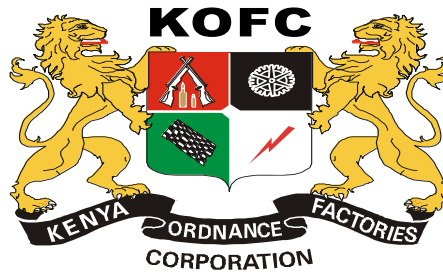


TENDER NO: KOFC/OT/GEN/013/2020/2021



KENYA ORDNANCE FACTORIES CORPORATION

P.O BOX 6634 – 30100

ELDORET

OPEN TENDER DOCUMENT

FOR

SUPPLY OF ASSORTED PLASTIC WATER BOTTLES AND CAPS

TENDERER DETAILS

NAME.....

P O BOX

TEL NO:

EMAIL ADDRESS.....

SIGNATURE:

DATE.....

STAMP.....

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SECTION II - INSTRUCTIONS TO TENDERERS

2.1 Eligible Tenderers

- 2.1.1 This Invitation for Tenders is open to all tenderers eligible as described in the Invitation to Tender. Successful tenderers shall complete the supply of goods by the intended completion date specified in the Schedule of Requirements Section V.
- 2.1.2 KOFC's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.
- 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 KOFC to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods under this Invitation for tenders.
- 2.1.4 Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices.

2.2 Eligible Goods

- 2.2.1 All goods to be supplied under the contract shall have their origin in eligible source countries.
- 2.2.2 For purposes of this clause, "origin" means the place where the goods are mined, grown, or produced. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially-recognized product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 2.2.3 The origin of goods is distinct from the nationality of the tenderer.

2.3 Cost of Tendering

- 2.3.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and KOFC, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 2.3.2 The price to be charged for the tender document shall not exceed **Kshs1, 000/= (Not applicable to this tender)**.
- 2.3.3 All firms found capable of performing the contract satisfactorily in accordance to the set prequalification criteria shall be prequalified.

2.4. The Tender Document

2.4.1 The tender document comprises the documents listed below and addenda issued in accordance with clause 2.6 of these instructions to Tenderers

- a. Invitation to Tender
- b. Instructions to tenderers
- c. General Conditions of Contract
- d. Special Conditions of Contract
- e. Schedule of requirements
- f. Technical Specifications
- g. Tender Form and Price Schedules
- h. Tender Security Form
- i. Confidential Business Questionnaire

2.4.2 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 tenderers risk and may result in the rejection of its tender.

2.5 Clarification of Documents

2.5.1 A prospective tenderer requiring any clarification of the tender document may notify KOFC in writing or by post at the entity's address indicated in the Invitation to Tender. KOFC will respond in writing to any request for clarification of the tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of tenders, prescribed by 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 that have received the tender document.

2.5.2 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 Amendment of Documents

2.6.1 At any time prior to the deadline for submission of tenders, KOFC, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by amendment.

2.6.2 All prospective candidates that have received the tender documents will be notified of the amendment in writing or by post and will be binding on them. In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, KOFC, at its discretion, may extend the deadline for the submission of tenders.

2.7 Language of Tender

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

2.8 Documents Comprising of Tender

2.8.1 The tender prepared by the tenderers shall comprise the following components

- (a) A Tender Form and a Price Schedule completed in accordance with paragraph 2.9, 2.10 and 2.11 below
- (b) Documentary evidence established in accordance with paragraph 2.1.2 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
- (c) Documentary evidence established in accordance with paragraph 2.2.1 that the goods and ancillary services to be supplied by the tenderer are eligible goods and services and conform to the tender documents; and
- (d) Tender security furnished in accordance with paragraph 2.14.

2.9 Tender Forms

2.9.1 The tenderer shall complete the Tender Form and the appropriate Price Schedule furnished in the tender documents, indicating the goods to be supplied, a brief description of the goods, their country of origin, quantity, and prices.

2.10 Tender Prices

2.10.1 The tenderer shall indicate on the appropriate Price Schedule the unit prices and total tender price of the goods it proposes to supply under the contract

2.10.2 Prices indicated on the Price Schedule shall include all costs including taxes, insurance, delivery and offloading of goods to the premises of the entity.

