



TENDER DOCUMENT

TENDER NO: NGEC/RT/INTERNET/01/2020-2021

TENDER NAME:

**RESTRICTED TENDER FOR PROVISION OF INTERNET AND
WIDE AREA NETWORK (WAN) SERVICES**

**NATIONAL GENDER & EQUALITY COMMISSION
SOLUTION TECH PLACE, 1st FLOOR
P.O. Box 27512 - 00506
NAIROBI**

DATE: 8TH JULY 2020

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SECTION I - INVITATION FOR TENDERS

8th July 2020

TENDER REF. NO.: NGEC/OT/INS/001/2019-2020

TENDER NAME: PROCUREMENT OF PROVISION OF INTERNET AND WIDE AREA NETWORK SERVICES

- 1.1 The National Gender & Equality Commission (NGEC) invites sealed tenders from Selected Service Providers (candidates) for the **PROVISION OF INTERNET AND WIDE AREA NETWORK SERVICES IN NGEC HEAD OFFICE AND REGIONAL OFFICES (KITUI, GARISSA, NAKURU, MALINDI AND KISUMU)**
- 1.3 Tender documents may be obtained from NGEC Procurement office during working hours upon payment of non-refundable fee of Kshs. 1,000.00 or be downloaded free of charge from **the Commission website:** www.ngeckeny.org.
- 1.4 Prices quoted should be net inclusive of all taxes, and delivery costs, must be in Kenya Shillings and shall remain valid for **90 days** from the closing date of the tender.
- 1.5 Completed tender documents are to be enclosed in plain sealed envelopes, marked with the tender number and name and be deposited in the Tender Box at **Solution Tech Place, 1st Floor, Upperhill Longonot Road** or be addressed to
**National Gender & Equality Commission,
Solution Tech Place, 1st Floor,
P.o. Box 27512 00506,
NAIROBI**
so as to be received on or before **Friday 17th July 2020 at 10.00 AM**
- 1.6 Tenders will be opened immediately thereafter in the presence of the candidates or representatives who choose to attend at the above address.

FOR COMMISSION SECRETARY

SECTION II - INSTRUCTIONS TO TENDERERS

2.1. Eligible Tenderers

- 2.1.1 NGEN invites tenders to all eligible bidders prescribed in the Bid Data Sheet. Successful tenderers shall provide the services for a period of three years subject to satisfactory performance and annual review by the Commission.
- 2.1.2 The NGEN's employees, committee members, board members and their relatives (spouse and children) are not eligible to participate in the tender unless where specially allowed under section 131 of the Act.
- 2.1.3 Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the NGEN to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the services under this Invitation for tenders.
- 2.1.4 Tenderers involved in the corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

2.2 Cost of Tendering

- 2.2.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and NGEN, will in no case be responsible or liable for those costs. Regardless of the conduct or outcome of the tendering process.
- 2.2.2 The price to be charged for the tender document shall not exceed Kshs.1,000/=
- 2.2.3 The NGEN shall allow the tenderer to review the tender document free of charge before purchase.

2.3 Contents of Tender Document

- 2.3.1 The tender documents comprise the documents listed below and addenda issued in accordance with these instructions to tenderers.
 - (i) Instructions to Tenderers
 - (ii) General Conditions of Contract
 - (iii) Special Conditions of Contract
 - (iv) Schedule of Requirements
 - (v) (vi) Form of Tender
 - (vii) Price Schedules
 - (viii) Contract Form
 - (xi) Performance security Form

- 2.3.2 The Tenderer is expected to examine all instructions, forms, terms and specification 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.

2.4 Clarification of Tender Documents

- 2.4.1 A Candidate making inquiries of the tender documents may notify NGEC by post, fax or by email at the NGEC's address indicated in the Invitation for tenders. NGEC 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 the tenders, prescribed by NGEC. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all candidates who have received the tender documents.

- 2.4.2 NGEC shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.

- 2.4.3 Preference where allowed in the evaluation of tenders shall not exceed 15%

2.5 Amendment of Tender Documents

- 2.5.1 At any time prior to the deadline for submission of tenders, the NGEC, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by issuing an addendum.

