



TENDER No. NKCC/T/053/2018-19

SUPPLY & DELIVERY OF BRANDED COOLERS

CLOSING DATE: 3RD JUNE 2019 AT 10.00 A.M

M/s.....
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Dear Sirs,

**RE: TENDER FOR SUPPLY AND DELIVERY OF BRANDED DISPLAY FRIDGES TO
NEW KENYA CO-OPERATIVE CREAMERIES LIMITED.**

You are hereby invited to submit tenders for Supply and Delivery of Branded Display Fridges 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. Evaluation Criteria
7. Price Schedule of Goods Form
8. Standard Forms

1. SUBMISSION OF TENDER DOCUMENTS

TENDER NOTICE

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

Tender number	Description	Bid security (Ksh)	Eligibility	Closing/opening Date
NKCC/T/038/2018-19	Provision of Garbage collection Services	N/A	Reserved for AGPO	3 rd 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	Open	17 th June 2019 at 10.00a.m
NKCC/EOI/040/2018-2019	Provision of Consultancy for Review of ICT Strategy and Policies	N/A	Open	3 rd June 2019 at 10.00a.m
NKCC/T/041/2018-2019	Supply and delivery of HDPE Milk Bottles	50,000	Open	3 rd June 2019 at 10.00a.m
NKCC/T/042/2018-2019	Supply and delivery of U-straws	50,000	Open	3 rd June 2019 at 10.00a.m
NKCC/T/043/2018-2019	Supply and delivery of Cartons	50,000	Open	3 rd June 2019 at 10.00a.m
NKCC/T/044/2018-2019	Supply and delivery of 20 Litre Milk O bags	50,000	open	3 rd June 2019 at 10.00a.m
NKCC/T/045/2018-19	Supply and delivery of Shrink Sleeves	50,000	Open	3 rd 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	Open	3 rd June 2019 at 10.00a.m
NKCC/T/047/2018-19	Supply and delivery of Ghee and Powder Tins	50,000	Open	3 rd June 2019 at 10.00a.m
NKCC/T/048/2018-19	Supply and delivery of Shrink Bags-Amillon	50,000	Open	3 rd June 2019 at 10.00a.m

NKCC/T/049/2018-19	Supply and Delivery of Milk powder bags	50,000	Open	3 rd June 2019 at 10.00a.m
NKCC/T/050/2018-19	Supply and delivery of Gable Top Packaging Material	50,000	Open	3 rd June 2019 at 10.00a.m
NKCC/T/051/2018-19	Supply and delivery of Sealing Tape	50,000	Open	3 rd June 2019 at 10.00a.m
NKCC/T/052/2018-19	Supply & delivery of powder polythene liners, shrink wrappers & milk powder sachets.	50,000	Open	3 rd June 2019 at 10.00a.m
NKCC/T/053/2018-19	Supply and delivery of Branded Coolers	150,000	Open	3 rd June 2019 at 10.00a.m
NKCC/T/054/2018-19	Provision of Transport Services- Eldoret-Sotik route	N/A	Open	3 rd 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). Bidders are required to send/e-mail their names and contact details to: 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.

2.0 INSTRUCTIONS TO TENDERERS

2.1 Eligible Tenderers

- 2.1.1 This Invitation for Tenders is open to all tenderers eligible as described in the Invitation to Tender. Successful tenderers shall complete the supply of goods by the intended completion date specified in the Schedule of Requirements.
- 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 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) Schedule of requirements

- (vi) Technical Specifications
- (vii) Tender Form and Price Schedules
- (viii) Tender Security Form
- (ix) Contract Form
- (x) Performance Security Form
- (xi) Bank Guarantee for Advance Payment Form
- (xii) 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, in the case of a tenderer offering to supply goods under the contract which the tenderer did not manufacture or otherwise produce, the tenderer has been duly **authorized by the goods' Manufacturer or producer** to supply the goods.
- (b) that the tenderer has the financial, technical, and production capability necessary to perform the contract;
- (c) that, in the case of a tenderer not doing business within Kenya, the tenderer is or will be (if awarded the contract) represented by an Agent in Kenya equipped, and able to carry out the Tenderer's maintenance, repair, and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.

2.13 Goods Eligibility and Conformity to Tender Documents

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

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

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

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

2.17.1 The Tenderer shall seal the Technical and Financial Proposals of the tender in **one envelope**. The envelope shall then be sealed in an outer envelope.

