragraph 2.23 - Evaluation and Comparison of Tenders**

- (a) The KOFC will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.23.
- (b) The Comparison shall be of the **price for delivery and discounts where granted all inclusive**.
- (c) Tenders will be evaluated based on the following stages.

a. PRELIMINARY EVALUATION -

The participating tenderers shall submit copies of the following **Mandatory documents** along with the Original and Copy of tender document properly **bound, paginated and initialed in the correct sequence** on or before the closing date.

i.	Copy of Certificate of Incorporation / Registration
ii.	Copy of Valid Tax Compliance Certificate.
iii.	Confidential Questionnaire dully filled, signed and stamped
iv.	Tender dully filled, signed and stamped

**NOTE:**

**FAILURE TO SUBMIT ANY OF THE ABOVE DOCUMENTS SHALL LEAD TO AUTOMATIC DISQUALIFICATION FROM FURTHER EVALUATION.**

b. TECHNICAL EVALUATION

The criteria for the Technical evaluation will be as follows: -

**The minimum qualifying criteria shall be 70% of the marks in the technical evaluation**

**The marks shall be distributed as follows:**

Item	Parameter	Scores
1	Delivery Period	40
3	Conformity to Specifications	60

c. **Delivery - 40 points**

The parameter will be weighted on a possible 40 points as follows. The evaluation will be based on the delivery period quoted and the shortest delivery period among the responsive firms will earn the maximum 40 points and other quoted prices earn points based on the following formula: -

$$\frac{\text{Short Delivery Period} \times 40}{\text{Quoted Delivery Period}}$$

d. **Conformity to Specifications -60 points**

The parameter will be weighted on a possible 60 points and points will be awarded as follows:-

- Fully conform with the specification - 40 points
- Minor deviation from specification - 20 points

**Total Weighted points - 100 Points**

### C. FINANCIAL EVALUATION

Only those who meet all the criteria). This shall be based on the prices quoted and will attract a further 40 points with lowest quote among the responsive firms earning the maximum 40 points, other quoted prices will earn points based on the following formula:

$$\frac{\text{Lowest Price} \times 40}{\text{Quoted Price}}$$

#### NOTE

Due diligence shall be conducted to the lowest evaluated responsive firm by an appointed team of officers to confirm and verify the qualifications of the tenderer.

#### 1. Pursuant to Paragraph 2.25 – Award of Contract

The points earned in the evaluations shall be added up and the tenderer scoring the highest marks and having complied with all stipulated tender conditions will be deemed the successful tenderer.

#### 2. Pursuant to Paragraph 2.28 – Performance Security

Successful tenderer shall (if considered necessary) be required to execute a performance security in a manner to be prescribed and communicated during notification of tender results.

The performance Security bond will be a condition for signing of a contract agreement and will be **forfeited** in the event of a **non-performance** during the contract period.

#### 3. References

Candidates will be required to provide a **list of credible References** (clients).

#### 4. Document Verification

The documents referred to above shall be verified with the issuing authorities (if and when need arises) to ascertain authenticity.

#### 5. Determination Of Responsiveness

Completion of tender documents in all respects and properly signed and stamped. Incomplete documents shall be considered **not responsive**.

#### 6. Past/Previous Performance

In the case of Candidates who have had occasion to transact business with the Ministry of State for Defense, their performance during the respective contract period shall be brought into focus.

#### 7. Rejection of all Tenders

The KOFC reserves the right to reject all tenders at any time prior to acceptance and is not bound to give reasons.

## SECTION III - GENERAL CONDITIONS OF CONTRACT

### TABLE OF CONTENTS

3.1	Definitions
3.2	Application
3.3	Standards
3.4	Use of contract documents and information
3.5	Patent Rights
3.6	Performance security
3.7	Inspections and tests
3.8	Payment
3.9	Prices
3.10	Assignment
3.11	Termination for default
3.12	Termination for insolvency
3.13	Termination for convenience
3.14	Resolution of disputes
3.15	Governing language
3.16	Force majeure
3.17	Applicable law
3.18	Notices

## SECTION III - GENERAL CONDITIONS OF CONTRACT

### 3.1 Definitions

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

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

### 3.2 Application

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

### 3.3 Standards

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

### 3.5 Patent Right's

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

### 3.6 Performance Security

Within thirty (30) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the KOFC the performance security **where applicable** in the amount specified in Special Conditions of Contract.