2.10.3 Prices quoted by the tender shall be fixed during the Tender's performance of the contract and not subject to variation on any account. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.22

2.10.4 The validity period of the tender shall be **90 days** from the date of opening of the tender.

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 paragraph 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 eligibility to tender shall establish to KOFC's satisfaction that the tenderer, at the time of submission of its tender, is from an eligible source country as defined under paragraph 2.1

2.12.3 The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall be established to KOFC's satisfaction;

- (a) That, in the case of a tenderer offering to supply goods under the contract which the tenderer did not manufacture or otherwise produce, the tenderer has been duly authorized by the goods' Manufacturer or producer to supply the goods.
- (b) That the tenderer has the financial, technical, and production capability necessary to perform the contract;
- (c) That, in the case of a tenderer not doing business within Kenya, the tenderer is or will be (if awarded the contract) represented by an Agent in Kenya equipped, and able to carry out the Tenderer's maintenance, repair, and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.

2.13 Goods Eligibility and Conformity to Tender Documents

2.13.1 Pursuant to paragraph 2.2 of this section, the tenderer shall furnish, as part of its tender documents establishing the eligibility and conformity to the tender documents of all goods which the tenderer proposes to supply under the contract

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

2.13.3 The documentary evidence of conformity of the goods to the tender documents may be in the form of literature, drawings, and data, and shall consist of:

- (a) A detailed description of the essential technical and performance characteristic of the goods;
- (b) A list giving full particulars, including available source and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the goods for a period of one (1) year, following commencement of the use of the goods by KOFC; and

- (c) A clause-by-clause commentary on KOFC's Technical Specifications demonstrating substantial responsiveness of the goods and service to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.

2.13.4 For purposes of the documentary evidence to be furnished pursuant to paragraph 2.13.3(c) above, the tenderer shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by the Procurement entity in its Technical Specifications, are intended to be descriptive only and not restrictive. The tenderer may substitute alternative standards, brand names, and/or catalogue numbers in its tender, provided that it demonstrates to the Procurement entity's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

2.14 Tender Security

2.14.1 The tenderer shall furnish, as part of its tender, a tender security for the amount specified in the Appendix to Invitation to Tenderers.

2.14.2 The tender security shall be **Kshs. 500,000.00**.

2.14.3 The tender security is required to protect KOFC against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 2.14.7

2.14.4 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form of a bank guarantee or a bank draft issued by a reputable bank located in Kenya or abroad, or a guarantee issued by a reputable insurance company in the form provided in the tender documents or another form acceptable to KOFC and valid for thirty (30) days beyond the validity of the tender.

2.14.5 Any tender not secured in accordance with paragraph 2.14.1 and 2.14.3 will be rejected by KOFC as non responsive, pursuant to paragraph 2.22

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

2.14.7 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

2.14.8 The tender security may be forfeited:

- (a) If a tenderer withdraws its tender during the period of tender validity specified by 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

- or
(ii) To furnish performance security in accordance with paragraph 2.28

2.15 Validity of Tenders

- 2.15.1 Tenders shall remain valid for **90 days** or as specified in the Invitation to Tender after the date of tender opening prescribed by KOFC, pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the KOFC as non responsive.
- 2.15.2 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 2.14 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.

2.16 Format and Signing of Tender

- 2.16.1 KOFC 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.
- 2.16.2 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. The latter authorization shall be indicated by written power-of-attorney accompanying the tender. All pages of the tender, except for unamended printed literature, shall be initialed by the person or persons signing the tender.
- 2.16.3 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.

2.17 Sealing and Marking of Tenders

- 2.17.1 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.
- 2.17.2 The inner and outer envelopes shall:
- (a) Be addressed to KOFC at the address given in the Invitation to Tender:
 - (b) Bear, tender number and name in the Invitation for Tenders and the words, "**DO NOT OPEN BEFORE, WEDNESDAY 12 MAY 2021 at 1000 hrs (10am)**"
- 2.17.3 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".

2.17.4 If the outer envelope is not sealed and marked as required by paragraph 2.17.2, KOFC will assume no responsibility for the tender's misplacement or premature opening.

2.18 Deadline for Submission of Tenders

2.18.1 Tenders must be received by KOFC at the address specified under paragraph 2.17.2 no later than **WEDNESDAY 12 MAY 2021 at 1000hrs.**

2.18.2 KOFC may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 2.6, in which case all rights and obligations of KOFC and candidates previously subject to the deadline will therefore be subject to the deadline as extended

2.19 Modification and Withdrawal of Tenders

2.19.1 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 tenders, is received by the Procuring prior to the deadline prescribed for submission of tenders.

