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**TENDER No. NKCC/T/042/2018-19**

**SUPPLY & DELIVERY OF U- STRAWS**

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**CLOSING DATE: 3<sup>RD</sup> JUNE 2019**

**AT 10.00 A.M**

M/s.....  
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Dear Sirs,

**RE: TENDER FOR U STRAWS**

You are hereby invited to submit sealed tenders for supply and delivery of u-straws to New Kenya Co-operative Creameries Limited.

The following notes, general specifications and guide lines are incorporated for your attention and action.

1. Submission of Tender Documents
2. Instructions to Tenderers
3. General Conditions of Contract
4. Special Conditions of Contract
5. Technical Specifications
6. Schedule of Requirements
7. Price Schedule of Goods
8. Standard Forms

### INVITATION TO TENDER

Tenders are invited from interested and eligible firms/suppliers to submit sealed bids for the following:

<b>Tender number</b>	<b>Description</b>	<b>Bid security (Ksh)</b>	<b>Eligibility</b>	<b>Closing/opening Date</b>
NKCC/T/038/2018-19	Provision of Garbage collection Services	N/A	<b>Reserved for AGPO</b>	3 <sup>rd</sup> June 2019 at 10.00a.m
NKCC/T/039/2018-2019	Supply & installation of Fire Alarm Systems – <i>NB Site visits dates in the tender document.</i>	50,000	<b>Open</b>	17 <sup>th</sup> June 2019 at 10.00a.m
NKCC/EOI/040/2018-2019	Provision of Consultancy for Review of ICT Strategy and Policies	N/A	<b>Open</b>	3 <sup>rd</sup> June 2019 at 10.00a.m
NKCC/T/041/2018-2019	Supply and delivery of HDPE Milk Bottles	50,000	<b>Open</b>	3 <sup>rd</sup> June 2019 at 10.00a.m
NKCC/T/042/2018-2019	Supply and delivery of U-straws	50,000	<b>Open</b>	3 <sup>rd</sup> June 2019 at 10.00a.m
NKCC/T/043/2018-2019	Supply and delivery of Cartons	50,000	<b>Open</b>	3 <sup>rd</sup> June 2019 at 10.00a.m
NKCC/T/044/2018-2019	Supply and delivery of 20 Litre Milk O bags	50,000	<b>open</b>	3 <sup>rd</sup> June 2019 at 10.00a.m
NKCC/T/045/2018-19	Supply and delivery of Shrink Sleeves	50,000	<b>Open</b>	3 <sup>rd</sup> June 2019 at 10.00a.m
NKCC/T/046/2018-19	Supply and delivery of Yoghurt cups, Aluminum Foils, Logo lids and Trays	50,000	<b>Open</b>	3 <sup>rd</sup> June 2019 at 10.00a.m
NKCC/T/047/2018-19	Supply and delivery of Ghee and Powder Tins	50,000	<b>Open</b>	3 <sup>rd</sup> June 2019 at 10.00a.m
NKCC/T/048/2018-19	Supply and delivery of Shrink Bags-Amillon	50,000	<b>Open</b>	3 <sup>rd</sup> June 2019 at 10.00a.m

NKCC/T/049/2018-19	Supply and Delivery of Milk powder bags	50,000	<b>Open</b>	3 <sup>rd</sup> June 2019 at 10.00a.m
NKCC/T/050/2018-19	Supply and delivery of Gable Top Packaging Material	50,000	<b>Open</b>	3 <sup>rd</sup> June 2019 at 10.00a.m
NKCC/T/051/2018-19	Supply and delivery of Sealing Tape	50,000	<b>Open</b>	3 <sup>rd</sup> June 2019 at 10.00a.m
NKCC/T/052/2018-19	Supply & delivery of powder polythene liners, shrink wrappers & milk powder sachets.	50,000	<b>Open</b>	3 <sup>rd</sup> June 2019 at 10.00a.m
NKCC/T/053/2018-19	Supply and delivery of Branded Coolers	150,000	<b>Open</b>	3 <sup>rd</sup> June 2019 at 10.00a.m
NKCC/T/054/2018-19	Provision of Transport Services- Eldoret-Sotik route	N/A	<b>Open</b>	3 <sup>rd</sup> June 2019 at 10.00a.m