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

- (a) Dully filled specification sheet
- (b) Technical manuals from the equipment manufacturer which should include Spare Parts, Maintenance, Operations and Machine Specifications Catalogues
- (c) Brief description of the firms' organization and an outline of experience and recent assignments of similar nature
- (d) Tender (Bid) Security of KES. 150,000 in form of a Bank Guarantee or Bankers Cheque
- (e) Manufacturers Authority and warranty

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:

(a) be addressed to:

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

(b) and bear, "Tender No. NKCC/T/053/2018-19 Supply and Delivery of Branded Fridges", and the words:

"DO NOT OPEN BEFORE 3rd 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 **3rd 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 3rd 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
2.1.2	New KCC employees, Committee Members, Board Members Or their relatives (Spouse and children) are not eligible
2.12.3	The Tenderer shall submit Manufacturer’s Authority, Certificate/registration of incorporation and KRA Tax Compliance Certificate
2.13.3	The Tenderer shall attach product Specification Sheets and Catalogues for the offered goods

2.14.1	Tender Security of Kenya Shillings One Hundred Fifty Thousand (KES. 150,000) shall be submitted with this Tender in form of a Bank Guarantee or Bankers Cheque and valid for 120 days from the Tender closing date
2.18.1	Tender closing date (deadline for submission of tenders) is 3rd June 2019 at 10.00am
2.20.1	Tender opening date 3rd June 2019 at 10.00am
2.30.1	The amount of Performance Security to be furnished shall be 10% of the Tender amount

3.0 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 Subcontracts

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 period(s) 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.

4.0 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.

REFERENCE OF GENERAL CONDITIONS OF CONTRACT.	SPECIAL CONDITIONS OF CONTRACT
3.7.1	The amount of Performance Security to be furnished shall be 10% of the Tender amount
3.10.1	These Fridges shall be delivered to New KCC's Central Maintenance Workshops on Changamwe Road off Enterprise Road Nairobi Industrial Area
3.12.1	A Bank Guarantee for Advance Payment (if any) equivalent to the advance payment asked for shall be furnished by the successful Tenderer
3.18.1	Resolutions of disputes shall be governed by the laws of Kenya in every respect including formation, validity, interpretation and performance

5.0 TECHNICAL SPECIFICATIONS

5.1 General

- 5.1.1 These specifications describe the requirements for goods. Tenderers are requested to submit with their offers the detailed specifications, drawings, catalogues, etc for the products they intend to supply
- 5.1.2 Tenderers must indicate on the specifications sheets whether the goods offered comply with each specified requirement.
- 5.1.3 All the dimensions and capacities of the items to be supplied shall not be less than those required in these specifications. Deviations from the basic requirements, if any shall be explained in detail in writing with the offer, with supporting data such as calculation sheets, etc. The New KCC reserves the right to reject the products, if such deviations shall be found critical to the use and operation of the products.
- 5.1.4 The tenderers are requested to present information along with their offers as follows:
- (i) Shortest possible delivery period of the products**
 - (ii) Information on proper representative and/or agent for goods stocks including their names and addresses.**

5.2.0 SPECIFICATIONS SHEETS (PARTICULARS)

5.2.1.a TECHNICAL SPECIFICATIONS SHEET 1

Item	New KCC's Requirement	Score	Tenderer's Offer
Glass Door Display Refrigerator	State Types/Models offered		
Design	Glass door with slide out refrigeration system	4	
Capacities (Gross Volumes)	250 Litres	4	
	400 Litres	4	
	600 Litres	4	
Number of Shelves	250 Litres – 3	3	
	400 Litres – 4	3	
	600 Litres – 5	3	
Shelf design	PVC coated	2	
Racking	Adjustable height	2	
Branding	Body, Canopy and Shelf Strips with New KCC artworks	2	
Refrigerant	R134a or any other Environmentally friendly refrigerant	Mandatory	
Cooling range	0 to 10 °C	4	
Temperature indicator	Digital Thermometer	2	
Lighting	Cabinet and canopy	2	
Drainage	Self evaporative	2	
Feet	Heavy Duty Swivel castors with stoppers	2	
Doors	Self closing and hold open	2	
	Double Pane glass	2	
	Anti-fog glass	2	
	With Locking mechanism	2	
Protection	In-built electronic voltage stabilizer	3	
	Hi-Lo Voltage protection	3	
Condenser	Back facing	2	
Power supply	240 V, 50 Hz	Mandatory	
Warranty	Specify		
Country of Origin	Specify		
Manufacturer	Specify		
Local Agent	Specify		

5.2.1.b TECHNICAL SPECIFICATIONS SHEET 2

Item	New KCC's Requirement	Score	Tenderer's Offer
Open Front Display Refrigerator	State Type/Model offered		
Design	Open front with slide out refrigeration system	4	
Capacity	1050, 1250 & 1600 LITRES	4	
Number of Shelves	6	3	
Shelf design	PVC coated	2	
Racking	Adjustable height	2	
Branding	Body, Canopy and Shelf Strips with New KCC artworks	2	
Refrigerant	R134a or any other Environmentally friendly refrigerant	Mandatory	
Cooling range	2 to 10 °C	4	
Temperature indicator	Digital Thermometer	2	
Lighting	Cabinet and canopy	2	
Drainage	Self evaporative	2	
Feet	Heavy Duty Swivel castors with stoppers	2	
Closing (Door)	Suitable blind	4	
Protection	In-built electronic voltage stabilizer	3	
	Hi-Lo Voltage protection	3	
Condenser	Back facing	2	
Power supply	240 V, 50 Hz	Mandatory	
Warranty	Specify		
Country of Origin	Specify		
Manufacturer	Specify		
Local Agent	Specify		

5.2.2 These Specifications may not be exhaustive and the Tenderer should include other items that may be deemed necessary for the efficient operation of the equipment.