2.19.2 The Tenderer's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 2.17. A withdrawal notice may also be sent by cable, telex but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.

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

2.19.4 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 2.14.7

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

2.19.6 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.

2.20 Opening of Tenders

2.20.1 KOFC will open all tenders in the presence of tenderers' representatives who choose to attend, at **1000hrs on Wednesday 12 May 2021** and in the location specified in the Invitation to Tender. The tenderers' representatives who are present shall sign a register evidencing their attendance.

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

2.20.3 KOFC shall prepare minutes of the tender opening.

2.21 Clarification of Tenders

2.21.1 To assist in the examination, evaluation and comparison of tenders 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 of the tender shall be sought, offered, or permitted.

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

2.22 Preliminary Examination

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

2.22.2 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 forfeited. If there is a discrepancy between words and figures the amount in words will prevail

2.22.3 KOFC may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or effect the relative ranking of any tenderer.

2.22.4 Prior to the detailed evaluation, 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. KOFC's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

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

2.23 Conversion to Single Currency

2.23.1 Where other currencies are used, KOFC will convert these currencies to Kenya Shillings using the exchange rate on the date of tender closing provided by the Central Bank of Kenya.

2.24 Evaluation and Comparison of Tenders

2.24.1 KOFC will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.22

2.24.2 The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.

2.24.3 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.

2.25 Preference

2.25.1 Preference where allowed in the evaluation of tenders shall not exceed 15% of the evaluated price of tender.

2.26 Contacting KOFC

2.26.1 Subject to paragraph 2.21 no tenderer shall contact KOFC on any matter related to its tender, from the time of the tender opening to the time the contract is awarded.

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

2.27 Award of Contract

(a) Post-qualification

2.27.1 In the absence of pre-qualification, 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.

2.27.2 The determination will take into account the tenderer financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 2.12.3 as well as such other information as KOFC deems necessary and appropriate.

2.27.3 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 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

2.27.4 KOFC will award the contract to the successful tenderer(s) 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.

(c) KOFC's Right to Vary quantities

2.27.5 KOFC reserves the right at the time of contract award to increase or decrease the quantity of goods originally specified in the Schedule of requirements without any change in unit price or other terms and conditions

(d) KOFC's Right to Accept or Reject Any or All Tenders

2.27.6 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 KOFC's action

2.28 Notification of Award

2.28.1 Prior to the expiration of the period of tender validity, KOFC will notify the successful tenderer in writing that its tender has been accepted. Simultaneously, the other tenderers shall be notified that their tenders were not successful.

2.28.2 The notification of award will **NOT** constitute the formation of the Contract.

2.29 Signing of Contract

2.29.1 At the same time as KOFC notifies the successful tenderer that its tender has been accepted, KOFC will send the tenderer the Contract Form provided in the tender documents, incorporating all agreements between the parties.

2.29.2 The parties to the contract shall have it signed 14 days from the date of notification of contract award unless there is an administrative review request.

2.29.3 Within thirty (30) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to KOFC.

2.30 Performance Security

2.30.1 Within Thirty (30) days of the receipt of notification of award from KOFC, the successful tenderer shall furnish the performance security in accordance with the Conditions of Contract, in the Performance Security Form provided in the tender documents, or in another form acceptable to KOFC.

2.30.2 Failure of the successful tenderer to comply with the requirements of paragraph 2.27 or paragraph 2.28 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event KOFC may make the award to the next lowest evaluated Candidate or call for new tenders.

2.31 Corrupt or Fraudulent Practices

2.31.1 KOFC requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts when used in the present regulations, the following terms are defined as follows;

- (i) “Corrupt practice” means the offering, giving, receiving, or soliciting 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 of facts in order to influence a procurement process or the execution of a contract.

2.31.2 In which event KOFC may make the award to the next lowest evaluated Candidate or call for new tenders.

2.31.3 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.