Complete tender documents with detailed information may be obtained from the **Office of the Head of Procurement, New KCC Ltd, Dakar Road off Enterprise Road** between 9.00 a.m. to 4.00 p.m, upon payment of a non-refundable fee of Kshs. 1,000/- (Kshs. One Thousand only) per tender document, paid in cash or Bankers Cheque. Prospective bidders may also download the tender documents from <http://supplier.treasury.go.ke> : <https://www.tenders.go.ke> free of charge and New KCC Website ([www.newkcc.co.ke](http://www.newkcc.co.ke)). Bidders are required to send/e-mail their names and contact details to: [info@newkcc.co.ke](mailto:info@newkcc.co.ke).

Tenders must be accompanied by a Bid Security as specified above. **The bid security should be valid for 150 days from the tender closing/opening date and in form of either bank guarantee, cash, Insurance Company Guarantee, a Letter of Credit, or Guarantee by a Deposit taking Microfinance Institution, Sacco Society, the Youth Enterprise Development Fund or the Women Enterprise Fund.**

Completed tender documents in plain sealed envelope clearly marked with **Tender Number** and **Description** should be addressed to:

**The Managing Director  
New KCC Ltd  
P.O. Box 30131-00100  
Nairobi**

To be received not later than **10.00 a.m** on the closing /opening date shown above.

For enquiries: Email to: [info@newkcc.co.ke](mailto:info@newkcc.co.ke)

## **2.0 INSTRUCTIONS TO TENDERERS**

### **2.1 Eligible Tenderers**

- 2.1.1 This Invitation for Tenders is to all tenderers eligible as described in the Invitation to Tender. Successful tenderers shall complete the supply of goods by the intended completion date specified in the Schedule of Requirements.
- 2.1.2 The New KCC's employees, committee members, board members and their relatives (spouse and children) are not eligible to participate in the tender.
- 2.1.3 Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the New KCC to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods under this Invitation for tenders.
- 2.1.4 Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices.

### **2.2 Eligible Goods**

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

### **2.3 Cost of Tendering**

- 2.3.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the New KCC, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 2.3.2 The Tenderer is encouraged to visit and examine the Site of the Works and its surroundings, and obtain all information that may be necessary for preparing the tender and entering into a contract for carrying out the Works. The costs of visiting the Site shall be borne by the Tenderer.
- 2.3.3 All firms found capable of performing the contract satisfactorily in accordance to the set prequalification criteria shall be prequalified.

## **2.4. The Tender Document**

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

- (i) Invitation to Tender
- (ii) Instructions to tenderers
- (iii) General Conditions of Contract
- (iv) Special Conditions of Contract
- (v) Technical Specifications
- (vi) Schedule of requirements
- (vii) Price Schedules
- (viii) Tender Form
- (ix) Tender Security Form
- (x) Contract Form
- (xi) Performance Security Form
- (xii) Bank Guarantee for Advance Payment Form
- (xiii) Confidential Business Questionnaire

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

## **2.5 Clarification of Documents**

2.5.1 A prospective tenderer requiring any clarification of the tender document may notify New KCC in writing or by post at the address indicated in the Invitation to Tender. New KCC will respond in writing to any request for clarification of the tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of tenders, prescribed by the New KCC. Written copies of the New KCC's response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers that have received the tender document.

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

## **2.6 Amendment of Documents**

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

2.6.2 All prospective candidates that have received the tender documents will be notified of the amendment in writing or by post and will be binding on them.

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

## 2.7 **Language of Tender**

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

## 2.8 **Documents Comprising of Tender**

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

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

## 2.9 **Tender Forms**

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

## 2.10 **Tender Prices**

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

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

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

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

## 2.11 **Tender Currencies**

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

## **2.12 Tenderers Eligibility and Qualifications**

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

2.12.2 The documentary evidence of the tenderers eligibility to tender shall establish to the New KCC's satisfaction that the tenderer, at the time of submission of its tender, is from an eligible source country as defined under paragraph 2.1

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

- (a) that the tenderer has the financial, technical, and production capability necessary to perform the contract;
- (b) that, in the case of a tenderer not doing business within Kenya, the tenderer is or will be (if awarded the contract) represented by an Agent in Kenya equipped, and able to carry out the Tenderer's maintenance, repair, and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.

