



National Drought Management Authority

Email: info@ndma.go.ke
Fax No.: 254 (20) 2227982
Telephone: 254 (20) 2227496/2227168
254 722200656/ 734652220
When replying please quote:

P.O. Box 53547 - 00200
NAIROBI
KENYA

TENDER FOR PROVISION OF TRANSPORTATION AND DELIVERY SERVICES FOR SUPPLEMENTARY ANIMAL FEEDS ON FRAMEWORK CONTRACT

TENDER No. NDMA/16/2018 - 2019

February 2019

Tender Issue Date: 19th February, 2019
Tender Closing Date & Time: 12th March, 2019 at 10:30am

TABLE OF CONTENTS		Page
1	SECTION I – INVITATION TO TENDER.....	3
2	SECTION II – INSTRUCTIONS TO TENDERERS	5
3	SECTION III – GENERAL CONDITIONS OF CONTRACT.....	21
4	SECTION IV – SPECIAL CONDITIONS OF CONTRACT	26
5	SECTION V – SCHEDULE OF REQUIREMENTS.....	28
6	SECTION VI – DESCRIPTION OF SERVICES	29
7.	SECTION VII – STANDARD FORMS	33

1 SECTION I – INVITATION TO TENDER

Date: 19th February 2019

Tender Ref No: NDMA/16/2018-2019

Tender name: TENDER FOR PROVISION OF TRANSPORTATION AND DELIVERY SERVICES FOR SUPPLEMENTARY ANIMAL FEEDS

1. The National Drought Management Authority (NDMA) is a public body established by the National Drought Management Authority (NDMA) Act, 2016. The Act gives the NDMA the mandate to exercise overall coordination over all matters relating to drought risk management and to establish mechanisms, either on its own or with stakeholders, that will end drought emergencies in Kenya.
2. The National Drought Management Authority has received funding from the European Union under the “Ending Drought Emergencies: Drought Risk Management and Coordination – Support to Pillar 5 (EDE/DRMC-SP5)” grant. National Drought Management Authority now invites sealed tenders from interested and eligible candidates for the Provision of Transportation and Delivery Services on a two-year framework contract.
3. Detailed tender documents may be obtained from the Procurement Office located on 8th Floor, Lornho House, situated along Standard Street, Nairobi during normal working hours.
4. Interested and eligible tenderers are required to pay a non-refundable fee of Kshs. 1,000 for each set of tender documents in Bankers Cheque or deposit the cash in the National Drought Management Authority Bank Account, KCB – KICC Branch, Account Number 1136140255, and submit the deposit slip at the cash office at NDMA Headquarters located on 8th Floor, Lornho House, situated along Standard Street, Nairobi.
5. Prospective bidders may also download the Tender Document free of charge from our website www.ndma.go.ke or from the Tender Portal www.tenders.go.ke. Bidders who download the tender documents must forward their company details/contacts including email address to the email supplychain@ndma.go.ke.
6. Completed tender documents in plain sealed envelopes and clearly marked with the **TENDER NUMBER** and **TENDER DESCRIPTION** should be addressed to:

Chief Executive Officer
National Drought Management Authority
Lornho House, Standard Street, 8th Floor
P.O. Box 53547 – 00200, NAIROBI

and deposited in the tender box situated at the NDMA Reception, Lornho House, Standard Street 8th Floor so as to be received on or before the scheduled dates indicated above. Documents submitted after the deadline will not be accepted.

7. Tender documents will be opened immediately thereafter in the Boardroom on 17th Floor, Lornho House, Standard Street, Nairobi in the presence of Tenderers or their representatives who choose to attend.

JAMES ODUOR
CHIEF EXECUTIVE OFFICER

8 SECTION II – INSTRUCTIONS TO TENDERERS

	Page
TABLE OF CONTENTS.....	
2.1 ELIGIBLE TENDERERS	7
2.2 COST OF TENDERING	7
2.3 CONTENTS OF TENDER DOCUMENTS	7
2.4 CLARIFICATION OF DOCUMENTS.....	8
2.5 AMENDMENT OF DOCUMENTS	8
2.6 LANGUAGE OF TENDER.....	8
2.7 DOCUMENTS COMPRISING THE TENDER.....	9
2.8 FORM OF TENDER	9
2.9 TENDER PRICES	9
2.10 TENDER CURRENCIES	9
2.11 TENDERERS ELIGIBILITY AND QUALIFICATIONS	9
2.12 TENDER SECURITY.....	10
2.13 VALIDITY OF TENDERS.....	11
2.14 FORMAT AND SIGNING OF TENDER.....	11
2.15 SEALING AND MARKING OF TENDERS	11
2.16 DEADLINE FOR SUBMISSION OF TENDERS.....	12
2.17 MODIFICATION AND WITHDRAWAL OF TENDERS	12
2.18 OPENING OF TENDERS	12
2.19 CLARIFICATION OF TENDERS	13
2.20 PRELIMINARY EXAMINATION AND RESPONSIVENESS	13

2.21	CONVERSION TO A SINGLE CURRENCY	13
2.22	EVALUATION AND COMPARISON OF TENDERS	14
2.23	CONTACTING THE PROCURING ENTITY.....	15
2.24	AWARD OF CONTRACT	15
2.25	NOTIFICATION OF AWARD	15
2.26	SIGNING OF CONTRACT.....	16
2.27	PERFORMANCE SECURITY	16
2.28	CORRUPT OR FRAUDULENT PRACTICES.....	16
2.29	APPENDIX TO INSTRUCTIONS TO THE TENDERERS.....	17

8.1 **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 mandatory documentation as given under the Appendix to Instructions to Tenderers – clause 2.29 must be submitted as they will be used for confirmation of eligibility of the tenders.
- 2.1.3. The tenderers are required to submit a duly filled and signed viewing certificate (Section VII – 9) that they will use in giving the prices.
- 2.1.4. The procuring entity’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 131 of the Act.
- 2.1.5. Tenderers shall provide the qualification information statement that the tenderer (including all members, of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring entity 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.
- 2.1.6. Tenderers involved in corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

8.2 **Cost of tendering**

- 2.2.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the procuring entity, 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 KShs 1,000.
- 2.2.3 The procuring entity shall allow the tenderer to review the tender document free of charge before purchase.

8.3 **Contents of tender documents**

- 8.3.1 The tender document comprises of the documents listed below and addenda issued in accordance with clause 2.5 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
- xi) Performance security form
- xii) Principal's or manufacturers authorization form
- xiii) Declaration 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 tenderers risk and may result in the rejection of its tender.

8.4 Clarification of Documents

8.4.1 A prospective candidate making inquiries of the tender document may notify the Procuring entity in writing or by post, fax or email at the entity's address indicated in the Invitation for tenders. The Procuring entity 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 procuring entity. 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".