2.31.4 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

a. PRELIMINARY EVALUATION

The participating tenderers **MUST** provide copies of the following documents. The documents to be submitted along with the tender documents on or before the closing date.

i.	Copy of Certificate of Incorporation / Registration
ii.	Copy of Valid Tax Compliance Certificate.
iii.	Copy of Valid Single Business Permit from County government
iv.	Original Tender Security of Kenya Shillings 500,000 in the form of Banker's Guarantee or Insurance Company Guarantee. Tender Security should be valid for a period of 90 days from date of opening.
v.	Evidence of physical registered office (Attached either lease agreement, title deed, electricity bill, water bill, rental payment receipt or Business Permit)
vi.	Audited financial statements for the last 3 years 2018,2019,2020
vii.	Confidential Questionnaire dully filled, signed and stamped
viii.	Form of 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

Tenderer **MUST** adhere to the Technical specifications below:

SER	ITEM DESCRIPTION	TECHNICAL SPECIFICATIONS	TENDERER'S CONFIRMATION (YES or NO)
1	1.5 Litre Blue Water Bottle and Cap - Long Neck	Polyethylene Terephthalate (PET)	
2	2 Litre Blue Water Bottle with Handle and Cap	Polyethylene Terephthalate (PET)	
3	3 Litre Blue Water Bottle with Handle and Cap	Polyethylene Terephthalate (PET)	
4	5 Litre Blue Water Bottle with Handle and Cap	PP Polyethylene Terephthalate (PET)	
5	10 Litre Blue Water Bottle and Cap	PP Polyethylene Terephthalate (PET)	

Responsiveness

A tenderer, who fails to comply with above conditions above, will be considered not responsive and not considered for further evaluation.

C. FINANCIAL EVALUATION.

The bids shall be compared and the tenderer with the lowest evaluated price shall be awarded the contract

SECTION III - GENERAL CONDITIONS OF CONTRACT

3.1 Definitions

3.1.1 In this Contract, the following terms shall be interpreted as indicated: -

- (a) “The Contract” means the agreement entered into between 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 all of the equipment, machinery, and/or other materials, which the tenderer is required to supply to KOFC under the Contract.
- (d) “KOFC” means the organization purchasing the Goods under this Contract.
- (e) “The Tenderer” means the individual or firm supplying the Goods under this Contract.

3.2 Application

3.2.1 These General Conditions shall apply in all Contracts made by KOFC for the procurement.

3.3 Country of Origin

3.3.1 For purposes of this clause, “Origin” means the place where the Goods were mined, grown or produced.

3.3.2 The origin of Goods and Services is distinct from the nationality of the tenderer

3.4 Standards

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

3.5 Use of Contract Documents and Information

3.5.1 The tenderer shall not, without KOFC’s prior written consent, disclose the Contract, or any provision therefore, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of KOFC in connection therewith, to any person other than a person employed by the tenderer in the performance of the Contract.

3.5.2 The tenderer shall not, without KOFC’s prior written consent, make use of any document or information enumerated in paragraph 3.5.1 above

3.5.3 Any document, other than the Contract itself, enumerated in paragraph 3.5.1 shall remain the property of KOFC and shall be returned (all copies) to KOFC on completion of the Tenderer’s performance under the Contract if so required by KOFC

3.6 Patent Rights

3.6.1 The tenderer shall indemnify KOFC against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof in KOFC's country

3.7 Performance Security

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

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

3.7.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to KOFC and shall be in the form of a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in Kenya or abroad, acceptable to KOFC, in the form provided in the tender documents.

3.7.4 The performance security will be discharged by KOFC and returned to the Candidate not later than thirty (30) days following the date of completion of the Tenderer's performance obligations under the Contract, including any warranty obligations, under the Contract

3.8 Inspection and Tests

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

3.8.2 The inspections and tests may be conducted in the premises of the tenderer or its subcontractor(s), at point of delivery, and/or at the Goods' final destination. If conducted on the premises of the tenderer or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to KOFC.

3.8.3 Should any inspected or tested goods fail to conform to the Specifications, KOFC may reject the goods, and the tenderer shall either replace the rejected goods or make alternations necessary to make specification requirements free of costs to KOFC.

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

3.8.5 Nothing in paragraph 3.8 shall in any way release the tenderer from any warranty or other obligations under this Contract.

3.9 Packing

3.9.1 The tenderer 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.

3.9.2 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.

3.10 Delivery and Documents

3.10.1 Delivery of the Goods shall be made by the tenderer in accordance with the terms specified by KOFC in its Schedule of Requirements and the Special Conditions of Contract.