- 2.5.2 All prospective tenderers who have obtained the tender documents will be notified of the amendment by post, fax or email and such amendment will be binding on them.

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

2.6 Language of Tenders

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

2.7. Documents Comprising the Tender

- 2.7.1 The tender prepared by the tenderer shall comprise the following components:
- (a) A Tender Form and a Price Schedule completed in accordance with paragraph 2.8, 2.9 and 2.10 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) Tender security if applicable
 - (d) Declaration Form

2.8. Form of Tender

- 2.8.1 The tenderer shall complete the Tender Form and the Price Schedule furnished in the tender documents, indicating the services to be provided.

2.9. Tender Prices

- 2.9.1 The tenderer shall indicate on the form of tender and the appropriate Price Schedule the unit prices and total tender price of the services it proposes to provide under the contract.
- 2.9.2 Prices indicated on the Price Schedule shall be the cost of the services quoted including all customs duties and VAT and other taxes payable.
- 2.9.3 Prices quoted by the tenderer shall remain fixed during the Term of the contract unless otherwise agreed by the parties. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.20.5

2.10. Tender Currencies

- 2.10.1 Prices shall be quoted in Kenya Shillings.

2.11. Tenderers Eligibility and Qualifications

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

2.12. Tender Security

- 2.12.1 The tenderer shall furnish, as part of its tender, a tender security for the amount and form specified in the Data Sheet to Instructions to Tenderers.
- 2.12.2 The tender security shall not exceed 2 per cent of the tender price.
- 2.12.3 The tender security is required to protect the NGEN against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 2.12.7
- 2.12.4 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form
- a) Cash.
 - b) A bank guarantee.
 - c) Such insurance guarantee approved by the Authority.
 - d) Letter of credit.
- 2.12.5 Any tender not secured in accordance with paragraph 2.12.1. and 2.12.3 shall be rejected by the NGEN as non-responsive, pursuant to paragraph 2.20.5
- 2.12.6 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
- 2.12.7 The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, and furnishing the performance security.
- 2.12.8 The tender security may be forfeited:
- (a) if a tenderer withdraws its tender during the period of tender validity.
 - (b) in the case of a successful tenderer, if the tenderer fails:
 - (i) to sign the contract in accordance with paragraph 2.29 or
 - (ii) to furnish performance security in accordance with paragraph 2.30.
 - (c) If the tenderer rejects correction of an arithmetic error in the tender.

2.13. Validity of Tenders

- 2.13.1 Tenders shall remain valid for 90 days after date of tender opening pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the NGEN as non-responsive.
- 2.13.2 In exceptional circumstances, the NGEN may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be

made in writing. The tender security provided under paragraph 2.12 shall also be suitably extended. A tenderer granting the request will not be required nor permitted to modify its tender.

2.14. Format and Signing of Tenders

2.14.1 The tenderer shall prepare an original and a copy of the tender, clearly marking each **“ORIGINAL TENDER”** and **“COPY OF TENDER,”** as appropriate. In the event of any discrepancy between them, the original shall govern.

2.14.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. All pages of the tender, except for un-amended printed literature, shall be initialed by the person or persons signing the tender.

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

2.15 Sealing and Marking of Tenders

2.15.1 The tenderer shall seal the original and the copy of the tender in separate envelopes, duly marking the envelopes as **“ORIGINAL TENDER”** and **“COPY OF TENDER”**. The envelopes shall then be sealed in an outer envelope.

2.15.2 The inner and outer envelopes shall:

- (a) be addressed to NGEN at the address given in the Invitation to Tender.
- (b) bear tender number and name in the invitation to tender and the words, **“DO NOT OPEN BEFORE** the date and time of closing in the data sheet.

2.15.3 The inner envelopes shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared “late”.

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

2.16. Deadline for Submission of Tenders

2.16.1 Tenders must be received by NGEN at the address specified not later than the day, date and time of closing stated in the data sheet.