8.4.2 The procuring entity 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.

8.5 Amendment of documents

8.5.1 At any time prior to the deadline for submission of tenders, the Procuring entity, 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.

8.5.2 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.

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

8.6 Language of tender

8.6.1 The tender prepared by the tenderer, as well as all correspondence and documents relating to the tender exchanged by the tenderer and the Procuring entity, 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.

8.7 Documents Comprising the Tender

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

- a) A Tender Form and a Price Schedule completed in accordance with clauses 2.8, 2.9 and 2.10 below.
- b) Documentary evidence established in accordance with Clause 2.11 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted.
- c) Tender security furnished is in accordance with Clause 2.12.
- d) Confidential business questionnaire.

8.8 Form of Tender

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

8.9 Tender Prices

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

8.9.2 Prices indicated on the Price Schedule shall be the cost of the services quoted including all customs duties and VAT and other taxes payable.

8.9.3 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 clause 2.22.

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

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

8.9.6 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.

8.10 Tender Currencies

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

8.11 Tenderers Eligibility and Qualifications

8.11.1 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.

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

8.12 **Tender Security**

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

8.12.2 Tender Security (Bid bond) of Kenya Shillings Three Hundred Thousand (Kshs 300,000) in form of a Bank guarantee from a bank licensed and operating in Kenya or another bank recognized by the Central Bank of Kenya or from an insurance company duly recognized by the Public Procurement Regulatory Authority in the format provided for Lot 1 and duly filled, signed and stamped Tender Securing Declaration Form for Lot 2.

8.12.3 The tender security is required to protect the Procuring entity against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to clause 2.12.7.

8.12.4 The tender security shall be denominated in a Kenya Shillings or in another freely convertible currency and shall be in the form of:

- a) A bank guarantee.
- b) Such insurance guarantee approved by the Authority.

8.12.5 Any tender not secured in accordance with clause 2.12.1 and 2.12.3 will be rejected by the Procuring entity as non responsive, pursuant to clause 2.20.

8.12.6 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 procuring entity.

8.12.7 The successful tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to clause 2.26, and furnishing the performance security, pursuant to clause 2.27.

8.12.8 The tender security may be forfeited:

- a) If a tenderer **withdraws** its tender **during** the period of tender validity specified by the procuring entity 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 clause 2.26; **or**
 - ii) to furnish performance security in accordance with clause 2.27.
- c) If the tenderer rejects, correction of an error in the tender.

8.13 **Validity of Tenders**

- 8.13.1** Tenders shall remain valid for 120 days or as specified in the invitation to tender after date of tender opening prescribed by the Procuring entity, pursuant to clause 2.18. A tender valid for a shorter period shall be rejected by the Procuring entity as nonresponsive.
- 8.13.2** In exceptional circumstances, the Procuring entity 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 clause 2.12 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.

8.14 **Format and Signing of Tender**

- 8.14.1** 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.
- 8.14.2** 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.
- 8.14.3** 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.

8.15 **Sealing and Marking of Tenders**

- 8.15.1** 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 Procuring entity 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 12th March, 2019 AT 10:30am**".
- 8.15.2** 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".
- 8.15.3** If the outer envelope is not sealed and marked as required by clause 2.15.2, the Procuring entity will assume no responsibility for the tender's misplacement or premature opening.

8.16 **Deadline for Submission of Tenders**

8.16.1 Tenders must be received by the Procuring entity at the address specified under clause 2.15.2 **no later than 12th March, 2019 at 10:30am.**

8.16.2 The procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with clause 2.5, in which case all rights and obligations of the procuring entity and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

8.16.3 Bulky tenders which will not fit in the tender box shall be received by the procuring entity as provided for in the appendix.

8.17 **Modification and withdrawal of tenders**

8.17.1 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's is received by the procuring entity prior to the deadline prescribed for the submission of tenders.

8.17.2 The Tenderer's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of clause 2.15. 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.

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

8.17.4 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 clause 2.12.7.

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

8.17.6 The procuring entity 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.

8.18 **Opening of Tenders**

8.18.1 The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend at **10:30am on 12th March, 2019** and in the location specified in the invitation to tender. The tenderers' representatives who are present shall sign a register evidencing their attendance.

8.18.2 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 Procuring Entity, at its discretion, may consider appropriate, will be announced at the opening.

8.18.3 The procuring entity 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.

8.19 **Clarification of tenders**

- 8.19.1** To assist in the examination, evaluation and comparison of tenders the procuring entity 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.
- 8.19.2** Any effort by the tenderer to influence the procuring entity in the procuring entity's tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderers tender.
- 8.19.3** Comparison or contract award decisions may result in the rejection of the tenderers' tender.

8.20 **Preliminary Examination and Responsiveness**

- 8.20.1** The Procuring entity 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.
- 8.20.2** 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.
- 8.20.3** The Procuring entity 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.
- 8.20.4** Prior to the detailed evaluation, pursuant to clause 2.22, the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these clauses, a substantially responsive tender is one which conforms to all the terms and conditions of the tender documents without material deviations. The Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.
- 8.20.5** If a tender is not substantially responsive, it will be rejected by the Procuring entity and may not subsequently be made responsive by the tenderer by correction of the nonconformity.

8.21 **Conversion to a single currency**

- 8.21.1** Where other currencies are used, the procuring entity 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.

8.22 **Evaluation and comparison of tenders**

8.22.1 The procuring entity will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to clause 2.20.

8.22.2 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.

8.22.3 The Procuring entity'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 clause 2.22.4 and in the technical specifications:

- a) operational plan proposed in the tender; and
- b) deviations in payment schedule from that specified in the Special Conditions of Contract;

8.22.4 Pursuant to clause 2.22.3 the following evaluation methods will be applied:

a) ***Operational Plan.***

The Procuring entity requires that the services under the Invitation for Tenders shall be performed at the time specified in the Schedule of Requirements. Tenderers offering to perform longer than the procuring entity'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 Procuring entity may consider the alternative payment schedule offered by the selected tenderer.

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

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

- a) Score the minimum technical evaluation score as given in the evaluation criteria under the appendix to instructions to tenderers – clause 2.29.
- b) Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.
- c) Legal capacity to enter into a contract for procurement
- d) 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
- e) Shall not be debarred from participating in public procurement.

8.23 **Contacting the procuring entity**

8.23.1 Subject to clause 2.19, no tenderer shall contact the procuring entity on any matter relating to its tender, from the time of the tender opening to the time the contract is awarded.

8.23.2 Any effort by a tenderer to influence the procuring entity in its decisions on tender evaluation tender comparison or contract award may result in the rejection of the tenderers tender.

8.24 **Award of Contract**

a) Post qualification

8.24.1 In the absence of pre-qualification, the Procuring entity 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.

8.24.2 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 tenderers qualifications submitted by the tenderer, pursuant to clause 2.1.2, as well as such other information as the Procuring entity deems necessary and appropriate.