## **2.13 Goods Eligibility and Conformity to Tender Documents**

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

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

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

- (a) a detailed description of the essential technical and performance characteristic of the goods;
- (b) a list giving full particulars, including available source and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the goods for a period of two (2) years, following commencement of the use of the goods by the New KCC; and
- (c) a clause-by-clause commentary on the New KCC's Technical Specifications demonstrating substantial responsiveness of the goods and service to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.



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

## **2.14 Tender Security**

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

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

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

2.14.4 Any tender not secured in accordance with paragraph 2.14.1 and 2.14.3 will be rejected by the New KCC as non responsive, pursuant to paragraph 2.22

2.14.5 Unsuccessful Tenderer's tender 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 New KCC.

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

2.14.7 The tender security may be forfeited:

- (a) if a tenderer withdraws its tender during the period of tender validity specified by the New KCC on the Tender Form; or
- (b) in the case of a successful tenderer, if the tenderer fails:
  - (i) to sign the contract in accordance with paragraph 2.27
  - or
  - (ii) to furnish performance security in accordance with paragraph 2.28

## **2.15 Validity of Tenders**

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

2.15.2 In exceptional circumstances, the New KCC may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 2.14 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

## 2.16 **Format and Signing of Tender**

2.16.1 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.

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

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

## 2.17 **Sealing and Marking of Tenders**

2.17.2 The Technical Proposal will provide the following information / documents:

(a) Dully filled specification sheet

(b) Brief description of the firms organization and an outline of experience and recent assignments of similar nature.

2.17.3 The Financial Proposal will give: -

All the costs associated with the assignment that is, The Price Schedule for goods and the Form of Tender.

2.17.4 The tenderer shall submit one ORIGINAL and one COPY of both the Technical and Financial Proposals.

The inner and outer envelopes shall be addressed to:

**The Managing Director  
New KCC Ltd  
P.O. Box 30131 - 00100  
Creamery House, Dakar Road, Ind. Area  
Nairobi.**

and bear, “ Tender No. NKCC/T/042/2018-19– Supply & Delivery of U - Straws

**“DO NOT OPEN BEFORE 3<sup>RD</sup> JUNE 2019 at 10.00 am.**

**2.17.5 The inner envelope shall indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared “late” while the outer envelope shall bear no mark indicating the identity of the tenderer.**

2.17.6 If the outer envelope is not sealed and marked as required by paragraph 2.17.5, the New KCC will assume no responsibility for the tender’s misplacement or premature opening.

## **2.18 Deadline for Submission of Tenders**

2.18.1 Tenders must be received by the New KCC at the address specified under paragraph 2.17.5 no later than **3<sup>RD</sup> JUNE 2019 at 10.00am.**

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

## **2.19 Modification and Withdrawal of Tenders**

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

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

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

2.19.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the Tenderer’s forfeiture of its tender security, pursuant to paragraph 2.14.7

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

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

## **2.20 Opening of Tenders**

**2.20.1** The New KCC will open all tenders in the presence of tenderers' representatives who choose to attend, **on 3<sup>RD</sup> JUNE 2019 at 10.00am at New KCC's Boardroom.**

The tenderers' representatives who are present shall sign a register evidencing their attendance.

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

2.20.3 The New KCC will prepare minutes of the tender opening.

## **2.21 Clarification of Tenders**

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

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

## **2.22 Preliminary Examination**

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

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

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

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

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

## **2.23 Conversion to Single Currency**

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

## **2.24 Evaluation and Comparison of Tenders**

2.24.1 The New KCC will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.22.

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

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

## **2.25 Preference**

2.25.1 Preference where allowed in the evaluation of tenders shall not exceed 15% and this may be considered.

## **2.26 Contacting the New KCC**

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

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

## **2.27 Award of Contract**

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

2.27.1 In the absence of pre-qualification, the New KCC will determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.

