|  |  |
| --- | --- |
|  | ppra_log**THE UNITED REPUBLIC OF TANZANIA****MINISTRY OF FINANCE AND PLANNING****PUBLIC PROCUREMENT REGULATORY AUTHORITY****Contract Forms** forSTD for Non-Consultancy ServicesPublic Procurement Regulatory AuthorityKambarage Tower, 9th Floor, PSPF Road,P.O. Box 2865, 41104 Dodoma,TANZANIAFebruary, 2022 |

###

### SECTION X: CONTRACT FORMS

This Section contains forms which, once completed, will form part of the Contract. The forms for Performance Security/Performance Securing Declaration and Advance Payment Security, when required, shall only be completed by the successful Tenderer after contract award. The Section also contains the Letter of Intention to Award the Contract, which shall not form part of the contract.

1. **Notice of Intention to Award a Contract**

 *[Letter head paper of the PE]*

Ref No: *[insert Ref. No.] ..................................* Date: ...............

To: [***name and address of the Service Provider]***

**RE: NOTIFICATION OF THE INTENTION TO AWARD CONTRACT NUMBER** [insert No of contract] **FOR** [*insert description]*

Reference is made to the above subject matter.

The submitted tenders were evaluated according to the criteria stated in the tender documents. In accordance with the requirements of Public Procurement Act, Cap 410, we announce our intention to award a contract to M/s*: (Insert the name of the firm)* for a contract price of *(insert the contract award price and currency)* and for a completion period/delivery period of *(insert the duration).*

Your tender was not considered for award of the contract due to the following reasons[[1]](#footnote-1)

1. .........................................................
2. .........................................................
3. ..........................................................

Be informed that, you have seven (7) working days from the date of this letter, within which to submit any complaints you may have regarding this award decision and/or circumstances surrounding the rejection of your tender for administrative review. The complaints must be in writing, clearly identifying the tender in question, detailing ground(s) of the complaint and should be submitted to *(insert the title of Accounting Officer)* through TANePS*.*

We appreciate your interest in doing business with us and encourage you to participate in our future tenders.

Authorized Signature: .............................................................................................

Name and Title of Signatory: ..................................................................................

Name of PE: ............................................................................................................

**2. Letter of Acceptance**

*[Letter head paper of the PE]*

*[date]*

To: *[name and address of the Service Provider]*

**RE**: **NOTIFICATION OF AWARD OF CONTRACT FOR TENDER NO. [***insert tender number* **] FOR [***insert tender description*]

This is to notify you that, your tender dated *[insert date]* for execution of the Contract Number *[insert Contract number and description, as provided in the Special Conditions of Contract]* for the Accepted Contract Amount of the equivalent of *[insert amount in numbers and words and name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers is hereby accepted.

Therefore:

1. We confirm that [*insert name proposed by the PE in the Tender Data Sheet]* be appointed as Adjudicator;

*Or*

1. We accept that [insert *name proposed by Tenderer*] be appointed as Adjudicator.[[2]](#footnote-2)

Or

1. We do not accept that [insert *name proposed by Tenderer*] be appointed as adjudicator, and by sending a copy of this letter of acceptance to [*insert the name of the Appointing Authority*], we are hereby requesting [insert *name of the Appointing Authority*], to appoint the adjudicator in accordance with ITT 43.1.[[3]](#footnote-3)

You are requested to furnish the Performance Securing Declaration or Performance Security[[4]](#footnote-4) within 14 days in accordance with the Conditions of Contract, using for that purpose the Forms included in Section X, Contract Forms of the Tendering Document.

Authorized Signature: .............................................................................................

 Name and Title of Signatory: .................................................................................

 Name of PE ...................................................................................................

**Attachment: Contract Agreement**

Copy: PPRA, CAG, Office of Attorney General, GAMD, IAG, TRA and Adjudicator’s Appointing Authority (where applicable). , .

**3. Form of Agreement**

This AGREEMENT (hereinafter called the “Contract”) is made this *[day of the month]* day of *[insert a month]*, *[insert a year]* between, *[insert name and address of Employer]* (hereinafter called the “Employer”) of the one part, and *[insert name and address of Service Provider]* (hereinafter called the “Service Provider”) of the other part.

[***Note****: In the text below, text in brackets is optional; all notes should be deleted in final text*. *If the Service Provider consist of more than one Entity, the above should be partially amended to read as follows:*]

“*[insert the name of Employer]* (hereinafter called the “Employer”) and, on the other hand, a joint venture/consortium/association consisting of the following entities namely, *[insert of name of entity]* and *[insert name of entity] and [etc.]* (hereinafter called the “Service Provider”) each of which shall be jointly and severally liable to the Employer for all the Service Providers’ obligations under this Contract.