8.24.3 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 Procuring entity will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

b) Award Criteria

8.24.4 Subject to clause 2.27 the Procuring entity 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.

8.24.5 The procuring entity 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 procuring entity's action. If the procuring entity determines that none of the tenderers is responsive; the procuring entity shall notify each tenderer who submitted a tender.

8.24.6 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.

8.25 **Notification of award**

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

8.25.2 The notification of award will signify the formation of the Contract subject to the signing of the contract between the tenderer and the procuring entity pursuant to clause 2.26. Simultaneously the other tenderers shall be notified that their tenders have not been successful.

8.25.3 Upon the successful Tenderer's furnishing of the performance security pursuant to clause 2.27, the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to clause 2.12.

8.26 **Signing of Contract**

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

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

8.26.3 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.

8.27 **Performance Security**

8.27.1 Within fourteen (14) days of the receipt of notification of award from the Procuring entity, 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 the Procuring entity.

8.27.2 Failure of the successful tenderer to comply with the requirement of clause 2.26 or clause 2.27.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Procuring entity may make the award to the next lowest evaluated or call for new tenders.

8.28 **Corrupt or Fraudulent Practices**

8.28.1 The Procuring entity 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.

8.28.2 The procuring entity 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;

8.28.3 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 THE TENDERERS

The following information for procurement of services shall complement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provisions 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.

Instructions to Tenderers	Particulars of appendix to instructions to tenderers
2.1	<p>Eligible tenderers are as indicated here below:</p> <p>This Invitation to tender is open to eligible candidates from Kenya who are Commodity Transporters as described in the instructions to tenderers. Lot No. 1 is Open while Lot No. 2 is restricted to Youth, Women and Persons with Disabilities.</p>
2.10	<p>Tender Currency</p> <p>The currency to be used is Kenya Shillings.</p>
2.12	<p>Tender Security</p> <p>Tender security of Kenya Shillings three hundred thousand only (Kshs 300,000/-) for Lot No. 1 in form of a Bank guarantee from a bank licensed and operating in Kenya or tender security from an Insurance Company duly recognized by the Insurance Regulatory Authority of Kenya and Tender Securing Declaration form for Lot No 2.</p>
2.22	<p><u>EVALUATION AND COMPARISON OF TENDERS</u></p> <p>TENDERERS SHALL BE EVALUATED IN THREE (3) STAGES</p> <p>A. STAGE ONE - PRELIMINARY EVALUATION</p> <p>The tenderer shall provide the following mandatory requirements which shall be used for the preliminary evaluation (failure to submit the mandatory requirements will lead to disqualification from the tender process).</p> <ul style="list-style-type: none"> • Copy of Certificate of Registration/Incorporation • Copy of valid Tax Compliance Certificate • The Copy of valid CR12 form from the Registrar of Companies • Tender security (Bid bond) of Kenya Shillings Three hundred thousand only (Kshs 300,000/-); in form of a Bank guarantee from a bank licensed and operating in Kenya or a bank recognized by the Central Bank of Kenya or tender security from an Insurance Company duly recognized by the Insurance Regulatory Authority of Kenya for Lot 1. • Tender Securing Declaration form duly filled, signed and stamped for Lot No. 2 • Duly filled Confidential Business Questionnaire (Section VII - Standard Forms) • Duly filled Bidder's Declaration and Integrity Pact (Section VII – Standard Forms).

Instructions to Tenderers	Particulars of appendix to instructions to tenderers												
	<ul style="list-style-type: none"> • Current Business Permit • Valid NTSA Inspections Certificates • Valid Proof of Ownership (Logbooks and Lease agreement with Logbooks) • Valid Speed Governor certificate • Properly bound (book binding or spiral binding), paginated tender document (each page of the tender submission must have a page number and the page numbers must be in chronological order). <p><i>Tenderers will be required to pass the preliminary evaluation having submitted all the mandatory documentation before being considered for technical evaluation.</i></p> <p>B. STAGE TWO - COMPLIANCE TO TECHNICAL REQUIREMENTS – SECTION V</p> <table border="1" data-bbox="427 891 1543 2045"> <thead> <tr> <th data-bbox="435 947 507 1003">1.</th> <th data-bbox="515 947 1393 1003">Evaluation criteria</th> <th data-bbox="1401 947 1535 1003">Score</th> </tr> </thead> <tbody> <tr> <td data-bbox="435 1003 507 1384"></td> <td data-bbox="515 1003 1393 1384"> <p>1. Fleet Size- Each bidder must have a minimum of 20 trucks, with a capacity of 30 tonnes for transportation of pellets, which will be reliable under severe weather conditions and rugged terrain for Lot No. 1. For Lot No. 2, minimum number of trucks should be 10 and marks pro-rated accordingly.</p> <p>The trucks may be solely owned by the bidder (<i>1mark per truck for lot 1 and 2 marks per truck for lot 2</i>) Attach logbooks as evidence of existence or ownership of trucks.</p> </td> <td data-bbox="1401 1003 1535 1384">20</td> </tr> <tr> <td data-bbox="435 1384 507 1765"></td> <td data-bbox="515 1384 1393 1765"> <p>2. Fleet Insurance requirements and compliance: All trucks must have comprehensive Insurance in which case proof must be attached with the bid. (<i>0.5 and 1 mark per truck for lot 1 and lot 2 respectively, maximum 10 marks</i>).</p> <p>Upon successful award and before signing of contract, successful bidders will be required to provide Goods in Transit and Fidelity Insurance covers (letters from the GIT and fidelity cover underwriters addressed to NDMA committing to undertake the cover upon successful award of contract).</p> </td> <td data-bbox="1401 1384 1535 1765">10</td> </tr> <tr> <td data-bbox="435 1765 507 2045"></td> <td data-bbox="515 1765 1393 2045"> <p>3. Evidence of transportation of Animal Feeds and or other Commodities to any of the remote sites herein listed within the last 5 years progressively.</p> <p>Attach copy of contract or Purchase Orders, contracts or delivery notes or Referral letter as evidence of previous experience in transportation of Commodities (Animal Feeds or other general transportation services) to remote sites at least 5 sites quoted</p> </td> <td data-bbox="1401 1765 1535 2045">30</td> </tr> </tbody> </table>	1.	Evaluation criteria	Score		<p>1. Fleet Size- Each bidder must have a minimum of 20 trucks, with a capacity of 30 tonnes for transportation of pellets, which will be reliable under severe weather conditions and rugged terrain for Lot No. 1. For Lot No. 2, minimum number of trucks should be 10 and marks pro-rated accordingly.</p> <p>The trucks may be solely owned by the bidder (<i>1mark per truck for lot 1 and 2 marks per truck for lot 2</i>) Attach logbooks as evidence of existence or ownership of trucks.</p>	20		<p>2. Fleet Insurance requirements and compliance: All trucks must have comprehensive Insurance in which case proof must be attached with the bid. (<i>0.5 and 1 mark per truck for lot 1 and lot 2 respectively, maximum 10 marks</i>).</p> <p>Upon successful award and before signing of contract, successful bidders will be required to provide Goods in Transit and Fidelity Insurance covers (letters from the GIT and fidelity cover underwriters addressed to NDMA committing to undertake the cover upon successful award of contract).</p>	10		<p>3. Evidence of transportation of Animal Feeds and or other Commodities to any of the remote sites herein listed within the last 5 years progressively.</p> <p>Attach copy of contract or Purchase Orders, contracts or delivery notes or Referral letter as evidence of previous experience in transportation of Commodities (Animal Feeds or other general transportation services) to remote sites at least 5 sites quoted</p>	30
1.	Evaluation criteria	Score											
	<p>1. Fleet Size- Each bidder must have a minimum of 20 trucks, with a capacity of 30 tonnes for transportation of pellets, which will be reliable under severe weather conditions and rugged terrain for Lot No. 1. For Lot No. 2, minimum number of trucks should be 10 and marks pro-rated accordingly.</p> <p>The trucks may be solely owned by the bidder (<i>1mark per truck for lot 1 and 2 marks per truck for lot 2</i>) Attach logbooks as evidence of existence or ownership of trucks.</p>	20											
	<p>2. Fleet Insurance requirements and compliance: All trucks must have comprehensive Insurance in which case proof must be attached with the bid. (<i>0.5 and 1 mark per truck for lot 1 and lot 2 respectively, maximum 10 marks</i>).</p> <p>Upon successful award and before signing of contract, successful bidders will be required to provide Goods in Transit and Fidelity Insurance covers (letters from the GIT and fidelity cover underwriters addressed to NDMA committing to undertake the cover upon successful award of contract).</p>	10											
	<p>3. Evidence of transportation of Animal Feeds and or other Commodities to any of the remote sites herein listed within the last 5 years progressively.</p> <p>Attach copy of contract or Purchase Orders, contracts or delivery notes or Referral letter as evidence of previous experience in transportation of Commodities (Animal Feeds or other general transportation services) to remote sites at least 5 sites quoted</p>	30											

