



NATIONAL AIDS CONTROL COUNCIL

**TENDER No. NACC/RT/003/2019-2020**

**PROVISION OF ONLINE DATA BACK SERVICES**

**National AIDS Control Council (NACC)**

**Landmark Plaza, 9th Floor**

**Argwings Kodhek Road**

**P. O. Box 61307 – 00200**

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**CLOSING DATE: NOVEMBER 20, 2019 AT 10:00AM**

TABLE OF CONTENTS		Page
INTRODUCTION .....		3
SECTION I	INVITATION TO TENDER.....	4
SECTION II	INSTRUCTIONS TO TENDERERS.....	6
	APPENDIX TO INSTRUCTIONS TO TENDERERS...	20
SECTION III	GENERAL CONDITIONS OF CONTRACT.....	23
SECTION IV	SPECIAL CONDITIONS OF CONTRACT.....	29
SECTION V	SCHEDULE OF REQUIREMENTS.....	30
SECTION VI	TECHNICAL SPECIFICATIONS.....	33
SECTION VII	STANDARD FORMS.....	34

## INTRODUCTION

The National Aids Control Council (NACC) is a State Corporation established under Legal Notice no. 170 of 1999 gives with a mandate to coordinate stakeholders in the multi-sectoral response to HIV and AIDS in Kenya. The mission of NACC involves “provide policy and a strategic framework for mobilizing and coordinating resources for the prevention of HIV transmission and provision of care and support to the infected and affected people in Kenya”.

National AIDS Control Council hereinafter referred to as NACC wishes to invite bids from firms providing online data back up for a period of two years.

SECTION I – INVITATION TO  
TENDER Date: November 12, 2019

Tender Ref No: NACC/RT/003/2019-2020

**Tender Name: PROVISION OF ONLINE DATA BACK SERVICES FOR A  
PERIOD OF TWO YEARS**

- 1.1 The National AIDS Control Council (NACC) is a State Corporation established under legal Notice 170 of 1999 to coordinate stakeholders in the multi-sectoral response to HIV and AIDS in Kenya.
- 1.2 The **Council** invites sealed bids from eligible candidates for the **Provision of Online data back services for a period of two years.**
- 1.3 Eligible and interested Bidders may obtain further information and inspect the bidding documents at Procurement Office situated at the NACC Headquarters **on 8th floor Landmark Plaza, Argwings Kodhek road**, during official working hours.
- 1.4 A complete set of tender documents may be obtained by interested Candidates by downloading the document from NACC website: [www.nacc.or.ke](http://www.nacc.or.ke) or [www.tenders.go.ke](http://www.tenders.go.ke) at no fee. Tender clarifications and/or addendums if need be, to be channeled through the following email; [communication@nacc.or.ke](mailto:communication@nacc.or.ke). Alternatively, printed tender documents may be obtained by interested candidates upon payment of a non-refundable fee of Kenya Shillings **1,000/=**
- 1.5 Prices quoted should be inclusive of all taxes and service delivery costs, must be expressed in Kenya shillings and valid for 120 days after opening of the tender.
- 1.6 The tender documents to be submitted shall not be accompanied by tender security.
- 1.7 Completed tender documents dully serialized and paginated are to be enclosed in plain sealed envelopes, marked with the tender number and name and be deposited in the Tender Box at **9<sup>th</sup> floor Landmark Plaza** or be addressed to;

**The Chief Executive Officer,  
National Aids Control Council  
Landmark Plaza, 9<sup>th</sup> Floor,  
Argwings Kodhek  
P O Box 61307 – 00100,  
NAIROBI, KENYA**

so as to be received on or before **November 20, 2019 at 10:00 am**

- 1.8 Tenders will be opened immediately thereafter in the presence of the Candidates or their representatives who choose to attend.

## SECTION II - INSTRUCTIONS TO TENDERERS

TABLE OF CONTENTS.		Page
2.1	Eligible Tenderers .....	6
2.2	Cost of tendering .....	6
2.3	Contents of tender documents .....	6
2.4	Clarification of Tender documents .....	7
2.5	Amendment of tender documents .....	7
2.6	Language of tenders .....	7
2.7	Documents comprising the tender .....	7
2.8	Form of tender .....	7
2.9	Tender prices .....	8
2.10	Tender currencies .....	8
2.11	Tenderers eligibility and qualifications .....	8
2.12	Tender security .....	8
2.13	Validity of tenders .....	9
2.14	Format and signing of tenders .....	9
2.15	Sealing and marking of tenders .....	10
2.16	Deadline for submission of tenders .....	10
2.17	Modification and withdrawal of tenders .....	10
2.18	Opening of tenders .....	11
2.19	Clarification of tenders .....	11
2.20	Preliminary Examination .....	11
2.21	Conversion to other currencies .....	12
2.22	Evaluation and comparison of tenders .....	12
2.23	Contacting NACC.....	13
2.24	Post-qualification .....	13
2.25	Notification of award .....	14
2.26	Signing of Contract .....	14
2.27	Performance security .....	14
2.28	Corrupt or fraudulent practices .....	14