3.11 Insurance

3.11.1 The Goods supplied under the Contract shall be fully insured against loss or damage incidental to manufacturer or acquisition, transportation, storage, and delivery in the manner specified in the Special conditions of contract.

3.12 Payment

3.12.1 The method and conditions of payment to be made to the tenderer under this Contract shall be specified in Special Conditions of Contract/Contract Agreement Document.

3.12.2 Payments shall be made promptly by KOFC as specified in the contract

3.13 Prices

3.13.1 Prices charged by the tenderer for goods delivered and services performed under the Contract shall not, with the exception of any price adjustments authorized in Special Conditions of Contract, vary from the prices by the tenderer in its tender.

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

3.13.3 Where contract price variation is allowed (after one year), the variation shall not exceed 15% of the original contract price.

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

3.14. Assignment

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

3.15 Subcontracts

3.15.1 The tenderer shall notify KOFC in writing of all subcontracts awarded under this Contract if not already specified in the tender. Such notification, in the original tender or later, shall not relieve the tenderer from any liability or obligation under the Contract

3.16 Termination for default

3.16.1 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 deliver any or all of the goods within the periods specified in the Contract, or within any extension thereof granted by KOFC

(b) If the tenderer fails to perform any other obligation(s) under the Contract

(c) If the tenderer, in the judgment of KOFC has engaged in corrupt or fraudulent practices in competing for or in executing the Contract

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

3.17 Liquidated Damages

3.17.1. If the tenderer fails to deliver any or all of the goods within the period(s) specified in the contract, KOFC shall, without prejudice to its other remedies under the contract, deduct from the contract prices liquidated damages sum equivalent to 0.5% of the delivered price of the delayed items up to a maximum deduction of 10% of the delayed goods. After this the tenderer may consider termination of the contract.

3.18 Resolution of Disputes

3.18.1 KOFC and the tenderer shall make every effort to resolve amicably by direct informal negotiation and disagreement or dispute arising between them under or in connection with the contract

3.18.2 If, after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute, either party may require adjudication in an agreed national or international forum, and/or international arbitration.

3.19 Language and Law

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

3.20 Force Majeure

3.20.1 The tenderer 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.

SECTION IV - SPECIAL CONDITIONS OF CONTRACT

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

4.2. Special conditions of contract as relates to the GCC

1. **a. Pursuant to Paragraph 2.8 – Completion of Tender Documents**

To qualify as responsive, tenderers will be required to: -

- i. Complete the tender documents in all respects,
- ii. Ensure the tender documents are properly signed, Stamped and initialed on every page by the authorized official of the bidding firm,
- iii. The confidential Business Questionnaire (S33) **MUST** be carefully completed, providing all tenderer details as required.
- iv. Incomplete documents shall be considered not responsive.

b. Tenderers Contacts / Address

Tenderers **MUST** carefully fill out their current contact which should include:

Physical Address

Postal Address

Telephone Number / Mobile Number

Email Address

c. Original Tender Documents

Tenderer **MUST** return the Original and a Copy tender document downloaded from the Corporation's Website.

d. Responsiveness

A tenderer, who fails to comply with conditions above, will be considered not responsive and not considered for further evaluation.

e. Disqualification

Tenderers who are thus established as not responsive shall be disqualified from further evaluation. Canvassing shall lead to total disqualification.

2. **Pursuant to Paragraph 2.10 Tender Prices:**

- a. Price (s) quoted **MUST** be inclusive of 16% VAT and shall remain **valid for** at least **90 days** from the closing date of the tender.
- b. Prices **MUST** be quoted in Price schedule at section V in this document.
- c. Prices **MUST** also be expressed in Figure/ words
- d. Prices **MUST** be inclusive of delivery, taxes, discounts costs and offloading to buyer premises.
- e. Tenderers should note that this is a **Term (One year) Contract** and therefore prices quoted **MUST** be maintained throughout the contract period (one year).

3. **Pursuant of Paragraph: 2.24 - Evaluation and Comparison of Tenders.**

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

4. **Pursuant to Paragraph 2.24.3** – 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

5. Pursuant to Paragraph 2.28: - Tender Results Notification:

The Successful and Unsuccessful tenderers **shall** be notified of the tender results prior to the expiration of tender validity period.