Instructions to Tenderers	Particulars of appendix to instructions to tenderers		
		above <i>(6 marks for each PO/Contract/delivery note indicating transportation of products to the remote sites)</i>	
		<p>4. Evidence of ownership of workshop/garage Trucks listed for this tender must be mechanically sound, to ascertain Fleet maintenance plan & availability of maintenance equipment. - For purposes of this tender, the bidder shall provide evidence of ownership of a workshop/garage equipped to carry out adequate preventative and breakdown maintenance for the fleet. In the event that the bidder has outsourced this activity, a legally binding agreement between the bidder and the service provider for the period covering this procurement must be submitted with the bid. As part of evaluation, NDMA shall visit the garages/workshops so submitted in this tender to confirm accuracy of information <i>(10 Marks)</i></p>	10
		<p>5. Maintenance plan evidenced by the following Documentation <i>(2 Marks per point)</i></p> <p>a) Maintenance Job Card b) Drivers daily checklist c) Valid NTSA inspection report d) Preventive maintenance checklist provided e) Clear documentation of vehicle maintenance plan <i>(10 Marks)</i></p>	10
		<p>6. Fleet operation- For purposes of this tender, the bidder must submit:</p> <ul style="list-style-type: none"> • A summary of at each driver experience showing five (5) years of driving experience to remote locations accompanied with copies of each driver's license and national ID which must be attached <i>(1 mark per driver, maximum 5 marks)</i> • Valid police clearance certificate must be attached for each driver. <i>(1 mark per driver, maximum 5 marks)</i> 	5
		<ul style="list-style-type: none"> • Proof of the drivers attending defensive driving trainings must be attached. <i>(1 mark per driver, maximum 5 marks)</i> • <i>First Aid training (5 marks)</i> 	5
		TOTAL	100

The minimum score to be considered technically responsive is 75% of the possible

Instructions to Tenderers	Particulars of appendix to instructions to tenderers
	<p>total points above.</p> <p>Only tenderers who score the minimum 75% and above will have their financial proposals evaluated, where award will be to the technically responsive tenderer with the lowest evaluated price amongst the technically responsive tenderers upon successful negotiations as per clause 2.24 (b) below:</p>
2.24	<p>a) Award NDMA 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.</p> <p>b) Competitive negotiation NDMA may conduct competitive negotiations where applicable in accordance with section 131 and Section 132 of the Public Procurement and Asset Disposal Act 2015.</p> <p>c) Post qualification NDMA shall conduct post qualification due diligence to 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.</p>
2.27	<p>Particulars of performance security The amount of Performance Security shall be Kshs 5,000,000.00 Lot 1 and Kshs. 1,000,000 for Lot 2 in the format of the Performance Security Form provided in the tender document (Section VII – Standard Forms) in the form of a bank guarantee drawn by a bank licensed and operating in Kenya.</p>
2.28	<p>In addition to clause 2.28, the ethics as described below will apply:</p> <p>2.28.4 Ethics It is a requirement that both NDMA and prospective suppliers of goods, services and works observe the highest standards of ethics during the procurement and execution of contracts. In pursuance of this policy, NDMA requires that all bidders concerned take measures to ensure that no transfer of gifts, payments or other benefits to officials of NDMA and/or procurement/management staff with decision making responsibility or influence occurs. In this regard, NDMA will require all tenderers to sign, as part of the tender documents, an Integrity Pact (Section VII – Standard forms). Non-delivery of the Bidders Declaration and Integrity Pact (Section VII – Standard forms) duly undersigned by the chief executive or legal representative of the tendering party will result in exclusion of the bid/ quotation from the procurement process.</p> <p>NDMA reserves the right to suspend or cancel a tender if corrupt practices of any kind are discovered at any stage of the award process.</p>

9 SECTION III – GENERAL CONDITIONS OF CONTRACT

TABLE OF CONTENTS.....	Page
3.1 DEFINITIONS	22
3.2 APPLICATION.....	22
3.3 STANDARDS	22
3.4 PATENT RIGHTS	22
3.5 PERFORMANCE SECURITY	22
3.6 INSPECTIONS AND TESTS	23
3.7 PAYMENT	23
3.8 PRICES	23
3.9 ASSIGNMENT.....	23
3.10 TERMINATION FOR DEFAULT.....	23
3.11 TERMINATION OF INSOLVENCY	24
3.12 TERMINATION FOR CONVENIENCE	24
3.13 RESOLUTION OF DISPUTES.....	24
3.14 GOVERNING LANGUAGE	24
3.15 FORCE MAJEURE	25
3.16 APPLICABLE LAW.....	25
3.17 NOTICES	25

9.1 **Definitions**

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

- a) “The contract” means the agreement entered into between the Procuring entity 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 services” means services to be provided by the contractor including materials and incidentals which the tenderer is required to provide to the Procuring entity under the Contract.
- d) “The Procuring entity” means the organization sourcing for the services under this Contract.
- e) “The contractor means the individual or firm providing the services 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

9.2 **Application**

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

9.3 **Standards**

- 9.3.1** The services provided under this Contract shall conform to the 7 standards mentioned in the Schedule of requirements

9.4 **Patent Rights**

The tenderer shall indemnify the Procuring entity 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.