## **2.1 Eligible Tenderers**

- 2.1.1. This Invitation to tender is open to all Tenderers eligible as described in the instructions to Tenderers. Successful Tenderers shall provide the services for the stipulated duration from the date of commencement (hereinafter referred to as the term) specified in the tender documents.
- 2.1.2. NACC'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.
- 2.1.3. 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 NACC to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the services under this Invitation for tenders.
- 2.1.4. Tenderers involved in corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

## **2.2 Cost of tendering**

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

## **Contents of tender documents**

- 2.2.1. The tender document comprises of the documents listed below and addenda issued in accordance with clause 2.5 of these instructions to tenderers.
  - 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 forms.
- 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.

## **2.3 Clarification of Documents**

- 2.3.1. A prospective candidate making inquiries of the tender document may notify NACC in writing or by post, fax or email at the entity's address indicated in the Invitation for tenders. NACC 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 NACC. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective Tenderers who have received the tender documents"
- 2.3.2. NACC 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

## **2.4 Amendment of documents**

2.4.1 The Procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents 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.

- 2.4.2. 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.
- 2.4.3. In order to allow prospective Tenderers reasonable time in which to take the amendment into account in preparing their tenders, NACC, at its discretion, may extend the deadline for the submission of tenders.

## **2.5 Language of tender**

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

## **2.7 Documents Comprising the Tender**

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

- (a) A Tender Form and a Price Schedule completed in accordance with paragraph 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

## **2.8 Form of Tender**

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

## **2.9 Tender Prices**

- 2.9.1 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.
- 2.9.2 Prices indicated on the Price Schedule shall be the cost of the services quoted including all customs duties and VAT and other taxes payable:
- 2.9.3 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 paragraph 2.22.
- 2.9.4 Contract price variations shall not be allowed for contracts not exceeding one year (12 months)
- 2.9.5 Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price.
- 2.9.6 Price variation requests shall be processed by NACC within 30 days of receiving the request.

## **2.10 Tender Currencies**

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

## **2.11 Tenderers Eligibility and Qualifications.**

- 2.11.1 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.
- 2.11.2 The documentary evidence of the Tenderers qualifications to perform the contract if its tender is accepted shall establish to NACC's satisfaction that the tenderer has the financial and technical capability necessary to perform the contract.

## **2.12 Tender Security**

- 2.12.1 The tenderer shall furnish, as part of its tender, a tender security for the amount and form specified in the Invitation to tender.
- 2.12.2 The tender security shall be in the amount not exceeding 2 per cent of the tender price.
- 2.12.2 The tender security is required to protect NACC against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 2.12.7
- 2.12.3 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) Cash.
  - (c) Such insurance guarantee approved by the PPRA.



- (d) Letter of credit.
- (e) Guarantee by a deposit taking Micro Finance Institution, SACCO Society, the Youth Enterprise Fund and the Women Enterprise Fund.

2.12.4 Any tender not secured in accordance with paragraph 2.12.1 and 2.12.3 will be rejected by NACC as non-responsive, pursuant to paragraph 2.20.

2.12.5 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 NACC

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

2.12.7 The tender security may be forfeited:

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

### 2.13 Validity of Tenders

2.13.1 Tenders shall remain valid for 120 days or as specified in the invitation to tender after date of tender opening prescribed by NACC, pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by NACC as non-responsive.

2.13.2 In exceptional circumstances, NACC 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 2.12 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.

### 2.14 Format and Signing of Tender

2.14.1 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.

2.14.2 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 un-amended printed literature, shall be initialed by the person or persons signing the tender.

2.14.3 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.

## 2.15 Sealing and Marking of Tenders

2.15.1 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 NACC at the address given in the invitation to tender as indicated below:

**The Chief Executive Officer,  
National Aids Control Council  
Landmark Plaza, 9<sup>th</sup> Floor,  
Argwings Kodhek  
P O Box 61307 – 00100,  
NAIROBI, KENYA**

(b) bear tender number and name in the invitation to tender and the words: “DO NOT OPEN BEFORE **November 20, 2019 at 10:00 am**”

2.15.3 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”.

2.15.4 If the outer envelope is not sealed and marked as required by paragraph 2.15.1, NACC will assume no responsibility for the tender’s misplacement or premature opening.