5.3 QUALIFICATION INFORMATION

Table 5.3.a: List of clients supplied with similar goods / services

NO.	CLIENT	CONTACT PERSON / ADDRESS	GOODS / SERVICES SUPPLIED	YEAR
1				
2				
3				
4				
5				
6				
7				
8				

Table 5.3.b: Name and address of Local representative/agent

REPRESENTATIVE / AGENT 1	
CONTACT PERSON	
TELEPHONE	
POSTAL ADDRESS	
PHYSICAL ADDRESS	
REPRESENTATIVE / AGENT 2	
CONTACT PERSON	
TELEPHONE	
POSTAL ADDRESS	
PHYSICAL ADDRESS	

6.0 Evaluation Criteria

I MANDATORY REQUIREMENTS

Tenderers must provide the following and attach copies of documents to support information given.

Item	Document
1	Tender Security of KES. 150,000 valid for 150 days from the Tender closing date - Original and Copy
2	Comprehensive Catalogues of goods offered (<u>highlight type / model offered</u>) – Original and Copy
3	Names of at least Five clients supplied with similar goods / services. References of type supplied, date and contact persons to be provided. (Table 5.3.a)
4	Local representative/Agent -Name and physical address. (Table 5.3.b)
5	Any other item as may be indicated in the Specifications Sheets - 5.2.1 a and 5.2.1 b
6	Incorporation and registration Certificates – Copy (Local Firms)
7	Current Trade License – Copy (Local Firms)
8	KRA Tax Compliance Certificate - Copy (Local Firms)

Note: Only bidders meeting the mandatory requirements will be invited for pitching

Bidders will be required to make a pitch on the following items on a date to be communicated by NKCC as per part of the evaluation process items 1 to 4 in the following table.

	ITEM	POINTS
1	Experience in fridges business, provide details (minimum 10 years)	10
2	Indicate and provide evidence of minimum 5 local clients that you have provided them with fridges in the past five years, two of which should be known Dairy companies (attach POs and contracts)	20
3	Warranty of minimum 2 years	5
4	Demonstrate maintenance capacity/ after sales service and availability of spare parts	25
Sub total		60
5	Equipment specifications (sheet 1 &2)	100 (to be converted as follows score/100*40)

Grand Total	100
--------------------	------------

Pass Mark is 70 out of 100 and only those who attain the pass mark will be visited for due diligence.

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

Operational capability by site visit criteria pass mark 15

Criterion	Scores
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)2mks	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
TOTAL	20

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

Evaluation Criteria	Maximum score	Pass mark	%
Mandatory requirements	Yes	Yes	Yes
Conformance with Technical specifications	100	70	70
Operational capability	20	15	75
Total Marks Expected (pass mark 71%)	120	85	71
Pass mark			

NOTE: Only bidders who score 71% 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 will be awarded

7.0 Price Schedule for Goods

Name of tenderer

Tender NumberPage of

1 Item	2 Description	3 Country of Origin	4 Qty	5 Unit Price
1	Cost of 250 Litre Capacity Branded Fridge		20	
1	Cost of 400 Litre Capacity Branded Fridge		42	
2	Cost of 600 Litre Capacity Branded Fridge		52	
3	Cost of 1050 Litre Capacity Branded Open Fridge		15	
4	Cost of 1250 Litre Capacity Open Fridge		15	
5	Cost of 1600 Litre Capacity Open Fridge		2	
5	Cost of 1 Year Service Contract for the 200 Fridges		Lot	

6	Other Costs		Lot	
Subtotal				
VAT 16%				
GRAND TOTAL (Supplied and Delivered Nairobi Kenya) Transfer to the form of tender.				

Remarks.

1. There will be no correction of arithmetic errors. Final price will be the price in the form of tender.
- 2.

Warranty period and extend

Signature of tenderer & stamp/seal _____

7.1 Form of Tender

Date:

Tender No.....

To: **New Kenya co-operative Creameries Limited**

P.O. Box 30131 – 00100 - Nairobi

Tel: 552965, 652415

Email: gillian soi@newkcc.co.ke/anastasia.githua@newkcc.co.ke/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 supply and deliver

.....

.....