2.16.2 NGEN may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 2.5.3 in which case all rights and obligations of NGEN and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

2.16.3 Bulky tenders which will not fit the tender box shall be received by NGEC as provided for in the Data Sheet.

2.17. Modification and Withdrawal of Tenders

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

2.17.2 The tenderer's modification or withdrawal notice shall be prepared, sealed, marked and dispatched in accordance with the provisions of paragraph 2.15. (Sealing and Marking of Tenders) a withdrawal notice may also be sent by post, fax or email but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.

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

2.17.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity. Withdrawal of a tender during this interval may result in the Tenderer's forfeiture of its tender security.

2.18. Opening of Tenders

2.18.1 NGEC will open all tenders in the presence of tenderers' representatives who choose to attend, at **10.30 AM on Tuesday 17th July 2020** and in the location specified in the invitation for tenders. The tenderers' representatives who are present shall sign a register evidencing their attendance.

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

2.18.3 NGEC will prepare minutes of the tender opening, which will be submitted to tenderers that signed the tender opening register and will have made the request.

2.19 Clarification of Tenders

2.19.1 To assist in the examination, evaluation and comparison of tenders, NGEC 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.

2.19.2 Any effort by the tenderer to influence NGEC in its tender evaluation, tender

comparison or contract award decisions may result in the rejection of the tenderers' tender.

2.20 Preliminary Examination and Responsiveness

2.20.1 NGEC 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.

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

2.20.3 NGEC 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.

2.20.4 Prior to the detailed evaluation, NGEC 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. NGEC's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

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

2.21. Conversion to single currency

2.21.1 Where other currencies are used, NGEC will convert those currencies to Kenya Shillings using the selling exchange rate on the date of tender closing provided by the Central Bank of Kenya.

2.22. Evaluation and Comparison of Tenders

2.22.1 NGEC will evaluate and compare the tenders which have been determined to be substantially responsive.

2.22.2 NGEC's evaluation of a tender will take into account, in addition to the tender price, the following factors, in the manner and to the extent indicated in paragraph 2.22.3.

(a) operational plan proposed in the tender;

(b) deviations in payment schedule from that specified in the Special Conditions of Contract

2.22.3 The following evaluation methods will be applied.

(a) Operational Plan

(i) NGEC requires that the services under the Invitation for Tenders shall be performed at the time specified in the Schedule of Requirements. Tenders offering to perform longer than NGEC's required delivery time will be treated as non-responsive and rejected.

(b) Deviation in payment schedule

(i) Tenderers shall state their tender price for the payment on schedule outlined in the special conditions of contract. Tenders will be evaluated on the basis of this base price. Tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in tender price they wish to offer for such alternative payment schedule. NGEC may consider the alternative payment schedule offered by the selected tenderer.

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

2.23. Contacting NGEC

2.23.1 No tenderer shall contact NGEC on any matter relating to its tender, from the time of the tender opening to the time the contract is awarded.

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

2.24 Post-qualification

2.24.1 NGEC will verify and determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.

2.24.2 The determination will take into account the tenderer financial and technical capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, as well as such other information as NGEC deems necessary and appropriate.

2.24.3 An affirmative determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the Tenderer's tender, in

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

2.25 Award Criteria

2.25.1 Subject to paragraph 2.29 NGEC will award the contract to the successful tenderer whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

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

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

2.26. NGEC's Right to accept or Reject any or all Tenders

2.26.1 NGEC 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 NGEC's action. If NGEC determines that none of the tenders is responsive, NGEC shall notify each tenderer who submitted a tender.

2.26.2 NGEC 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.

2.26.3 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.

2.27 Notification of Award

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

2.27.2 The notification of award will signify the formation of the contract subject to the signing of the contract between the tenderer and NGEC pursuant to clause 2.9 (Tender Prices). Simultaneously the other tenderers shall be notified that their tenders were not successful.

2.27.3 Upon the successful Tenderer's furnishing of the performance security, NGEC will promptly notify each unsuccessful Tenderer and will discharge its tender security.

2.28 Signing of Contract

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

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

2.28.3 The contract will be definitive upon its signature by the two parties.

2.28.4 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 Performance Security

2.29.1 The successful tenderer shall furnish the performance security in accordance with the Conditions of Contract, in a form acceptable to NGEC.