### 2.16 Deadline for Submission of Tenders

2.16.1 Tenders must be received by NACC at the address specified under paragraph 2.15.1 (a) no later than **November 20, 2019 at 10:00 am**

2.16.2 NACC may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 2.4 in which case all rights and obligations of NACC and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

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

### 2.17 Modification and withdrawal of tenders

2.17.1 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 NACC prior to the deadline prescribed for the submission of tenders.

2.17.2 The Tenderer’s modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 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.

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

2.17.4 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 paragraph 2.12.7.

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

2.17.6 NACC 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.

## **2.18 Opening of Tenders**

- 2.18.1 NACC will open all tenders in the presence of Tenderers' representatives who choose to attend, on **November 20, 2019 at 10:00 am** and in the location specified in the invitation to tender. The Tenderers' representatives who are present shall sign a register evidencing their attendance.
- 2.18.3 The Tenderers' names, tender modifications or withdrawals, tender prices, discounts, and the presence or absence of requisite tender security and such other details as NACC, at its discretion, may consider appropriate, will be announced at the opening.
- 2.18.4 NACC will prepare minutes of the tender opening which will be submitted to the Tenderers that signed the tender opening register and will have made the request.

## **2.19 Clarification of tenders**

- 2.19.1 To assist in the examination, evaluation and comparison of tenders NACC may at its discretion, ask the tenderer for a clarification of its tender. The request for clarification and the response shall be in writing, and no change in the prices or substance shall be sought, offered, or permitted.
- 2.19.2 Any effort by the tenderer to influence NACC in its tender evaluation, tender comparison or contract award decisions may result in the rejection of the Tenderers tender.

## **2.20 Preliminary Examination and Responsiveness**

- 2.20.1 NACC will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required securities have been furnished whether the documents have been properly signed, and whether the tenders are generally in order.
- 2.20.2 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.
- 2.20.3 NACC may waive any minor informality or nonconformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any tenderer.
- 2.20.4 Prior to the detailed evaluation, pursuant to paragraph 2.22, NACC 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. NACC's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

2.20.5 If a tender is not substantially responsive, it will be rejected by NACC and may not subsequently be made responsive by the tenderer by correction of the nonconformity.

## **2.21 Conversion to a single currency**

2.21.1 Where other currencies are used, NACC will convert those currencies to Kenya shillings using the selling exchange rate on the date of tender closing provided by the central bank of Kenya.

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

2.22.1 NACC will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.20

2.22.2 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.

2.22.3 NACC's evaluation of a tender will take into account, in addition to the tender price, the following factors, in the manner and to the extent indicated in paragraph 2.22.4 and in the technical specifications:

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

2.22.4 Pursuant to paragraph 2.22.3 the following evaluation methods will be applied:

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

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

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

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

(a) Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.

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

### **2.23. Contacting NACC**

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

2.23.2 Any effort by a tenderer to influence NACC in its decisions on tender evaluation tender comparison or contract award may result in the rejection of the Tenderers tender.

### **2.24 Award of Contract**

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

2.24.1 In the absence of pre-qualification, NACC 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.

2.24.2 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 paragraph 2.1 as well as such other information as NACC deems necessary and appropriate.

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

#### **b) Award Criteria**

2.24.3 Subject to paragraph 2.26 NACC will award the contract to the successful tenderer whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

2.24.4 NACC 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 NACC action. If NACC determines that none of the Tenderers is responsive; NACC shall notify each tenderer who submitted a tender.

2.24.5 A tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after notification of contract

award shall be considered for debarment from participating in future public procurement.

## **2.25 Notification of award**

- 2.25.1 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.
- 2.25.2 The notification of award will signify the formation of the Contract subject to the signing of the contract between the tenderer and NACC pursuant to clause 2.26. Simultaneously the other Tenderers shall be notified that their tenders have not been successful.
- 2.25.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 2.27, NACC will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.12.

## **2.26 Signing of Contract**

- 2.26.1 At the same time as NACC notifies the successful tenderer that its tender has been accepted, NACC will simultaneously inform the other Tenderers that their tenders have not been successful.
- 2.26.2 Within fourteen (14) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to NACC
- 2.26.3 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.

## **2.27 Performance Security**

- 2.27.1 Within thirty (30) days of the receipt of notification of award from NACC, 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 NACC
- 2.27.2 Failure of the successful tenderer to comply with the requirement of paragraph 2.26 or paragraph 2.27.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event NACC may make the award to the next lowest evaluated or call for new tenders.

## **2.28 Corrupt or Fraudulent Practices**

- 2.28.1 NACC 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.