[insert equipment description] in conformity with the said tender documents for the sum of

.....

.....

.....** (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 deliver, install and commission the equipment inweeks.

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

8.2 Confidential business questionnaire form

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

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

Part 1 – General: Business Name Location of business premises. Plot No..... Street/Road Postal Address Tel No. Fax E mail Nature of Business Registration Certificate No. Maximum value of business which you can handle at any one time – Kshs. Name of your bankers Branch
--

Part 2 (a) – Sole Proprietor Your name in full Age Nationality Country of origin • Citizenship details

Part 2 (b) Partnership

Given details of partners as follows:

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

Part 2 (c) – Registered Company

Private or Public

State the nominal and issued capital of company-

Nominal Kshs.

Issued Kshs.

Given details of all directors as follows

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

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

8.3 Tender Security Form

Whereas..... *[name of the tenderer]* (hereinafter called “the tenderer”) has submitted its tender dated *[date of submission of tender]* for the supply of.....

[name and/or description of the goods]

(hereinafter called “the Tender”)

KNOW ALL PEOPLE by these presents that WE

of..... having our registered office at

..... (hereinafter called “the Bank”), are bound unto **New Kenya co-operative Creameries** (hereinafter called “New KCC”) in the sum of

..... for which payment well and truly to be made to the said New KCC, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this

..... day of20.....

THE CONDITIONS of this obligation are:

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

we undertake to pay to the Procuring entity up to the above amount upon receipt of its first written demand, without New KCC having to substantiate its demand, provided that in its demand New KCC 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]

(Amend accordingly if provided by Insurance Company)

8.4 Contract Form

THIS AGREEMENT made the day of 20..... between **New Kenya Co-operative Creameries of Kenya** (hereinafter called “New KCC”) on the one part and..... [name of tenderer] of..... [city and country of tenderer] (hereinafter called “the tenderer”) of the other part:

WHEREAS the New KCC invited tenders for certain goods, and has accepted a tender by the tenderer for the supply of those goods in the sum of [contract price in words and figures] (hereinafter called “the Contract Price”).

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) New KCC’s Notification of Award.

3. In consideration of the payments to be made by the New KCC to the tenderer as hereinafter mentioned, the tenderer hereby covenants with the New KCC to provide the goods and to remedy defects therein in conformity in all respects with the provisions of the Contract
4. The New KCC hereby covenants to pay the tenderer in consideration of the provision of the goods and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the contract at the times and in the manner prescribed by the contract.

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

Signed, sealed, delivered by..... the (for the New KCC)

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

in the presence of

(Amend accordingly if provided by Insurance Company)

8.5 Sample Performance Security Form

To: **New Kenya Co-operative Creameries Limited**

WHEREAS [name of tenderer]
 (hereinafter called “the tenderer”) has undertaken, in pursuance of Contract No.....

[reference number of the contract] dated 20..... to supply

..... [description of goods]
 (hereinafter called “the Contract”).

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

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

THEREFORE, WE hereby affirm that we are Guarantors and responsible to you, on behalf of the tenderer, up to a total

of.....

[amount of the guarantee in words and figures], and we undertake to pay you, upon your first written demand declaring the tenderer to be in default under the Contract and without cavil or argument, any sum or sums within the limits

of.....

[amount of guarantee] as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the day of20.....

Signature and seal of the Guarantors

.....
[name of bank or financial institution]

.....
[address]

.....
[date]

8.6 Bank Guarantee for Advance Payment

To: **New Kenya Co-operative Creameries Limited**

[name of tender]

Gentlemen and/or Ladies:

In accordance with the payment provision included in the Special Conditions of Contract, which amends the General Conditions of Contract to provide for advance payment,

.....
[name and address of tenderer] (hereinafter called “the tenderer”) shall deposit with the New KCC a bank guarantee to guarantee its proper and faithful performance under the said Clause of the Contract in an amount

of.....
[amount of guarantee in figures and words].

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

.....

[amount of guarantee in figures and words].

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

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

Yours truly,

Signature and seal of the Guarantors

.....
[name of bank or financial institution]

.....
[address]

[date]

8.7 Manufacturer’s Authorization Form

To: **New Kenya Co-operative Creameries Limited**

WHEREAS

[Name of the Manufacturer]

Who are established and reputable manufacturers of

..... *[Name and/or description of the goods]*

Having factories at.....

[Address of factory]

Do hereby authorize

[Name and address of Agent]

To submit a tender, and subsequently negotiate and sign the Contract with you against tender

No.....

[Reference of the Tender]

For the above goods manufactured by us.

We hereby extend our full guarantee and warranty as per the General Conditions of Contract for the goods offered for supply by the above firm against this Invitation for Tenders.

.....
[Signature for and on behalf of Manufacturer]

Note: This letter of authority should be on the letterhead of the Manufacturer and should be signed by an authorised person.