**WHEREAS**

(a) the Employer has requested the Service Provider to provide certain Services as defined in the General Conditions of Contract attached to this Contract (hereinafter called the “Services”);

(b) the Service Provider, having represented to the Employer that they have the required professional skills, personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract at a contract price of [*insert the figures and words and the currency*];

(c) the Employer has committed funds towards eligible payments under this Contract, it being understood that such payments will be subject, in all respects, to the terms and conditions of the Contract providing for the funds and that no party other than the Employer shall derive any rights from the Contract providing for the funds or have any claim to the funds proceeds;

**NOW THEREFORE,** the parties hereto hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:

1. Form of Agreement;
2. Letter of Acceptance;
3. Minutes of Negotiations if any;
4. Form of Tender;
5. The Special Conditions of Contract;
6. The General Conditions of Contract;
7. The Priced Activity Schedule;
8. The Specifications (Statement of Requirements);
9. The following Appendices: [***Note****: If any of these Appendices are not used, the words “Not Used” should be inserted below next to the title of the Appendix and on the sheet attached hereto carrying the title of that Appendix*.]

Appendix A: Description of the Services

Appendix B: Schedule of Payments

Appendix C: Key Personnel and Subcontractors

Appendix D: Breakdown of Contract Price in Foreign Currency

Appendix E: Breakdown of Contract Price in Local Currency

Appendix F: Services and Facilities Provided by the Employer; and

1. Other relevant document(s): [*List if any].*

2. The mutual rights and obligations of the Employer and the Service Provider shall be as set forth in the Contract, in particular:

1. The Service Provider shall carry out the Services in accordance with the provisions of the Contract; and
2. The Employer shall make payments to the Service Provider in accordance with the provisions of the Contract.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be signed in their respective names as of the day and year specified above.

**SIGNED, SEALED AND DELIVERED FOR AND ON BEHALF OF:**

|  |  |
| --- | --- |
|  **THE PROCURING ENTITY**  |  **THE SERVICE PROVIDER** |
| **Name: ………………………………** | **Name: …………………………….** |
|  **(***Authorized Representative***) (***Authorized Representative***)**  |
| **Designation:** | **………………………………** | **Designation:** | **…………………………….** |
| **Signature:** | **………………………………** | **Signature:** | **…………………………….** |
| **Date: ………………………………** **WITNESS** | **Date: ……………………………****WITNESS** |
| **Name:** | **………………………………** | **Name:** | **…………………………….** |
| **Designation:** | **………………………………** | **Designation:** | **…………………………….** |

**Signature:** ……………………………. **Signature:** ………………………….

**Performance Securing Declaration[[5]](#footnote-5)**

Date: *[insert* ***date*** *(as day, month and year)]*

Contract No.: *[insert* ***Contract number]***

To: *[insert* ***complete name of Employer****]*

I/We, the undersigned, declare that:

1. I/We understand that, according to your conditions, to guarantee the faithful performance by the Service Provider of its obligations under the Contract, I/We shall submit this form of Performance Securing Declaration within a maximum period of fourteen (14) calendar days from the date of the Letter of Acceptance and prior to the signing of the Contract.
2. I/We accept that: I/We will be disqualified from tendering for any procurement contract with any procuring entity for the period of time determined by the Public Procurement Regulatory Authority in accordance with the procedures stipulated in the Public Procurement Act and Public Procurement Regulations if I/We have failed to execute the Contract in accordance with the Terms and Conditions therein.

I/We understand that this Performance Securing Declaration shall cease to be valid upon satisfactory performance and final acceptance of the Services by the Employer.

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

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

Duly authorized to sign the Contract for and on behalf of: *[insert* ***complete name of Service Provider]***

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

Corporate Seal (where appropriate)

Performance Security

**Option 1: (Bank Guarantee)**

*[Guarantor letterhead]*

**Beneficiary:** *[insert name and Address of* Employer*]*

**Date:** \_ *[Insert date of issue]*

**PERFORMANCE GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that \_ *[insert name of Service Provider, which in the case of a* ***JVCA*** *shall be the name of the* ***JVCA****]* (hereinafter called "the Applicant") has entered into Contract No. *[insert reference number of the contract]* dated *[insert date]* with the Beneficiary, for the execution of \_ *[insert name of contract and brief description of* the Non-Consultancy services*]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* (\_\_\_\_\_\_) *[insert amount in words]*,[[6]](#footnote-6)1 such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary’s complying demand supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the …. Day of ……, 2… [[7]](#footnote-7)2, and any demand for payment under it must be received by us at this office indicated above on or before that date.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
*[signature(s)]*