NACC will reject a proposal for award if it determines that the

- 2.28.2 tenderer

recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;

- 2.28.3 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

<b>Instructions to tenderers</b>	<b>Particulars of appendix to instructions to tenderers</b>
2.1	Particulars of eligible tenderers: Pre-qualified firms by ICT Ministry to offer the data back services.
2.2.2	Price to be charged for tender documents. Kshs. 1,000 for those who purchase the tender document directly and free for those who download the document
2.10	Particulars of other currencies allowed. None —
2.11	Particulars of eligibility and qualifications documents of evidence required. Copies of: i) Certificate of Registration/Incorporation ii) Certificate of valid tax compliance iii) VAT Certificate iv) Dully executed Anti-Corruption Declaration Form v) Dully Executed Self Declaration on Debarment vio Power of Attorney (Letter authorizing person signing on behalf of firm or bidder)
2.12.2	Particulars of tender security if applicable. None <span style="background-color: yellow; display: inline-block; width: 100px; height: 15px; vertical-align: middle;"></span>
2.13	Validity of Tenders: Tenders Shall remain valid for 120 days from the date of tender Opening.
2.16.3	Bulky tenders which do not fit in the tender box shall be delivered to the CEO office situated at Landmark Plaza 9 <sup>th</sup> floor.
2.22	Evaluation Criteria as attached
2.24	Particulars of post - qualification if applicable. NACC may inspect the premises and /or check the accuracy of any or all information provided by the bidder before awarding a contract.
2.24.4	<b>Award Criteria:</b> <b>The tender will be awarded to:</b> the successful tenderer whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.
2.27	Particulars of performance security if applicable. NONE <span style="background-color: yellow; display: inline-block; width: 100px; height: 15px; vertical-align: middle;"></span>

OF CONTRACT

SECTION III: GENERAL CONDITIONS

TABLE OF CONTENTS

Page

3.1	Definitions	21
3.2	Application	21
3.3	Standards	21
3.4	Use of contract documents and information	21
3.5	Patent Rights	21
3.6	Performance security	21
3.7	Inspections and tests	22
3.8	Payment	22
3.9	Prices	22
3.10	Assignment	23
3.11	Termination for default	23
3.12	Termination for insolvency	23
3.13	Termination for convenience	23
3.14	Resolution of disputes	23
3.15	Governing language	24
3.16	Force majeure	24
3.17	Applicable law	24
3.18	Notices	24



## SECTION III: GENERAL CONDITIONS OF CONTRACT

### 3.1 Definitions

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

- i) “The contract” means the agreement entered into between NACC 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.
- ii) “The Contract Price” means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations.
- iii) “The services” means services to be provided by the contractor including materials and incidentals which the tenderer is required to provide to NACC under the Contract.
- iv) “NACC” means the organization sourcing for the services under this Contract.
- v) “The contractor means the individual or firm providing the services under this Contract.
- vi) “GCC” means general conditions of contract contained in this section
- vii) “SCC” means the special conditions of contract
- viii) “Day” means calendar day

### 3.2 Application

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

### 3.3 Standards

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

### 3.5 Patent Right's

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

### 3.6 Performance Security

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

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

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

- a) Cash.
- b) A bank guarantee.
- c) Such insurance guarantee approved by the NACC.
- d) Letter of credit.
- e) Guarantee by a deposit taking Micro Finance Institution, SACCO Society, the Youth Enterprise Fund and the Women Enterprise Fund.

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

**3.7 Inspections and Tests**

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

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

3.7.3 Should any inspected or tested services fail to conform to the Specifications, NACC 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 NACC

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

**3.8 Payment**

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

**3.9 Prices**

Prices charged by the contractor for 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 NACC'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.

**3.10 Assignment**

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

### **3.11 Termination for Default**

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

In the event NACC 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 NACC for any excess costs for such similar services.

### **3.12 Termination of insolvency**

NACC may at the 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 NACC.

### **3.13 Termination for convenience**

3.13.1 NACC 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 NACC convenience, the extent to which performance of the contractor of the contract is terminated and the date on which such termination becomes effective.

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

### **3.14 Resolution of disputes**

NACC'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.

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

### **3.15 Governing Language**

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

### **3.16 Force Majeure**

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

### **3.17 Applicable Law.**

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

### **3.18 Notices**

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

#### SECTION IV - SPECIAL CONDITIONS OF CONTRACT

4.1 Special conditions of contract shall supplement the general conditions of contract, wherever there is a conflict between the GCC and the provisions of the SCC herein shall prevail over those the GCC.