2.29.2 Failure by the successful tenderer to comply with the requirement of this paragraph or paragraph 2.30.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event NGEC may make the award to the next lowest evaluated tender or call for new tenders.

2.30 Corrupt or Fraudulent Practices

2.30.1 NGEC requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts. A tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.

2.30.2 NGEC 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

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

Bid Data Sheet to Instructions to Tenderers (ITT)

The following information for the procurement of Internet and WAN services shall complement, supplement, or amend, the provisions on the instructions to tenderers. Wherever there is a conflict between the provisions of the instructions to tenderers and the provisions of the Bid Data Sheet, the provisions of the Bid Data Sheet herein shall prevail over those of

the instructions to tenderers.

Instructions to tenderers	Particulars of appendix to instructions to tenderers
2.1	Particulars of eligible tenderers: Selected pre-qualified firms for Provision of Internet and Wide Area Network Services
2.2.2	Price to be charged for tender documents. Kshs. 1,000 for those who purchase a hard copy and free for those who download from the Commission website: www.ngeckkenya.org
2.10	Particulars of other currencies allowed. None
2.12.2	Particulars of tender security if applicable. Not applicable
2.12.4	Form of Tender Security: Not applicable
2.13	Validity of Tenders: Tenders Shall remain valid for 90 days after date of tender opening
2.16.3	Bulky tenders which do not fit in the tender box shall be delivered to the Procurement Unit at 2nd Floor Solution Tech Building Longonot Road, UpperHill Nairobi.
2.20.1	<p><u>PRELIMINARY EVALUATION CRITERIA</u></p> <p>Tenderers are required to submit copies of the following MANDATORY DOCUMENTS which will be used during Preliminary Examination to determine responsiveness</p>

Instructions to tenderers	Particulars of appendix to instructions to tenderers
	<ol style="list-style-type: none"> 1. Copy of Certificate of Incorporation/Registration 2. Copy of Valid Tax Compliance Certificate 3. Copy of Valid Single Business Permit 4. Duly filled and Signed form of Tender 5. Valid Network Facilities Provider license by Communications Authority of Kenya (Minimum – Tier 2). 6. Valid International Gateway Systems and Service Provider by Communications Authority of Kenya 7. Dully filled Confidential Business Questionnaire 8. Technical Requirements Schedule- must fill and provide in full 9. Provide Audited Financial Accounts for 2018 and 2019 with annual Turnover of Ksh. 50 Million 10. Must serialize pages for bid submitted 11. Must submit a duly filled Price Schedule form in the format provided

Instructions to tenderers	Particulars of appendix to instructions to tenderers		
2.22	Evaluation and Comparison of Tenders <u>TECHNICAL EVALUATION CRITERIA (Total Points 100)</u>		
		TOTAL MARKS 100%	
	1	The firm must have been providing Internet and Wide Area Network services for the eight years (attach evidence)	25
	2	Provide Technical Diagram of the proposed SDWAN architecture for NGEC and POP the last mile link will connect to.	5
	3	Provide Diagram showing architecture with International undersea cable e.g. TEAMS, EASSY, SEACOM	5
	4	The bidder should have handled three (3) similar projects in scope and complexity in the last two (2) years with reputable firms. Attach requisite evidence.	25
	5	The bidder has specified a project manager and two network engineers who meet the specified criteria i.e. PRINCE2 and CCNP minimum, Proof of Firewall training and Completion Certification, each with minimum of two years' experience (Provide Certificates and CV	20
	6	Proposed project implementation plan with clearly indicated; <ol style="list-style-type: none"> 1. Timelines and responsibilities 2. clear organizational escalation matrix 3. Detailed training plan on the deployed SDWAN appliance and Client Portal 4. detailed SLA with guaranteed service uptime of 99.9%. 5. a detailed presentation of the proposed connection model for internet and support for SD-WAN implementation 	20

Instructions to tenderers	Particulars of appendix to instructions to tenderers
2.24 (a)	Particulars of post – qualification if applicable. NGEC may inspect the premises
Other's as necessary	Complete as necessary. None