3.6.2 The proceeds of the performance security shall be payable to the KOFC as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.

3.6.3 The performance security shall be denominated in the currency of the Contract or in a freely convertible currency acceptable to the KOFC and shall be in the form of either:

- a) Cash.
- b) A bank guarantee.
- c) Such insurance guarantee approved by the Authority.
- d) Letter of credit.

3.6.4 The performance security will be discharged by the KOFC and returned to the candidate not later than thirty (30) days following the date of completion of the tenderer's performance of obligations under the contract, including any warranty obligations under the contract.

### **3.7 Inspections and Tests**

3.7.1 The KOFC or its representative shall have the right to inspect and/or to test the goods to confirm their conformity to the Contract specifications. The KOFC shall notify the tenderer in writing, in a timely manner, of the identity of any representatives retained for these purposes.

3.7.2 The inspections and tests may be conducted on the premises of the tenderer or its subcontractor(s). If conducted on the premises of the tenderer or its subcontractor(s), all reasonable facilities and assistance, including access to the farm and production data, shall be furnished to the inspectors at no charge to the KOFC.

3.7.3 Should any inspected or tested goods fail to conform to the Specifications, the KOFC may reject the goods, and the tenderer shall either replace the rejected goods.

3.7.4 Nothing in paragraph 3.7 shall in any way release the tenderer from any warranty or other obligations under this Contract.

### **3.8 Payment**

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

### **3.9 Prices**

Prices charged by the contractor for goods supplied under the Contract shall not, with the exception of any Price adjustments authorized in SCC, vary from the prices by the tenderer in its tender or in the KOFC's request for tender validity extension as the case may be. No variation in or modification to the

terms of the contract shall be made except by written amendment signed by both parties.

### **3.10 Assignment**

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

### **3.11 Termination for Default**

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

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

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

### **3.12 Termination of insolvency**

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

### **3.13 Termination for convenience**

3.13.1 The KOFC by written notice sent to the contractor may terminate the contract in whole or in part, at any time for its convenience. The notice of termination shall specify that the termination is for the KOFC convenience, the extent to which performance of the contractor of the contract is terminated and the date on which such termination becomes effective.

3.13.2 For the remaining part of the contract after termination the KOFC may elect to cancel the services and pay to the contractor an agreed amount for partially completed services.

### **3.14 Resolution of disputes**

The KOFC and the contractor shall make every effort to resolve amicably by direct informal negotiations any disagreement or dispute arising between them under or in connection with the contract.

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

### **3.15 Governing Language**

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

### **3.16 Force Majeure**

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

### **3.17 Applicable Law.**

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

### **3.18 Notices**

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

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



## **SECTION IV - SPECIAL CONDITIONS OF CONTRACT**

Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, between the General Conditions of Contract and the Special Conditions of Contract, the provisions of the Special Conditions of Contract herein shall prevail over these in the General Conditions of Contract.

Special conditions of contract as relates to the general conditions of contract.

### **1. Pursuant to paragraph 3.6 – Performance Security**

If considered necessary, the successful tenderer shall furnish to the KOFC the performance security in amount specified in letter of notification.

### **2. Pursuant to paragraph 3.9, 3.13 – Prices**

Tenderers should note that prices quoted **MUST** be maintained throughout the contract period. The tenderer shall be responsible for taxes and duties incurred in their country.

### **3. Pursuant to paragraph 3.8 – Payment**

Tenderers should note that payments shall be made within **90 days** from the date of full delivery of goods and upon submission of all payment documents

### **4. Pursuant to paragraph 3.11 – Termination for default**

Tenderers should note that failure to deliver within a specified contract period shall institute one warning letter; failure to improve services shall thereafter lead to termination of the contract.