4.2 Special conditions of contract with reference to the general conditions of contract.

General conditions of contract reference	Special conditions of contract
3.5	Specify performance security if applicable:  10% of tender sum
3.7	Specify method Payments. <b>Payments shall be made at once per Financial Year.</b>
3.8	Specify price adjustments allowed. <b>None</b>
3.14	<b>Specify resolution of disputes.</b> In case of a dispute between the service provider and the employer, the same shall be resolved amicably between the parties in the first instance failure to which the dispute shall be referred for arbitration as per provisions of the Arbitration Act of 1995

	before a single arbitrator to be agreed on by the parties and in failure of such an agreement by the Chairperson for the time being of the chartered institute of Arbitrators Kenya branch and any award given shall be final
3.16	Specify applicable law. <b>Laws of Kenya</b>
3.17	<p>Indicate addresses of both parties.</p> <p>Client-</p> <p style="padding-left: 40px;">National AIDS Control Council LandMark Plaza Argwings Kodhek Road P.O Box 61307-00100, Nairobi, Kenya</p> <p style="padding-left: 40px;">Email: <a href="mailto:communication@nacc.or.ke">communication@nacc.or.ke</a></p> <p><b>Bidder to indicate</b></p> <p>Name:</p> <p>Location:</p> <p>Postal address:</p> <p>Email:</p> <p>Cell phone:</p> <p>Office line :</p> <p>Website</p>

## EVALUATION CRITERIA

The following requirements **must be met** by the tenderer not withstanding other requirements in the tender documents: - **EVALUATION CRITERIA**

### a) Preliminary/Evaluation

Bidders must meet all the mandatory requirements below to proceed to detailed technical evaluation stage: <b>Requirements</b>	
i.	Copy of Incorporation/Registration certificate
ii.	Copy of Valid Tax Compliance certificate
iii.	Dully Filled, signed and stamped Form of Tender in the format provided
iv.	Dully Filled, signed and stamped Confidential Business Questionnaire
v.	CR12 registered companies or Copies of IDs for sole proprietors and partnerships
vi.	Copy of Single Business permit from the county government where the business operates.
vii.	Copy of Manufacturers authorization
viii.	Certificate of Accreditation by STATE DEPARTMENT OF ICT /Pre-qualification
ix.	Copies of Audited Accounts for any two of the three years shown (2016, 2017 & 2018)
<b>NOTE</b> – Bidders who do not meet any of the above requirements shall be disqualified from further evaluation.	

## b) Technical Evaluation Criteria

Requirement		
(i)	<b>Full compliance with technical specifications</b>	YES/NO
(ii)	<b>Specific experience of the service provider relevant to the assignment</b> <i>a) Attach copies of LSOs or completion certificate from at least three (3) institutions in which you have completed similar assignments.</i> <i>b) Provide at least three (3) reference letters in the official letterhead of the client from each institution where you have completed similar assignments</i>	20 Marks
(iii)	<b>Provide the methodology and work schedule for the assignment in</b> a) Technical approach and methodology b) Bidders additional suggestions & proposals on the TORs c) Understanding & conformity to the TOR	20 Marks
(iv)	<b>Key professional staff qualifications and competence for the assignment</b> a) Team Leader - Have a minimum five (5) years' experience in Systems installations, (Attach CV in format provided) b) Experience of the Two (2) other staff – Have at least 2 years' experience in Systems installations (Attach CVs in format provided)	20 Marks
(v)	Academic Qualification of key personnel (Attach copies of certificates) <ul style="list-style-type: none"> <li>• Team Leader BSc Computer Science/ICT/IT/IS</li> <li>• Two Other Technical Staff BSc Computer Science/ICT/IT/IS</li> </ul>	20 Marks
(vi)	Professional Qualifications in ICT for the 3 (three) lead technical staff; Data Base Management Systems or Systems Security or Software development (Attach copies of certificates)	20 Marks

## C: FINANCIAL EVALUATION

The tendered sum per month for each bidder will be averaged.

### Recommendation for Award

The lowest evaluated bidder will be awarded.

## D; POST - QUALIFICATION.

NACC may inspect the premises and/or check the accuracy of any or all information provided by the bidder before awarding a contract.

## BIDDER'S EXPERIENCE REQUIREMENTS

Potential suppliers are required to submit details of at least three (3 No.) Government of Kenya organizations or 3 reputable organizations where they have undertaken similar services in the format given below.

Ensure you have provided reference letters from the organizations duly signed and stamped by the relevant officer. The reference letters must be in the organizations letterheads.

No.	Contact Information	Details
1	Name of Company	
	Name of contact person	
	Designation	
	Telephone number E-mail address	
2	Name of Company	
	Name of contact person	
	Designation	
	Telephone number E-mail address	
3	Name of Company	
	Name of contact person	
	Designation	
	Telephone number E-mail address	
4	Name of Company	
	Name of contact person	
	Designation	
	Telephone number E-mail address	
5	Name of Company	
	Name of contact person	
	Designation	
	Telephone number E-mail address	

Ensure you have provided reference letters for **ALL** the above organizations, duly **signed** and **stamped** by the relevant officer.

The reference letter **MUST** be on the organization's letterhead.



## SECTION VI - SCHEDULE OF REQUIREMENTS

### 5.1 Services Required

The NACC wishes to engage online data back services provider.