9.5 **Performance Security**

- 9.5.1** Within twenty eight (28) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the performance security where applicable in the amount specified in Special Conditions of Contract.

- 9.5.2** The proceeds of the performance security shall be payable to the Procuring entity as compensation for any loss resulting from the Tenderer’s failure to complete its obligations under the Contract.

9.5.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Procuring entity and shall be in the form of

a) A bank guarantee.

9.5.4 The performance security will be discharged by the procuring entity 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.

9.6 Inspections and Tests

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

9.6.2 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 drawings and production data, shall be furnished to the inspectors at no charge to the Procuring entity.

9.6.3 Should any inspected or tested services fail to conform to the Specifications, the Procuring entity may reject the services, and the tenderer shall either replace the rejected services or make alterations necessary to meet specification requirements free of cost to the Procuring entity.

9.6.4 Nothing in clause 3.6 shall in any way release the tenderer from any warranty or other obligations under this Contract.

9.7 Payment

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

9.8 Prices

Prices charged by the contractor for services performed 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 procuring entity'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 the parties.

9.9 Assignment

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

9.10 Termination for Default

The Procuring entity 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 Procuring entity;
- b) if the tenderer fails to perform any other obligation(s) under the Contract.
- c) if the tenderer, in the judgment of the Procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

In the event the Procuring entity 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 Procuring entity for any excess costs for such similar services.

9.11 Termination of insolvency

The procuring entity may at anytime 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 procuring entity.

9.12 Termination for convenience

9.12.1 The procuring entity 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 procuring entity convenience, the extent to which performance of the contractor of the contract is terminated and the date on which such termination becomes effective.

9.12.2 For the remaining part of the contract after termination the procuring entity may elect to cancel the services and pay to the contractor on agreed amount for partially completed services.

9.13 Resolution of disputes

9.13.1 The procuring entity's 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.

9.13.2 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 that the dispute be referred for resolution to the formal mechanisms specified in the SCC.

9.14 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.

9.15 **Force Majeure**

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

9.16 **Applicable Law**

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

9.17 **Notices**

Any notices given by one party to the other pursuant to this contract shall be sent to the other party by post or by fax 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.

10SECTION IV – SPECIAL CONDITIONS OF CONTRACT

Notes on Special Conditions of Contract

The clauses in this section are intended to assist the procuring entity in providing contract specific information in relation to corresponding clauses in the general conditions of contract.

The provisions of section IV complement the general conditions of contract included in section III, specifying contractual requirements linked to the special circumstances of the procuring entity and the procurement of services required. In preparing section IV, the following aspects should be taken into consideration.

- a) Information that complement provisions of section III must be incorporated
- b) Amendments and/or supplements to provision of section III, as necessitated by the circumstances of the specific service required must also be incorporated.

Where there is a conflict between the provisions of the special conditions of contract and the provisions of the general conditions of contract the provisions of the special conditions of contract herein shall prevail over the provisions of the general conditions of contract.

SECTION IV SPECIAL CONDITIONS OF CONTRACT

- 10.1 Special conditions of contract shall supplement the general conditions of contract, wherever there is a conflict between the GCC and the SCC, the provisions of the SCC herein shall prevail over those in the GCC.
- 10.2 Special conditions of contract with reference to the general conditions of contract.

General conditions of contract reference	Special conditions of contract
3.5	Particulars of performance security The amount of Performance Security shall be Kshs 5,000,000 for Lot 1 and 1,000,000 for Lot 2 in the format of the Performance Security Form provided in the tender document (Section VII – Standard Forms) in the form of a bank guarantee drawn by a bank licensed and operating in Kenya.
3.7	The payments will be done promptly, monthly within 30 days after receipt of invoice at NDMA and confirmation of satisfactory receipt of services
3.13	The provisions of the arbitration act of the laws of Kenya shall apply.

11 SECTION V – SCHEDULE OF REQUIREMENTS

This part will include any deliverables under the service contract

Number	Description	Quantity	Delivery Time Start _____ End _____
--------	-------------	----------	---

(The tenderer should amend as appropriate)

The transportation services are to be provided to various NDMA Sites/County Offices:

12 SECTION VI – DESCRIPTION OF SERVICES

TERMS OF REFERENCE FOR TRANSPORTATION AND DELIVERY SERVICES FOR DROUGHT PELLETS TO REMOTE LOCATIONS

1.0. Introduction.

National Drought Management Authority (NDMA) intends to procure dedicated transportation and delivery services for drought pellets to remote sites. The terrain within these operations sites are very remote and challenging involving a very rugged terrain, hence requiring almost new equipment which are mechanically sound.

2.0. Terms of Reference

The scope of services includes transportation of Animal Feeds in the form of Drought Pellets packaged in 50Kg bags and UMMB Blocks packaged in 2.5Kg blocks from the Manufacturer's/Distributor's premises to various remote Arid and Semi Arid Lands Counties listed below:

PROPOSED DELIVERY DESTINATIONS FOR VARIOUS COUNTIES AND ESTIMATED DISTANCES FROM NAIROBI FOR SUPPLEMENTARY FEEDS – DROUGHT PELLETS IN 50Kg BAGS AND UMMB BLOCKS

NOTE: The distances given below are only a guide. Point of collection of the goods will also be determined by the tender for supply of pellets and UMMB blocks. Actual delivery destinations may change based on need.

S/No	DESTINATION	DISTANCE IN KMS
1	Baringo – Chemolingot	412
2	Isiolo	275
3	Marsabit	425
4	Nanyuki	195
5	Mbeere - Siakago	225
6	Tharaka - Marimanti	375
7	Samburu - Maralal	372
8	Kitui	180
9	Makueni - Wote	132
10	Kajiado	70
11	Lamu	470
12	Taita Taveta - Wundanyi	370
13	Kwale	502
14	Kilifi	597
15	Tana River - Hola	485
16	Wajir	625
17	Garissa	366
18	Mandera	1015