SECTION III 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 NGEC and the tenderer, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- (b) “The Contract Price” means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations
- (c) “The Services” means services to be provided by the tenderer including any documents, which the tenderer is required to provide to the NGEC under the Contract.
- (d) “The NGEC” means the organization procuring the services under this Contract
- (e) “The Contractor” means the organization or firm providing the services under this Contract.
- (f) “GCC” means the General Conditions of Contract contained in this section.
- (g) “SCC” means the Special Conditions of Contract
- (h) “Day” means calendar day

3.2. Application

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

3.3. Standards

3.3.1 The services provided under this Contract shall conform to the standards mentioned in the schedule of requirements.

3.4. Use of Contract Documents and Information

3.4.1 The Contractor shall not, without the NGEC’s prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the NGEC in connection therewith, to any person other than a person employed by the contractor in the performance of the Contract.

3.4.2 The Contractor shall not, without the NGEC’s prior written consent, make use of

any document or information enumerated in paragraph 2.4.1 above.

- 3.4.3 Any document, other than the Contract itself, enumerated in paragraph 2.4.1 shall remain the property of the NGEC and shall be returned (all copies) to the NGEC on completion of the contract's or performance under the Contract if so required by the NGEC.

3.5. Patent Rights

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

3.6 Performance Security

- 3.6.1 Within twenty eight (28) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the NGEC the performance security where applicable in the amount specified in SCC

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

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

- a) Cash.
- b) A bank guarantee.
- c) Such insurance guarantee approved by the Authority.
- d) Letter of credit.

- 3.6.4 The performance security will be discharged by the NGEC and returned to the Candidate not later than thirty (30) days following the date of completion of the Contractor's performance of obligations under the Contract, including any warranty obligations, under the Contract.

3.7. Delivery of services and Documents

- 3.7.1 Delivery of the services shall be made by the Contractor in accordance with the terms specified by the NGEC in the schedule of requirements and the special conditions of contract

3.8. Payment

- 3.81. The method and conditions of payment to be made to the contractor under this Contract shall be specified in SCC

- 3.82. Payment shall be made promptly by the NGEC, but in no case later than sixty (60) days after submission of an invoice or claim by the contractor

3.9. Prices

- 3.9.1 Prices charged by the firm for Services performed under the Contract shall not, with

the exception of any price adjustments authorized in SCC vary from the prices quoted by the tenderer in its tender or in the NGEC's request for tender validity extension the case may be. No variation in or modification to the terms of the contract shall be made except by written amendments signed by the parties.

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

3.9.3 Where contract price variation is allowed the variation shall not exceed 20% of the original contract price

3.9.4 Price variation requests shall be processed by the NGEC within 30 days of receiving the request.

3.10. Assignment

3.10.1 The firm shall not assign, in whole or in part, its obligations to perform under this Contract, except with the NGEC's prior written consent.

3.11. Termination for Default

3.11.1 The NGEC may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Contractor terminate this Contract in whole or in part:

- (a) if the firm fails to provide any or all of the services within the period(s) specified in the Contract, or within any extension thereof granted by the NGEC.
- (b) If the firm fails to perform any other obligation(s) under the Contract
- (c) If the Contract in the judgment of the NGEC has engaged in corrupt or fraudulent practices in competing for or in executing the contract

3.11.2 In the event the NGEC terminates the contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, services similar to those un-delivered and the Contractor shall be liable to the NGEC for any excess costs for such similar services. However the contractor shall continue performance of the contract to extent not terminated.

3.12. Termination for Insolvency

3.12.1 The NGEC may at any time terminate the contract by giving written notice to the Contractor if the contractor becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the contractor, provided that such termination will not prejudice or affect any right of action or remedy, which has accrued or will accrue thereafter to the NGEC.

3.13. Termination for Convenience

3.13.1 The NGEC by written notice sent to the contractor, may terminate the contract in whole or in part, at any time for its convenience. The notice of termination shall

specify that the termination is for the procuring entities convenience, the extent to which performance of the contractor of the contract is terminated and the date on which such termination becomes effective.