#### Online Backup Technical Requirements

- The Backup Service Should collect data from data centre, 18 regional offices, laptops and desktops.
- Data is de-duplicated, compressed, and encrypted before being transmitted across the network to a cloud-based target site to be stored.
- Target systems can be located onsite, in a remote Data Centre, or with a service provider.
- A cost effective and highly scalable data recovery and back-up solution for businesses.
- cloud-based backup and restore services should be provided within the shortest time possible
- Provide 100% back up recovery assurance
- Data that will need to be stored/backed offsite will be from the NACC's 10 different servers as
  - Active directory/File server- AD on windows server 2012 R2 Enterprise,
  - ERP Server: ERP Navision 2017 R2 operating system is windows server 2012 R2
  - Email server: Exchange
  - SAP ERP server
  - Inspiro People payroll system
  - Website server
  - Teammate server
  - DC server
  - VCenter
  - M&E server
- Data Security – allows for secure transmission and storage of data in the cloud
- Support service – The NACC will require 24\*7\*365 support service when needed and a contact person who will be managing the account.
- Cost for the service will be yearly based

## SECTION VI – DESCRIPTION OF SERVICES

- The NACC requires Online Backup System to collect data from data centre, 18 regional offices, laptops and desktops. Data is de-duplicated, compressed, and encrypted before being transmitted across the network to a cloud-based target site to be stored.
- Automatic storage management – There is no cost for using on-premises storage devices, one that will Backup automatically, allocate and manage backup storage.
- Unlimited scaling – A Backup that uses the underlying power and unlimited scale of the backup cloud to deliver high-availability - with no maintenance or monitoring overhead.
- Multiple storage options – Gives an aspect of high-availability is storage replication and offers two types of replication: locally redundant storage (it creates three copies of data) and geo-redundant storage (replicates data to a secondary region).
- Unlimited data transfer – No limit for inbound or outbound data transfer, and one that also does not charge for the data that is transferred into the cloud.
- Data Security – allows for secure transmission and storage of data in the cloud. The Council will store the encryption passphrase locally, and it is never transmitted or stored in the cloud backup. If it is necessary to restore any of the data, only the Council has the encryption passphrase, or key, where the encryption should be personalized by the Council.
- Application-consistent backup – A Backup that provides application-consistent backups, which ensures additional fixes are not needed to restore the data. Restoring application consistent data reduces the restoration time, allowing the Council to quickly return to a running state.
- Long-term retention – This provides a long term data retention provided the contract is renewed. In case we are to stop the service; the data will be wiped and only resume after the renewal. The contract will not limit the length of time data remains in a Backup or Recovery Services vault.
- Speed – The cloud computing services that provides self service and on demand, so even vast amounts of computing resources can be provisioned in minutes, typically with just a few mouse clicks.
- Support service – The Council will require 24\*7\*365 support service when needed and a contact person who will be managing the account.
- Accessibility – The Council will require easy, fast and secure online access to our data anytime, anywhere and whenever needed.
- Email server recovery/ AD recovery/ ERP server recovery/Malware recovery
- 

	○ File Backup	○ Backs Up files and folders only (Windows)
	○ Desktop/Server (Image-Based)	○ Takes an image of the server and restores it in the same state with all applications running. (Windows)
	○ Microsoft SQL Server	○ Suitable for backing up SQL Databases to prevent corrupted Databases(Windows)
	○ Microsoft Exchange	○ For backing up Microsoft Exchange server to the cloud storage
	○ Ultimate	○ Provides Unlimited backup for Windows desktop computers and servers, MS Exchange and MS SQL Server.
	○ Virtual Machine (VM)	○ Backups Hyper-V and VMware VMs and restores them as virtual

## LOCATIONS

The services are required at the following locations:

No	Region/Field office	Office Location
1	Head Office	Landmark Plaza Building, 8 <sup>th</sup> floor, Opposite Nairobi Hospital
2	Mombasa	County Commissioner's Office Mombasa
3	Nakuru	County Commissioner's Office Nakuru
4	Eldoret	County Commissioner's Office Eldoret
5	Kakamega	County Commissioner's Office Kakamega
6	Kisumu	County Commissioner's Office Kisumu
7	Nyeri	County Commissioner's Office Nyeri
8	Embu	County Commissioner's Office Embu
9	Garissa	County Commissioner's Office Garissa
10	Turkana	DC's Office, Lodwar
11	Kisii	County Commissioner's Office, Kisii
12	Homa Bay	County Commissioner's Office, Homa Bay
13	Nyahururu	County Building Office Nyandarua
14	Kitale	County Commissioner's Office, Kitale
15	Machakos	County Commissioner's Office Machakos
16	Wajir	Ministry of Health Offices Wajir
17	Isiolo	Isiolo CDF Offices
18	Bungoma	Immigration Building Bungoma