19	Turkana – Lodwar	678
20	West Pokot	480
21	Nyeri	152
22	Meru - Maua	325
23	Narok	143

Other Requirements

- **Fleet Size-** Each bidder must have at least twenty trucks of 30 tonnes capacity for distribution of the pellets (lot 1) and at least ten trucks between 7 and 10 tonnes for lot 2 . The trucks must be solely owned by the bidder in which case, proof of ownership must be included with the bid. The transportation trucks listed for this tender shall be owned or leased to the bidder in which case a legally bidding contract must be attached with this tender.
- **Age of fleet-** The trucks listed for this tender shall not be more than eight (8) years old and must be mechanically sound. As part of evaluation, NDMA may require to inspect the fleet, in whole or in part to ascertain the mechanical status.
- **Fleet operation-** For purposes of this tender, the bidder must submit a list of drivers assigned to operate the fleet. A summary on each driver must be included showing at least five (5) years of driving experience, age, any defensive driving training undertaken and any other relevant information. For purposes of this tender, the preferred age bracket of drivers is 25-55 years old. Copies of driving licenses and any other certificates of training for the drivers must be included as proof.
- **Statutory and legal-** For purposes of this tender all trucks included in this bid must meet the prevailing requirements laid down by NTSA, Transport Ministry, Local Authority, or any other body that may be relevant. Bidders must therefore familiarize with such existing requirements and comply. Any noncompliance shall lead to disqualification.
- **Goods In Transit (GIT) Insurance cover -** For purposes of this tender, bidders must provide proof of GIT for their fleet or a commitment letter from an insurance company willing to issue GIT cover. Upon award, successful bidder(s) will be required to amend their GIT to reflect NDMA as a beneficiary, which will also be captured in the contract.

▪ **INSERT A FULLY SIGNED BOND (TOR1)**

BOND

By this AGREEMENT we in consideration of the award of the Contract for the Tender for PROVISION OF TRANSPORTATION AND DELIVERY SERVICES, NDMA/16/2018 – 2019 hereby irrevocably and unconditionally undertake to

- To ensure that the vehicles are in good mechanical working condition and ensure that the fleet is properly services as and when due for this Tender in the course of the supply contract.

Failure which, I understand and accept that the Contract shall automatically terminate at no expense, costs or liability whatsoever to National Drought Management Authority Ltd.

IN WITNESS WHEREOF we hereto have hereunto duly executed this Bond this..... day of 201....

SIGNED and SEALED with the common seal of]
.....]

In the presence of: -]

Director] Sign
Name] seal

Director/Secretary.....] sign
Name]

a) **National Drouht Management Authority**

b)

Appendix TOR2

Date:

No.	Item description	Y/N	Comments
1.	Vehicle engine is of the compression ignition (CI) type and located in front of the rear face of the cab.		
2.	Vehicle fitted with anti-lock braking system (ABS)		
3.	Vehicles fitted with speed governor device and certificate for the same provided		
4.	Where landing legs are fitted to articulated vehicles they must be installed by the manufacturer and subject to regular maintenance.		
5.	No unapproved electrical appliances are to be installed or used in the vehicles, e.g. CD players, fans.		
6.	Seat belts in good condition. Seat belts of lap/sash configuration with automatic retraction activated locking mechanisms		
7.	Seats must be fitted with head restraints to minimize the risk of whiplash injuries.		
8.	Reversing bleeper fitted. Two high intensity reversing lights fitted to the rear of the vehicle, angled to the Rear and slightly outwards		
9.	Wide-angle mirrors must be fitted to enhance the driver's view along the entire length of the vehicle. Where deemed necessary in view of the local driving conditions, additional mirrors may be required.		
10.	The tare weight and maximum gross vehicle weight displayed on the vehicle.		
11.	One 2.5 Kg fire extinguisher in the cabin. Next test date is valid and seal is unbroken		
12.	Vehicle has a first aid kit in an easily accessible place		
13.	Warning triangles (two safety triangles) available in the cabin		
14.	Special, clearly marked document holder mounted in a conspicuous position in the cabin (for easy location in an emergency)		
15.	Traffic cones		
16.	Set of emergency instructions including emergency contacts		
17.	Tyres comply with EAS 357 and retreaded tyres to KS205 (NOTE: Retread NOT allowed on steering axles)		
18.	Number plate mounting bracket with light		

NOTE:

- 1) Status should be indicated either "YES" or "NO".
- 2) Where status is "NO", the reason should be indicated in the "remarks" column

7. SECTION VII – STANDARD FORMS

- 1 Form of tender
- 2 Price schedules
- 3 Contract form
- 4 Confidential Questionnaire form
- 5 Tender security form
- 6 Tender Securing Declaration Form
- 7 Performance security form
- 8 Bank guarantee for advance payment
- 9 Bidder's Declaration and Integrity Pact

1 FORM OF TENDER

Date _____

Tender No. _____

To.....

.....

[Name and address of procuring entity]

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda No's..... *[insert numbers]* of which is hereby duly acknowledged, we, the undersigned, offer to provide *[description of services]* 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 provide the services in accordance with the services schedule specified in the Schedule of Requirements.

3. If our Tender is accepted, we will obtain the tender guarantee in a sum equivalent to _____ percent of the Contract Price for the due performance of the Contract, in the form prescribed by (Procuring entity).

4. We agree to abide by this Tender for a period of *[number]* 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. Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.

Dated this _____ day of _____ 20__

[Signature] _____ *[In the capacity of]*

Duly authorized to sign tender for and on behalf of _____

LOT I**PROPOSED DELIVERY DESTINATIONS FOR VARIOUS COUNTIES AND ESTIMATED DISTANCES FROM NAIROBI FOR SUPPLEMENTARY FEEDS – DROUGHT PELLETS IN 50KG BAGS**

NB: The following distances to the counties are from Nairobi. The pellets collection locations may change. However, the rate quoted per kilometer tonne should remain irrespective of start and end point of the journey.

S/No	DESTINATION	Truck Type: 30 tonne truck	DISTANCE IN KMS	Cost Kshs/tonne/km-inclusive of VAT
1	Baringo – Chemolingot		412	
2	Isiolo		275	
3	Marsabit		425	
4	Nanyuki		195	
5	Mbeere - Siakago		225	
6	Tharaka - Marimanti		375	
7	Samburu - Maralal		372	
8	Kitui		180	
9	Makueni - Wote		132	
10	Kajiado		70	
11	Lamu		470	
12	Taita Taveta - Wundanyi		370	
13	Kwale		502	
14	Kilifi		597	
15	Tana River - Hola		485	
16	Wajir		625	
17	Garissa		366	
18	Mandera		1015	
19	Turkana – Lodwar		678	
20	West Pokot		480	
21	Nyeri		152	
22	Meru - Maua		325	
23	Narok		143	

1. *Prices quoted should be inclusive of VAT – the tenderer should clearly state that their prices are inclusive of VAT. The prices should incorporate all specified requirements as given in Section VI.*
- 2.

Name & Signature of tenderer (authorized signatory)

Stamp _____

Note: The tenderer is to cater for all its costs in the price schedule. No hidden costs are acceptable and no additional costs will be acceptable after award.