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

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

(b) **Award Criteria**

2.27.4 The New KCC will award the contract to the successful tenderer(s) whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

(c) **New KCC's Right to Vary quantities**

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

(d) **New KCC's Right to accept or Reject any or All Tenders**

2.27.6 The New KCC 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 New KCC's action

**2.28 Notification of Award**

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

2.28.2 The notification of award will constitute the formation of the Contract but will have to wait until the contract is finally signed by both parties

2.28.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 2.28, the New KCC will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.14

**2.29 Signing of Contract**

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

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

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

### **2.30 Performance Security**

2.30.1 Within Thirty (30) days of the receipt of notification of award from the New KCC, 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 New KCC.

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

### **2.31 Corrupt or Fraudulent Practices**

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

- (i) “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution; and
- (ii) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the New KCC, and includes collusive practice among tenderer (prior to or after tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive the New KCC of the benefits of free and open competition;

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

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

### **2.32 Appendix to Instructions to Tenderers**

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

INSTRUCTIONS TO TENDERERS REFERENCE	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
2.1.1	<b>PRE-QUALIFIED SUPPLIERS ONLY:</b>
2.12.2	<b>The Tendered shall submit Certificate of incorporation, , certificate of business registration, business license(from any county gvt) &amp; Valid Tax Compliance Certificate</b>
<u>2.14</u>	Tender security of Kes 50,000
<u>2.23.1</u>	Central Bank of Kenya exchange rate at the time of closing this tender will form the conversion rate to Kenya Shillings.

## SECTION C: GENERAL CONDITIONS OF CONTRACT

### 3.1 Definitions

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

- (a) “The Contract” means the agreement entered into between the New KCC and the tenderer, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- (b) “The Contract Price” means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations
- (c) “The Goods” means all of the equipment, machinery, and/or other materials, which the tenderer is required to supply to the New KCC under the Contract.
- (d) “The New KCC” means the organization purchasing the Goods under this Contract.
- (e) “The Tenderer” means the individual or firm supplying the Goods under this Contract.

### 3.2 Application

3.2.1 These General Conditions shall apply in all Contracts made by the New KCC for the procurement installation and commissioning of equipment

### 3.3 Country of Origin

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

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



### **3.4 Standards**

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

### **3.5 Use of Contract Documents and Information**

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

3.5.2 The tenderer shall not, without the New KCC's prior written consent, make use of any document or information enumerated in paragraph 3.5.1 above

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

### **3.6 Patent Rights**

3.6.1 The tenderer shall indemnify the New KCC against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof in Kenya.

### **3.7 Performance Security**

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

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

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

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

### **3.8 Inspection and Tests**

- 3.8.1 The New KCC or its representative shall have the right to inspect and/or to test the goods to confirm their conformity to the Contract specifications. The New KCC shall notify the tenderer in writing in a timely manner, of the identity of any representatives retained for these purposes.
- 3.8.2 The inspections and tests may be conducted in the premises of the tenderer or its subcontractor(s), at point of delivery, and/or at the Goods' final destination. If conducted on the premises of the tenderer or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the New KCC.
- 3.8.3 Should any inspected or tested goods fail to conform to the Specifications, the New KCC may reject the equipment, and the tenderer shall either replace the rejected equipment or make alternations necessary to make specification requirements free of costs to the New KCC.
- 3.8.4 The New KCC's right to inspect, test and where necessary, reject the goods after the Goods' arrival shall in no way be limited or waived by reason of the equipment having previously been inspected, tested and passed by the New KCC or its representative prior to the equipment delivery.
- 3.8.5 Nothing in paragraph 3.8 shall in any way release the tenderer from any warranty or other obligations under this Contract.

### 3.9 **Packing**

- 3.9.1 The tenderer shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract.
- 3.9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract

### 3.10 **Delivery and Documents**

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

### 3.11 **Insurance**

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

### 3.12 **Payment**

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

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

### **3.13 Prices**

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

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

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

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

### **3.14. Assignment**

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

### **3.15 Subcontract**

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

### **3.16 Termination for default**

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

- (a) if the tenderer fails to deliver any or all of the goods within the periods) specified in the Contract, or within any extension thereof granted by the New KCC
- (b) if the tenderer fails to perform any other obligation(s) under the Contract
- (c) if the tenderer, in the judgment of the New KCC has engaged in corrupt or fraudulent practices in competing for or in executing the Contract

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

### **3.17 Liquidated Damages**

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

### **3.18 Resolution of Disputes**

- 3.18.1 The New KCC and the tenderer shall make every effort to resolve amicably by direct informal negotiation and disagreement or dispute arising between them under or in connection with the contract
- 3.18.2 If, after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute, either party may require adjudication in an agreed national or international forum, and/or international arbitration.