## SECTION VII- STANDARD FORMS

### Notes on standard forms

1. The tenderer shall complete and submit with its tender the form of tender and price schedules pursuant to instructions to Tenderers clause 9 and in accordance with the requirements included in the special conditions of contract.
2. When requested by the appendix to the instructions to Tenderers, the tenderer should provide the tender security, either in the form included herein or in another form acceptable to NACC pursuant to instructions to Tenderers clause 2.12
3. The contract form, the price schedules and the schedule of requirements shall be deemed to form part of the contract and should be modified accordingly at the time of contract award to incorporate corrections or modifications agreed by the tenderer and NACC in accordance with the instructions to Tenderers or general conditions of contract.
4. The performance security and bank guarantee for advance payment forms should not be completed by the Tenderers at the time of tender preparation. Only the successful tenderer will be required to provide performance/entity and bank guarantee for advance payment forms in accordance with the forms indicated herein or in another form acceptable to NACC and pursuant to the - conditions of contract.

## SECTION VIII - STANDARD FORMS

1. Form of tender
2. Price schedules
3. Confidential Questionnaire form
4. Tender Securing Declaration Form
5. Declaration Form
6. Anti-Corruption Declaration Commitment/ Pledge
7. Tender security form
8. Performance security form
9. Declaration form
10. Contract form
11. Letter of Notification of Award

FORM OF TENDER

Date.....

Tender No. NACC/RT/003/2019-2020

To: Chief Executive Officer  
National Aids Control Council  
P. O. Box 61307-00100  
NAIROBI

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda Nos.... *[insert numbers]* the of which is hereby duly acknowledged, we, the undersigned, offer to provide, *Provision of online Data Back Up Services* in conformity with the said tender documents for the sum of *[As per the price Schedule]* 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 **Ksh....** for the due performance of the Contract, in the form prescribed by NACC.
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 .....2018

*[Signature]*

*[In the capacity of]*

Duly authorized to sign tender for and on behalf of.....

**PRICE SCHEDULE FOR PROVISION OF DATA BACK UP SERVICES FOR NACC.**

No	Description of the Services	Monthly cost inclusive of VAT (Kshs)	Annual Cost inclusive of VAT(Ksh)
1.	Online data Back Up in 18 regions		

**Bidders Signature.....**

**Date.....**

**Official Stamp.....**

**CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM**

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

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

*Part 1 – General:*

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

**Part 2 (a) – Sole Proprietor**

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

Citizenship detail .....

**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 .....  
 ( Attach certificate of incorporation)

Date ..... Seal/Signature of Candidate .....



**TENDER SECURING DECLARATION FORM (AGPO FIRMS)**

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

Date:..... *[of Bid Submission]*

Tender No.....

To: National Aids Control Council

We, the undersigned, declare that:

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

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

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

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

Dated on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ *[insert date of signing]*

**SELF-DECLARATION FORM**

Date \_\_\_\_\_

To:

**The Chief Executive Officer  
National Aids Control Council  
P.O. Box 61307-00100  
Nairobi**

The tenderer i.e. (name and address)

\_\_\_\_\_ declare the following:

- a) Has not been debarred from participating in public procurement.
  
- b) Has not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement.

Name.....

Title.....

Signature.....

Date.....

Official Stamp.....

(To be signed by authorized representative and officially stamped)

**ANTI-CORRUPTION DECLARATION COMMITMENT/ PLEDGE**

*(Sections 62 of the PPAD Act, 2015)*

I/We/Messrs.....

of Street, Building, P O Box.....

.....

Contact/Phone/E mail.....

declare that Public Procurement is based on a free and fair competitive Tendering process which should not be open to abuse.

I/We .....

declare that I/We will not offer or facilitate, directly or indirectly, any inducement or reward to any public officer, their relations or business associates, in connection with

Tender/Tender No .....

for or in the subsequent performance of the contract if I/We am/are successful.

Authorized Signature.....

Name of Signatory.....

Title of Signatory .....

Official Stamp.....

SELF DECLARATION FORMS (r 62)

REPUBLIC OF KENYA

PUBLIC PROCUREMENT REGULATORY AUTHORITY (PPRA)

Form SD1

Self-declaration that the person/tenderer is not debarred in the matter of the public procurement and asset disposal act 2015.

I, ..... of P. O. Box ..... being a resident of

..... in the Republic of ----- do hereby make a statement as follows: -

1. THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Director of .....  
..... (insert name of the Company) who is a Bidder in respect of **Tender No.**  
..... for ..... (insert tender title/description) for ..... (insert name of the Procuring entity) and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.
3. THAT what is deponed to hereinabove is true to the best of my knowledge, information and belief.