### **5. Pursuant to paragraph 3.14 – Resolution of Disputes**

Tenderers should note that formal mechanism for resolution of dispute shall be arbitration. The arbitration shall be held in Nairobi, Kenya in accordance with the Kenya Arbitration Act by one or more arbitration appointed in accordance with the said Act.

## SECTION V – DESCRIPTION OF GOODS

1. These specifications describe the basic requirement for the Supply of **FRESH HORTICULTURAL RAW MATERIALS (CABBAGES, POTATOES, CARROTS, KALES, SPINACH, and ONIONS)**
2. All Tenderers will have access to information regarding the **FRESH HORTICULTURAL MATERIALS (CABBAGES, POTATOES, CARROTS, KALES, SPINACH, AND ONIONS)** to be supplied.
3. The following are detailed specifications for this tender.

## TECHNICAL SPECIFICATIONS

### (i) GENERAL SPECIFICATION

**FRESH HORTICULTURAL MATERIALS (CABBAGES, POTATOES, CARROTS, KALES, SPINACH, and ONIONS)**

<b>CROP</b>	<b>VARIETIES</b>	<b>FERTILIZERS</b>	<b>MANURE</b>
<b>Potatoes</b>	Tigoni, Shangi Karibukenya. sherehekea. Kenya mpya, purple gold	No restriction	All except from, piggery, cats, dogs & human waste
<b>Onions</b>	Redpinnoy,jambaF1, Bombayred & redcreole	No restriction	All except from, piggery, cats, dogs & human waste
<b>Cabbages</b>	Gloria F1, FanakaF1, Pretoria	No restriction	All except from, piggery, cats, dogs & human waste
<b>Carrots</b>	Nantes, Superkuroda & chantenay	No restriction	All except from, piggery, cats, dogs & human waste
<b>Kales</b>	Collard, thousand headed	No restriction	All except from, piggery, cats, dogs & human waste
<b>Spinach</b>	Swisschard, foodhook giant	No restriction	All except from, piggery, cats, dogs & human waste

**SCHEDULE OF FERTILIZERS, PESTICIDES, HERBICIDES AND OTHER AGROCHEMICALS USED.**

S/NO	DATE	ITEM	REMARKS

**THE CONTRACT MATERIAL PRODUCTION RECORD TO BE PROVIDED AS PER THE BELOW TABLE.**

Item/Crop	
Acreage	
Town or village	
Name of farm and L/R No.	
Source of water	
Type of land ownership	

**(ii) DELIVERY PERIOD**

The desired delivery period for the **FRESH HORTICULTURAL MATERIALS (CABBAGES, POTATOES, CARROTS, KALES, SPINACH, and ONIONS)** shall be **Three (3)** working days after order acceptance or as otherwise stipulated.

SECTION VI - TENDER FORM AND PRICE SCHEDULES

(i) Form of Tender: TENDER NO. KOFC/OT/FPPF/001/20-21

The Managing Director  
Kenya Ordinance Factories  
P.O. BOX 6634 30100 ELDORET  
TEL NO.0722 209 639

Gentlemen and/or Ladies:

1. Having examined the tender documents TENDER NO. KOFC/OT/FPPF/001/20-21 the receipt of which is hereby duly acknowledged, we, the undersigned, offers to supply **FRESH HORTICULTURAL RAW MATERIALS (CABBAGES, POTATOES, CARROTS, KALES, SPINACH, and ONIONS)**, in conformity with the said tender documents at a total price of Kenya Shillings ..... for the whole order.