### **3.19 Language and Law**

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

### **3.20 Force Majeure**

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

**Undertake**

**Assume**

## **SECTION D: SPECIAL CONDITIONS OF CONTRACT**

- 4.1. Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, between the General Conditions of Contract and the Special Conditions of Contract, the provisions of the Special Conditions of Contract herein shall prevail over these in the General Conditions of Contract.
- 4.2. **Special conditions of contract as relates to the General Conditions of Contract.**

<b>REFERENCE OF GENERAL CONDITIONS OF CONTRACT.</b>	<b>SPECIAL CONDITIONS OF CONTRACT</b>
<b>3.7.1</b>	<b>None</b>
<b>3.18.1</b>	<b>Resolutions of disputes shall be governed by the laws of Kenya in every respect including formation, validity, interpretation and performance</b>

## **SECTION E – SCHEDULE OF REQUIREMENTS**

### **I. REQUIREMENTS**

- Company profile including Key Personnel.

### **II. Statutory/Mandatory Requirement**

The bidder should show proof of compliance with statutory requirements by providing the following documents:-

- 1) Valid Tax Compliance Certificate
- 2) Certificate of Incorporation.
- 3) Current/valid business license.
- 4) Bid security of ksh 50000

### **EVALUATION CRITERIA**

The awarding of score in the evaluation criteria will be as follows:-

<b>No.</b>	<b>Component/Requirement</b>	<b>Score</b>
1.	Sample 10pcs	30
2.	Tenderer's experience with evidence and past performance on similar scope and products. Attach at least 3 recommendation letters, LPOs, Contracts etc. (10mrk each)	30
3.	Delivery period.	10
<b>PASS SCORE 70% OR 42 POINTS OUT OF 70.</b>		
	<b>TOTAL MARKS EXPECTED</b>	<b>70</b>

**Evaluation Notes:**

1. The financial and technical evaluation will only apply to those who meet mandatory requirements:
2. The New KCC will award the contract to the successful bidder whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender.
3. Quote as per New KCC samples which can be viewed during working hours at procurement office
4. Pass Mark is 70 out of 100

The operational capability evaluation will only apply to those who score 70% and above

**Operational capability by site visit criteria pass mark 15**

<b>Criterion</b>	<b>Scores</b>
Confirmation of Business Name & Physical Address	2
Confirmation of Originals & Mandatory Documents	5
Management Structure of the Organization (senior management present during the visit and Relevance to works bided )2mrks	2
Ability of the organization to deliver and offer after sales Service, Machinery ,food safety features (2mks each)	8
Size of Business, Large,3 Medium2 , Small 1	3
<b>TOTAL</b>	<b>20</b>

**NOTE: Only bidders who attain the pass mark of 15% and above will be considered for the grand evaluation stage.**

**SUMMARY AND RECOMMENDATIONS**

**10.1 GRAND EVALUATION ANALYSIS**

<b>Evaluation Criteria</b>	<b>Maximum score</b>	<b>Pass mark</b>	<b>%</b>
Mandatory requirements	Yes	Yes	Yes
Conformance with Technical specifications	100	70	70
Operational capability	20	15	75

<b>Total Marks Expected (pass mark 70% )</b>	<b>120</b>	<b>85</b>	<b>70</b>
<b>Pass mark</b>			

**NOTE: Only bidders who score 70% and above will proceed to the financial analysis.**

## **6.2.0 GUIDE TO EVALUATION CRITERIA**

### **6.2.1 Evaluation of Bids**

Bids shall be evaluated in three stages:

#### **Stage 1 Mandatory requirements**

Any bidder that fails to meet any one of the mandatory requirements shall not proceed to the next stage of technical Evaluation.