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

Performance Security

**Option 2: Performance Bond**

*[Guarantor letterhead]*

By this Bond *[insert name of Principal]* as Principal (hereinafter called “the Service Provider”) and *[insert name of Surety]* as Surety (hereinafter called “the Surety”), are held and firmly bound unto *[insert name of Employer]* as Obligee (hereinafter called “the Employer”) in the amount of *[insert amount in words and figures]*, for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Service Provider and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Service Provider has entered into a written Agreement with the Employer dated the day of , 20 , for *[name of contract and brief description of Non-Consultancy Services]* in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

NOW, THEREFORE, the Condition of this Obligation is such that, if the Service Provider shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Service Provider shall be, and declared by the Employer to be, in default under the Contract, the Employer having performed the Employer’s obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

(1) complete the Contract in accordance with its terms and conditions; or

(2) obtain a Tender or tenders from qualified Tenderers for submission to the Employer for completing the Contract in accordance with its terms and conditions, and upon determination by the Employer and the Surety of the lowest responsive Tenderer, arrange for a Contract between such Tenderer and Employer and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term “Balance of the Contract Price,” as used in this paragraph, shall mean the total amount payable by Employer to Service Provider under the Contract, less the amount properly paid by Employer to Service Provider; or

(3) pay the Employer the amount required by Employer to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

Any suit under this Bond must be instituted before the expiration of one year from the date of issue of the Certificate of Completion.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Employer named herein or the heirs, executors, administrators, successors, and assigns of the Employer.

In testimony whereof, the Service Provider has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this day of 20 .

SIGNED ON on behalf of

By in the capacity of

In the presence of

SIGNED ON on behalf of

By in the capacity of

In the presence of

Advance Payment Security

**Beneficiary:** *[Insert name and Address of* Employer*]*

**Date:** *[Insert date of issue]*

**ADVANCE PAYMENT GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor:**  *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[insert name of Service Provider, which in the case of a* ***JVCA*** *shall be the name of the* ***JVCA****]* (hereinafter called “the Applicant”) has entered into Contract No. *[insert reference number of the contract]* dated *[insert date]* with the Beneficiary, for the execution of *[insert name of contract and brief description of Non-Consultancy Services]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum *[insert amount in figures]* () *[insert amount in words]* is to be made against an advance payment guarantee.

At the request of the Applicant, we [*name of the Bank]* , hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* () *[insert amount in words][[8]](#footnote-8)1* upon receipt by us of your first demand in writing accompanied by a written statement stating that the Applicant is in breach of its obligation under the contract because the Applicant has

1. used the advance payment for purposes other than the costs of mobilization in respect of the Non-Consultancy Services; or
	* 1. has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

It is a condition that for any claim and payment under this guarantee to be made, the advance payment referred to above must have been received by the Applicant on its account number *[insert number]* at *[insert name and address of Applicant’s bank]*..

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that eighty (80) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the *[insert day]* day of *[insert month]*, 2 *[insert year]*,[[9]](#footnote-9)2 whichever is earlier Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

Yours truly,

Signature and Seal:

Name of Bank/Financial Institution:

Address:

Date:

***Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.***

1. Insert the reasons for non-selection of the tenderer for the award of contract. The reasons given here should be those which appears in the evaluation report and which were approved by the Tender Board as justifiable reasons to turn down the offer given by the tenderer. [↑](#footnote-ref-1)
2. To be used only if the Service Provider disagrees with the Adjudicator proposed by the Employer in the TDS and SCC and has accordingly offered another candidate and the Employer has accepted the counterproposal from the Service Provider. [↑](#footnote-ref-2)
3. To be used only if the Employer disagrees with the Adjudicator proposed by the Service Provider in the TDS and SCC.. [↑](#footnote-ref-3)
4. Insert the appropriate form of security to be furnished. The Performance Securing Declaration shall only be applicable for Tenders falling under regional exclusive preference. [↑](#footnote-ref-4)
5. Used as an alternative performance security for Contracts whose value fall under Regional Exclusive Preference (i.e. Tshs 200,000,000/- as per Tenth Schedule of Public Procurement Regulations -GN. No. 446 of 2013 as amended in 2016). It shall be submitted within fourteen (14) days after receiving the Letter of Acceptance. [↑](#footnote-ref-5)
6. *1 The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency(cies) of the Contract or a freely convertible currency acceptable to the Beneficiary.* [↑](#footnote-ref-6)
7. *2 Insert the date twenty-eight days after the expected completion date as described in GCC Sub-Clause 21.1. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”* [↑](#footnote-ref-7)
8. 1 *The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer.* [↑](#footnote-ref-8)
9. 2 *Insert the expected completion date as described in GC Clause 21.1. The Employer should note that in the event of an extension of the expected completion date, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months] [one year], in response to the Beneficiary’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”* [↑](#footnote-ref-9)