.....  
(*Total tender amount in words and figures*)  
or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

2. We undertake, if our Tender is accepted to make delivery the item(s) within a period of .....**days** after order confirmation.
3. We agree to abide by this Tender for a period of .....**days** from the date fixed for tender opening of the Instructions to **Framework agreement**, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
4. Until a formal Contract is prepared and executed, this **Frame work agreement**, together with your written acceptance thereof and your notification of award, shall not constitute a binding Contract between us.
5. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

\_\_\_\_\_  
[Signature and stamp] \_\_\_\_\_ [In the capacity of]

Duly authorized to sign tender for and on behalf of \_\_\_\_\_

**(ii) PRICE SCHEDULE**

Tenderers are invited for the Supply of Fresh Horticultural Materials (Cabbages, Potatoes, Carrots, Kales, Spinach, and Onions).

S/NO.	DESCRIPTION	UNIT OF ISSUE	UNIT COST	REMARKS
1.	Potatoes	KG		
2.	Onions	KG		
3.	Cabbages	KG		
4.	Carrots	KG		
5.	Kales	KG		
6.	Spinach	KG		

Amount in words \* (Kenya Shillings)

.....  
.....

\* Price quoted must also be expressed in words.

**Declaration:**

“I/We certify that I/we have not made and will not make any payments to any Person which can be perceived as inducements to enable me/us win this tender”.

Tenderers Name ..... Date. ....

(Authorized Officer)

Company Stamp/Seal.....Signature.....

**(iii) CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM**

You are requested to give the particulars indicated in Part 1 and either Part 2(a), 2(b) or 2 (c) whichever applied to your type of business

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

**Part 1 – General:**

Business Name .....  
Location of business premises .....  
Plot No. .... Street/Road .....  
Postal Address ..... Tel No. .... E mail .....  
Nature of Business.....  
Registration Certificate No. ....  
Maximum value of business which you can handle at any one time – Kshs .....  
Name of your bankers ..... Branch.....

**Business P**

**Part 2 (a) – Sole Proprietor**

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

**Part 2 (b) Partnership**

Given details of partners as follows:

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

**Business P**

**Part 2 (c) – Registered Company**

Private or Public .....

State the nominal and issued capital of company-

Nominal Kenya shillings.....

Issued Kenya shillings .....

Given details of all directors as follows

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

Date ..... Signature of Candidate .....

- If a Kenya Citizen, indicate under “Citizenship Details” whether by Birth, Naturalization or registration.

**(Format to be used by the bank when issuing a bid bond)**

**iv) TENDER SECURITY FORM**

Whereas ..... [name of the tenderer]  
(hereinafter called "the tenderer") has submitted its tender dated ..... [date of  
submission of tender] for the supply, installation and commissioning of  
..... [name and/or description of the equipment]  
(hereinafter called "the Tender") .....  
KNOW ALL PEOPLE by these presents that WE .....  
..... of ..... having our registered  
office at ..... (Hereinafter called "the Bank"), are bound unto  
..... [name of KOFCC] (Hereinafter called "the KOFCC") in the sum of  
..... for which payment well and truly to be made to the  
said KOFCC, the Bank binds itself, its successors, and assigns by these presents.  
Sealed with the Common Seal of the said Bank this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_ 20 \_\_\_\_\_

THE CONDITIONS of this obligation are:-

1. If the tenderer withdraws its Tender during the period of tender validity specified by the tenderer on the Tender Form; or
2. If the tenderer, having been notified of the acceptance of its Tender by the KOFCC during the period of tender validity:
  - (a) fails or refuses to execute the Contract Form, if required; or
  - (b) fails or refuses to furnish the performance security in accordance with the Instructions to tenderers;

We undertake to pay to the KOFCC up to the above amount upon receipt of its first written demand, without the KOFCC having to substantiate its demand, provided that in its demand the KOFCC will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

This tender guarantee will remain in force up to and including thirty (30) days after the period of tender validity, and any demand in respect thereof should reach the Bank not later than the above date.

\_\_\_\_\_  
[Signature of the bank]

(Amend accordingly if provided by Insurance Company)

**(v) REFERENCE LIST**

Tenderers to list here below names of references in form of Institutions (Public or private)

S/NO	NAME AND LOCATION OF INSTITUTION	TEL CONTACT	CONTACT PERSON
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			