6. Pursuant of Paragraph Pursuant of Paragraph 3.4 – Standards

The Goods supplied under this Contract **MUST** conform to the standards mentioned in the Technical Specifications **on Page 16.**

7. Pursuant to paragraph 3.7 – 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 in amount specified in letter of notification.

8. Pursuant to paragraph 3.10, 3.13 – Tenderers should note that this is a Term (one year) Contract and therefore prices quoted **MUST** be maintained throughout the contract period (one year).

9. Pursuant to paragraph 3.10- Tenders should note that goods shall be delivered and off loaded to the premises (delivery points) of the entity by the tenderer.

10. Pursuant to Paragraph 3.12.2- Tenders 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.

11. Pursuant to paragraph 3.16 – Termination for default. Tenderers should note that failure to deliver with specified period shall institute one warning letter failure to improve services shall thereafter lead to termination of the contract.

12. Successful Tenderer. 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.

Tenderers should note that the KOFC may prior to award **confirm qualification, capacity, experience of the deemed successful tenderers to determine whether the firm is qualified to be awarded the contract** in accordance with Section 83 of the Public Procurement and Asset Disposal Act, 2015

13. Specialization / Line of Business: Tenderers **shall** be expected to participate in tenders within their specific line of specialization/ business.

14. Past/Previous Performance: In the case of Candidates who have had occasion to transact business with KOFC, their **performance** during the respective **contract period** shall be brought into **focus.**

15. References: Candidates will be required to provide a **list of References** (If any), in the form of **Institutions**, who can vouch for their **performance.** (In the attached annexed. A)

16. Signing Contract Agreements: **Successful candidates** (tenderers) **should** take note, from the onset that **Contract Agreements must** be signed with the Corporation's Accounting Officer before any **Orders** and **deliveries** are made. Ensure you get and retain your copy of the signed Contract Agreement.

16. 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 V - PRICE SCHEDULE

1. Tenderer is invited for the Supply of Assorted Plastic Water Bottles and Caps on as and when required basis.

SER	ITEM DESCRIPTION	UNIT OF ACCOUNT	DELIVERY POINT	QTY	UNIT COST KSHS (VAT INCL)	AMOUNT IN WORDS
1	1.5 Litre Blue Water Bottle and Cap (PET) - Long Neck	Each	Thika Water Bottling Plant	As and When Required		
2	2 Litre Blue Water Bottle with Handle and Cap (PET)	Each				
3	3 Litre Blue Water Bottle with Handle and Cap (PET)	Each				
4	5 Litre Blue Water Bottle with Handle and Cap (PET)	Each				
5	10 Litre Blue Water Bottle and Cap (PET)	Each				

*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 NameDate.
(Authorized Officer)

Company Stamp/SealSignature.....

SECTION VI

STANDARD FORMS

1. **FORM OF TENDER**

Date:

Tender No. KOFC/OT/GEN/013/2020/2021

**TO: MANAGING DIRECTOR
KENYA ORDNANCE FACTORIES CORPORATION
P O BOX 6634 - 30100
ELDORET**

Gentlemen and/or Ladies:

1. Having examined the tender documents No. **KOFC/OT/GEN/013/2020/2021** the receipt of which is hereby duly acknowledged, we, the undersigned, offer to **Supply Assorted Plastic Water Bottles and Caps** in conformity with the said tender documents for the sum of (*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 deliver the goods for **one year** in accordance with the delivery schedule specified in the Local Purchase Order.

3. If our Tender is accepted, we will obtain the Performance guarantee of a bank in a sum of equivalent to _____ percent of the Contract Price for the due performance of the Contract, in the form prescribed by **KOFC**.

5. We agree to abide by this Tender for a period of **90 days** from the date fixed for tender opening of the Instructions to tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

5. This Tender, together with your written acceptance thereof and your notification of award, shall **NOT** constitute a Contract, between us

6. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this _____ day of _____ 20 _____
_____ [signature]

[in the capacity of]

Duly authorized to sign tender for an on behalf of _____

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. Fax 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

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.

Part 2 (c) – Registered Company

Private or Public

State the nominal and issued capital of company-

Nominal Kshs.

Issued Kshs.

Given details of all directors as follows

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

Date Signature of Candidate

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

REFERENCE LIST

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

S/N	Name and Location of Institution	Tel Contact	Contract Person
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			