LOT II

PROPOSED DELIVERY DESTINATIONS FOR VARIOUS COUNTIES AND ESTIMATED DISTANCES FROM NAIROBI FOR UMMB BLOCKS

NB: The following distances to the counties are from Nairobi. The UMMB Blocks 2.5Kg per piece, collection locations may change. However, the rate quoted per kilometer tonne should remain irrespective of start and end point of the journey.

S/No	DESTINATION	Truck Type: 7 tonne to 10 Truck (Please specify)	DISTANCE IN KMS	Cost Kshs/tonne/km-inclusive of VAT
1	Baringo – Chemolingot		412	
2	Isiolo		275	
3	Marsabit		425	
4	Nanyuki		195	
5	Mbeere - Siakago		225	
6	Tharaka - Marimanti		375	
7	Samburu - Maralal		372	
8	Kitui		180	
9	Makueni - Wote		132	
10	Kajiado		70	
11	Lamu		470	
12	Taita Taveta - Wundanyi		370	
13	Kwale		502	
14	Kilifi		597	
15	Tana River - Hola		485	
16	Wajir		625	
17	Garissa		366	
18	Mandera		1015	
19	Turkana – Lodwar		678	
20	West Pokot		480	
21	Nyeri		152	
22	Meru - Maua		325	
23	Narok		143	

3. *Prices quoted should be inclusive of VAT – the tenderer should clearly state that their prices are inclusive of VAT. The prices should incorporate all specified requirements as given in Section VI.*

Name & Signature of tenderer (authorized signatory)

Stamp _____

Note: The tenderer is to cater for all its costs in the price schedule. No hidden costs are acceptable and no additional costs will be acceptable after award.

3 CONTRACT FORM

THIS AGREEMENT made the _____ day of _____ 20____ between
..... [name of procurement entity] of
..... [country of Procurement entity] (hereinafter called “the Procuring
entity”) of the one part and [name of tenderer] of
..... [city and country of tenderer] (hereinafter called “the tenderer”) of the other
part.

WHEREAS the procuring entity invited tenders for certain materials and spares.
Viz..... [brief description of materials and spares] and has accepted a tender
by the tenderer for the supply of those materials and spares in the sum of
..... [contract price in words and figures]

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement, viz.:
 - (a) the Tender Form and the Price Schedule submitted by the tenderer;
 - (b) the Schedule of Requirements;
 - (c) the Technical Specifications;
 - (d) the General Conditions of Contract;
 - (e) the Special Conditions of Contract; and
 - (f) the Procuring entity’s Notification of Award.
3. In consideration of the payments to be made by the Procuring entity to the tenderer as hereinafter mentioned, the tenderer hereby covenants with the Procuring entity to provide the materials and spares and to remedy defects therein in conformity in all respects with the provisions of the Contract
4. The Procuring entity hereby covenants to pay the tenderer in consideration of the provision of the materials and spares and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the contract at the times and in the manner prescribed by the contract.

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

Signed, sealed, delivered by _____ the _____ (for the Procuring entity).

Signed, sealed, delivered by _____ the _____ (for the tenderer)

in the presence of _____.

4 CONFIDENTIAL BUSINESS QUESTIONNAIRE

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.

<p>Part 1 General</p> <p>Business Name</p> <p>Location of Business Premises</p> <p>Plot No, Street/Road.....</p> <p>Postal address Tel No. Fax Email.....</p> <p>.....</p> <p>Nature of Business</p> <p>Registration Certificate No.</p> <p>Maximum value of business which you can handle at any one time – KShs.</p> <p>Name of your bankers.....</p> <p>.....</p> <p>Branch</p>

<p>Part 2 (a) – Sole Proprietor</p> <p>Your name in full..... Age.....</p> <p>Nationality..... Country of Origin.....</p> <p>Citizenship details</p> <p>.....</p>																				
<p>Part 2 (b) – Partnership</p> <p>Given details of partners as follows</p> <table border="1"> <thead> <tr> <th>Name</th> <th>Nationality</th> <th>Citizenship details</th> <th>Shares</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>	Name	Nationality	Citizenship details	Shares	1.	2.	3.	4.
Name	Nationality	Citizenship details	Shares																	
1.																	
2.																	
3.																	
4.																	
<p>Part 2 (c) – Registered Company</p> <p>Private or Public</p> <p>State the nominal and issued capital of company</p> <p>Nominal KShs.</p> <p>Issued KShs.</p> <p>Given details of all directors as follows</p> <table border="1"> <thead> <tr> <th>Name</th> <th>Nationality</th> <th>Citizenship details</th> <th>Shares</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>	Name	Nationality	Citizenship details	Shares	1.	2.	3.	4.
Name	Nationality	Citizenship details	Shares																	
1.																	
2.																	
3.																	
4.																	
<p>Date.....Signature of Candidate.....</p>																				

5 FORM OF TENDER SECURITY

WHEREAS (hereinafter called “the Tenderer”) has submitted his tender dated for the construction of
..... (*name of Contract*)

KNOW ALL PEOPLE by these presents that WE having our registered office at(hereinafter called “the Bank”), are bound unto(hereinafter called “the Employer”) in the sum of KShs..... for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors and assigns by these presents sealed with the Common Seal of the said Bank this Day of20.....

THE CONDITIONS of this obligation are:

- 1. If after tender opening the tenderer withdraws his tender during the period of tender validity specified in the instructions to tenderers
Or
- 2. If the tenderer, having been notified of the acceptance of his tender by the Employer during the period of tender validity:
 - (a) fails or refuses to execute the form of Agreement in accordance with the Instructions to Tenderers, 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 Employer up to the above amount upon receipt of his first written demand, without the Employer having to substantiate his demand, provided that in his demand the Employer will note that the amount claimed by him is due to him, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

This 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 said date.

[date]

[signature of the Bank]

[witness]

[seal]

6 TENDER SECURING DECLARATION FORM

(The Bidder shall complete in this Form in accordance with the instructions indicated)

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

Tender No..... (*insert number of bidding process*)

To: **National Drought Management Authority**

We, the undersigned, declare that:-

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

Signed: (*insert signature of person whose name and capacity are shown*) in the capacity of (*insert legal capacity of person signing the Bid Securing Declaration*)

Name: (*insert complete name of person signing the Bid Securing Declaration*)

Duly authorized to sign the bid for and on behalf of: (insert complete name of Bidder)

Date on Day of(*insert date of signing*)

7 PERFORMANCE SECURITY FORM

To:

[name of the Procuring entity]

WHEREAS..... [name of tenderer]

(hereinafter called “the tenderer”) has undertaken, in pursuance of Contract No. _____
[reference number of the contract] dated _____ 20____ to

supply.....

[Description services](Hereinafter called “the contract”)

AND WHEREAS it has been stipulated by you in the said Contract that the tenderer shall furnish you with a bank guarantee by a reputable bank for the sum specified therein as security for compliance with the Tenderer’s performance obligations in accordance with the Contract.