#### **Stage 2 Technical Evaluation**

Bidders who fail to meet the pass mark for this stage will not qualify for stage 3

#### **Stage 3 Operational Capability**

Bidders who fail to meet the pass mark for this stage will not qualify for stage 4

#### **Stage 4 Financial Evaluation**

Lowest quotation meeting requirements

## **SECTION G - PRICE SCHEDULE**

Name of tenderer \_\_\_\_\_ Tender No. \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_

<b>ITEM DESCRIPTION</b>	<b>ESTIMATED ANNUAL CONSUMPTIONS IN PCS</b>	<b>UNIT PRICE VAT INCLUSIVE (KSHS)</b>
U - STRAWS	1,000,000	

Place of Delivery – Dandora Factory

Signature of tenderer \_\_\_\_\_

Name \_\_\_\_\_

Date. \_\_\_\_\_

Stamp/seal \_\_\_\_\_

### ***To Note:***

**The unit shall be considered in award and the LPO will be raised on the need basis.**

**The quantities indicated above are just an estimates.**

Price schedule must include all costs that the bidder will incur in performing this assignment as the provided Tender dictates. NKCC will only incur costs as expressly declared in this document and no other.

Unit price quoted can be used for the next one year from the period of award of this tender

The prices must also include all government taxes. Bidders must indicate the applicable taxes as clearly as possible. Where such costs are not declared they will be assumed to be included in the quotation provided.

## **SECTION H: Form of Tender**

Date: .....

Tender No.....

To: New Kenya co-operative Creameries Limited



**P.O. Box 30131 – 00100 - Nairobi**  
**Tel: 552965, 652415**  
**For enquiries, email: info@newkcc.co.ke**

Gentlemen and/or Ladies:

Having examined the tender documents including Addenda Nos ..... *[insert numbers]* the receipt of which is hereby duly acknowledged, we, the undersigned, offer to print, supply, and deliver

.....

.....  
*[insert item description]* in conformity with the said tender documents for the sum of

.....

.....

.....<sup>\*\*</sup>(inclusive / exclusive of VAT) *[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.

We undertake, if our Tender is accepted, to print supply and deliver, the Boards in .....weeks.

If our Tender is accepted, we will obtain the guarantee of a bank for the due performance of Contract, in the form prescribed by New KCC.

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

This Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us. Subject to signing of the contract by the parties.

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

Dated this ..... day of ..... 20.....

.....  
*[signature]* ..... *[in the capacity of]*

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

**\*\* Delete whichever is not applicable**

## **SECTION K: CONTRACT FORM**

THIS AGREEMENT made the \_\_\_ day of \_\_\_ 20\_\_\_ between.....New KCC of .....[country of Fund](hereinafter called “the Fund”) of the one part and .....[name of tenderer] of .....[city and country of tenderer](hereinafter called “the tenderer”) of the other part.

WHEREAS the Fund 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 Fund’s Notification of Award.
3. In consideration of the payments to be made by NKCC to the tenderer as hereinafter mentioned, the tenderer hereby covenants with NKCC to provide the materials therein in conformity in all respects with the provisions of the Contract
4. NKCC hereby covenants to pay the tenderer in consideration of the provision of the materials 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 NKCC)

Signed, sealed, delivered by \_\_\_\_\_ the \_\_\_\_\_ (for the tenderer)

in the presence of \_\_\_\_\_

## **SECTION I: 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 applies to your type of business.

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

Business Name.....

Location of Business Premises:.....Country/Town.....

Plot No.....Street /Road.....

Postal Address.....Telephone No.....

Nature of Business.....

Current Trade License No.....Expiry Date.....

Maximum value of Business which you can handle at any time :

Kenya Shillings.....

Name of Your Bankers.....

Branch.....

**Part 2 (a) – Sole Proprietor**

Your Name in Full.....Age.....

Nationality.....Country of Origin.....

Citizenship details.....

**Part 2(b) – Partnership**

Give details of partners as follows:

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

**Part 2(c) - Registered Company**

Private or Public.....

State the nominal and issued capital of the Company

Nominal      Kshs    .....

Issued        Kshs    .....

Give details as follows:

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

**Part 2 (d) Interested in the Firm:**

Is there any person in the employment of the Government of Kenya WHO has interest in this firm?  
YES/NO..... (Delete as necessary)

I certify that the above information is correct.

.....	.....	.....
Title	Signature	Date