.....  
(Title)

.....  
(Signature)

.....  
(Date)

Bidder Official Stamp

## BANK DETAILS FORM

Provide the following bank details for electronic transfer purposes

Name of the Bidder.....

Bank Name .....

Bank Branch Name .....

Bank Code .....

Bank Account .....

Bank Signatory(s) .....

.....

PIN Number .....

VAT Number .....

VALID KRA TCC No.....

Signed/ date.....

**TENDER SECURITY FORM**

Whereas .....[name of the tenderer]

(hereinafter called “the tenderer”)has submitted its tender dated.....[date of submission of tender ] for the provision of .....[name and/or description of the services]

(hereinafter called “the Tenderer”).....

KNOW ALL PEOPLE by these presents that WE.....

Of.....having registered office at

[name of procuring entity] (hereinafter called “the Bank”)are bound unto.....

[name of procuring entity](hereinafter called “NACC”) in the sum of .....

for which payment well and truly to be made to the said Procuring entity, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this\_\_\_\_\_ day of 20\_\_\_\_\_.

THE CONDITIONS of this obligation are:

- 1. If the tenderer withdraws its Tender during the period of tender validity specified by the tenderer on the Tender Form; or
- 2. If the bidder refuses to accept the correction of errors in its bid; or
- 3. If the tenderer, having been notified of the acceptance of its Tender by NACC during the period of tender validity:
  - (a) Fails or refuses to execute the Contract Form, if required; or
  - (b) fails or refuses to furnish the performance security, in accordance with the instructions to Tenderers;

we undertake to pay to NACC up to the above amount upon receipt of its first written demand, without NACC having to substantiate its demand, provided that in its demand NACC will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions. This guarantee will remain in force up to and including thirty (30) days after the period of tender validity, and any demand in respect thereof should reach the Bank not later than the above date.

\_\_\_\_\_  
[signature of the bank]

**PERFORMANCE BANK GUARANTEE (UNCONDITIONAL)**

To \_\_\_\_\_(Name of Employer) \_\_\_\_\_(Date)  
: \_\_\_\_\_(Address of Employer)

Dear Sir,

WHEREAS \_\_\_\_\_(hereinafter called “the Contractor”) has undertaken, in pursuance of Contract No. \_\_\_\_\_ dated \_\_\_\_\_ to execute \_\_\_\_\_ (hereinafter called “the Works”);

AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a recognised bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Contractor such a Bank Guarantee:

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of Kshs. \_\_\_\_\_ (amount of Guarantee in figures) Kenya Shillings \_\_\_\_\_ (amount of Guarantee in words), and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of Kenya Shillings \_\_\_\_\_ (amount of Guarantee in words) as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Contractor before presenting us with the demand.

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

This guarantee shall be valid until the date of issue of the Certificate of Completion.

SIGNATURE AND SEAL OF THE GUARANTOR \_\_\_\_\_

Name of Bank \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_

**(Amend accordingly if provided by Insurance Company)**

## CONTRACT FORM

THIS AGREEMENT made the \_\_\_day of \_\_\_\_20\_\_ between..... [Name of procurement entity] of .....[country of Procurement entity](hereinafter called "NACC") of the one part and .....[name of tenderer] of .....[city and country of tenderer](hereinafter called "the tenderer") of the other part.

WHEREAS NACC 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 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) NACC's Notification of Award.
3. In consideration of the payments to be made by NACC to the tenderer as hereinafter mentioned, the tenderer hereby covenants with NACC to provide the materials and spares and to remedy defects therein in conformity in all respects with the provisions of the Contract
4. NACC 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 NACC)

Signed, sealed, delivered by \_\_\_\_\_ the \_\_\_\_\_ (for the tenderer) in the presence of \_\_\_\_\_.



**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 EXECUTIVE DIRECTOR

REPUBLIC OF KENYA  
PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO.....OF.....20.....

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (*Procuring Entity*)

Request for review of the decision of the..... (*Name of the Procuring Entity*) of  
.....dated the...day of .....20.....in the matter of Tender No.....of  
.....20...

**REQUEST FOR REVIEW**

I/We.....,the above named Applicant(s), of address: Physical  
address.....Fax No.....Tel. No.....Email ....., hereby request the Public  
Procurement Administrative Review Board to review the whole/part of the  
above mentioned

decision on the following grounds , namely:-

- 1.
- 2.

By this memorandum, the Applicant requests the Board for  
an order/orders that: -

- 1.
- 2.

SIGNED .....(Applicant)

Dated on.....day of ...../...20...

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**FOR OFFICIAL USE ONLY**

Lodged with the Secretary Public Procurement Administrative Review Board on  
..... day  
of .....20.....

SIGNED  
Board Secretary