AND WHEREAS we have agreed to give the tenderer a guarantee:

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the tenderer, up to a total of
[amount of the guarantee in words and figures],

and we undertake to pay you, upon your first written demand declaring the tenderer to be in default under the Contract and without cavil or argument, any sum or sums within the limits of
[amount of guarantee] as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the _____ day of 20

Signature and seal of the Guarantors

[name of bank or financial institution]

[address]

[date]

8 BANK GUARANTEE FOR ADVANCE PAYMENT

To.....

[name of tender].....

Gentlemen and/or Ladies:

In accordance with the payment provision included in the special conditions of contract, which amends the general conditions of contract to provide for advance payment,

.....

[name and address of tenderer][hereinafter called “the tenderer”] shall deposit with the Procuring entity a bank guarantee to guarantee its proper and faithful performance under the said clause of the contract in an amount of *[amount of guarantee in figures and words]*.

We, the *[bank or financial institution]*, as instructed by the tenderer, agree unconditionally and irrevocably to guarantee as primary obligator and not as surety merely, the payment to the Procuring entity on its first demand without whatsoever right of objection on our part and without its first claim to the tenderer, in the amount not exceeding *[amount of guarantee in figures and words]*.

We further agree that no change or addition to or other modification of the terms of the Contract to be performed thereunder or of any of the Contract documents which may be made between the Procuring entity and the tenderer, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition, or modification.

This guarantee shall remain valid and in full effect from the date of the advance payment received by the tenderer under the Contract until *[date]*.

Yours truly,

Signature and seal of the Guarantors

[name of bank or financial institution]

[address]

[date]

9 BIDDER’S DECLARATION AND INTEGRITY PACT

BIDDER’S DECLARATION

We/I the undersigned, in the capacity of
for [name of the company/firm/individual] certify
that the **bidder is not in any of the following situations:**

- 1 Bankruptcy; are the subject of proceedings for a declaration of bankruptcy, or of an order for compulsory winding up or administration by court, or of any other similar proceedings;
- 2 Payments to us have been suspended in accordance with the judgment of a court other than a judgment declaring bankruptcy and resulting, in accordance with our national laws, in the total or partial loss of the right to administer and dispose off our property;
- 3 Legal proceedings have been instituted against us involving an order suspending payments and which may result, in accordance with our national laws, in a declaration of bankruptcy or in any other situation entailing the total or partial loss of the right to administer and dispose of our property;
- 4 Are being wound up, or our affairs are being administered by court, or have entered into an arrangement with creditors, or have suspended business activities or are subject to an injunction against running business by a court of law;
- 5 Have been convicted by a final judgment of any crime or offence concerning our/my professional conduct;
- 6 Are guilty of serious misrepresentation with regard to information required for participation in an invitation to tender or execution of a tender already awarded; and
- 7 Are in breach of contract on another contract with the Government of Kenya or other local or international contracting authority or foreign government.
- 8 Have been convicted of an offence concerning our/my professional conduct by a court of law, or found guilty of grave professional misconduct;
- 9 Have not fulfilled obligations relating to payments of taxes or statutory contributions.

If the bidder is in any of the above listed situations, kindly attach documents giving details of the situation.

Names in full: [.....]

Duly authorized to sign this bid on behalf of (bidder’s name):

[.....]

Place and date: [.....]

Stamp of the firm/company:

INTEGRITY PACT

Bidder's Oath to fulfill the Integrity Pact

Accepting that transparent business management and fair public administration are key to social development and national competitiveness, and in an effort to purge corruption and apply sanctions to corrupt businesses, and in full support of the worthy goals of this Integrity Pact, concerning the present tender for: _____, all personnel of _____ and its sub-contractors and agents hereby agree that:

1. We shall not conduct any unethical business practices, such as bid-rigging for the sake of a particular bidder to win the bid, or price-fixing. If proven as a fact that we have engaged in bid-rigging for the sake of a particular bidder to win the bid, we shall accept to be prohibited from submitting bids placed by National Drought Management Authority (herein referred to as NDMA) for a period of two (2) years. If proven that we have discussed with other bidders in a bid to fix a price, or rigged a bid for a particular bidder to win the bid, we shall accept the prohibition from submitting bids placed by NDMA for a period of two (2) years. If any unethical behaviour is tantamount to a fraudulent practice, we accept that such a case may be handed over to the authorities for investigation and possible prosecution.
 2. In the process of bidding, or concluding or execution of a contract, we shall not offer any bribe, gifts, entertainment or any other undue benefits directly or indirectly to related officials, and in case it is proved that we have violated any terms of this Integrity Pact in relation with a bid, or concluding or execution of a contract, or offered bribes for favours in a contract, to win a contract, or facilitate payment which should not have been forthcoming, we shall accept the prohibition from submitting a bid placed by NDMA for a period of two (2) years. If proven as a fact that we have offered bribes to NDMA or related officials for favours regarding a bid or contract to a bidder or a winning bidder, or for the purpose of faulty execution of the objectives of a contract, we shall accept the prohibition from submitting bids placed by NDMA for a period of two (2) years. If proven that we have offered bribes to NDMA or related officials in relation to bidding, or concluding or execution of a contract, we shall accept the prohibition from submitting bids placed by NDMA for a period of two (2) years.
 3. In case it is proven that we have offered bribes to a related official or a NDMA official regarding a bid, or concluding or execution of a contract, we shall accept the cancellation of the contract, and shall not file any civil, administrative or criminal appeals.
 4. We shall make our best effort to institute a Company Code of Conduct that prohibits bribery, bid rigging/fixing or any other corrupt practices in business relations with officials and NDMA, and a company regulation that prohibits any retaliatory acts toward anyone reporting inside corruption.
- f
5. In addition, I confirm on behalf of the bidder that the details included in the bidders profile and experience sheet and our quotation are correct to the best of my knowledge and belief. In addition, we authorize, NDMA to seek information from any source to confirm our compliance with the requirements of this Integrity Pact.

6 The bidder authorizes NDMA, to seek information from any source, including publication of the name of the bidder to confirm that the bidder is compliant with the requirements of this Integrity Pact.

We shall fulfill this Integrity Pact as a solemn oath made on the basis of mutual trust, and, if and when we win a bid, we shall sign and fulfill the above as a “Special Condition of Contract,” and not file any civil, administrative or criminal appeals regarding any of the above terms.

Dated: _____

Signed by: _____
(Chief Executive/Managing Director)

Full Name printed: _____

LETTER OF NOTIFICATION OF AWARD

Address of Procuring Entity

To: _____

RE: Tender No. _____

Tender Name _____

This is to notify that the contract/s stated below under the above mentioned tender have been awarded to you.

1. Please acknowledge receipt of this letter of notification signifying your acceptance.
2. The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.
3. You may contact the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.

(FULL PARTICULARS) _____

SIGNED FOR ACCOUNTING OFFICER