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

3.14 Resolution of Disputes

- 3.14.1 The NGEC and the contractor shall make every effort to resolve amicably by direct informal negotiations and disagreement or disputes arising between them under or in connection with the contract

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

3.15. Governing Language

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

3.16. Applicable Law

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

3.17 Force Majeure

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

3.18 Notices

- 3.1.1 Any notices given by one party to the other pursuant to this contract shall be sent to the other party by post or by Fax or Email and confirmed in writing to the other party's address specified in the SCC.

- 3.1.2 A notice shall be effective when delivered or on the notices effective date, whichever is later.

SECTION IV – SPECIAL CONDITIONS OF CONTRACT

4.2 Special Conditions of Contract as relates to the General Conditions of Contract

Reference of general conditions of contract	Special condition of contract
3.6 Performance security	10 percent of the contract price within fifteen days upon notification of award
3.7 Delivery of Services	For a period of three years subject to satisfactory performance and annual review by the Commission
3.8 Payment	Shall be done on quarterly basis
3.9 Price adjustment	No price adjustments will be allowed
3.16 Applicable law	Laws of Kenya
3.18 Notices	The COMMISSION SECRETARY NATIONAL GENDER & EQUALITY COMMISSION Solution Tech Place, 1 st Floor P.o. Box 27512- 00506 NAIROBI

SECTION V - TECHNICAL REQUIREMENTS SCHEDULE

Bidder MUST conduct site survey on all sites to estimate the initial connectivity requirements and the equipment required

Requirement	Tick if in compliance
Full compliance with the bandwidth requirements for the HQ, and NGEN Regional offices by providing pricing as below. Please note that only package one will be used for evaluation purpose.	
Conduct site surveys on all the offices and provide the one-off connection costs.	
Provision of dual internet links.	
MUST provide connectivity to different international internet gateways that should offer NGEN high levels of redundancy to the internet with auto fail over mechanisms. Minimum of 3 gateways (Specify)	Tick ___ and specify _____
Provision of SDWAN supported Customer Premise Equipment (SPEs) in all the sites.	Tick ___ and specify _____
Minimum of Ten (10) public IP addresses.	
MUST be able to provide both dual last mile and POP redundancy where by one of the last mile MUST be from another 3 rd party	
Provide a single glass plane for SDWAN to provide visibility, Central management	
The ISP must have a web based customer centralized trouble ticketing tool for call logging, monitoring and troubleshooting purpose and the same should be accessible 24/7/365. This should be able to illustrate traffic utilization, top talkers, support history of incidence up to resolution, ability to raise request e.g. upgrade	Tick _____ and Specify _____
Must provide for flexibility in bandwidth upgrade/downgrade.	
Bidders must justify in the bid document that they are the sole provider of the internet connection and not leasing from any other Internet Service Provider locally in KENYA. i.e. they should have their own network and internet infrastructure locally in Kenya. (Tier one or two in internet service provision hierarchy)	Tick _____ and Specify _____

Measures the ISP shall take to ensure the security of traffic to NGECC.	Tick_____ and Specify_____
The ISP shall have own infrastructure. The ISP should disclose to NGECC where MOUs' with third party vendors are in existence. Failure to disclose shall result to disqualification of the vendor's application.	Tick_____ and Specify_____

Package 1 (Mandatory)

No	Site	Primary Link (Mbps)	Backup Link (Mbps)	SD WAN Equipment Provider
1	Headquarter	20	5	ISP
2	Nakuru	2	1	ISP
3	Kisumu	2	1	ISP
4	Garissa	2	1	ISP
5	Kitui	2	1	ISP
6	Malindi	2	1	ISP

Package 2

No	Site	Primary Link (Mbps)	Backup Link (Mbps)	SD WAN Equipment Provider
1	Headquarter	25	7	ISP
2	Nakuru	4	2	ISP
3	Kisumu	4	2	ISP
4	Garissa	4	2	ISP
5	Kitui	4	2	ISP

6	Malindi	4	2	ISP
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Package 3

No	Site	Primary Link (Mbps)	Backup Link (Mbps)	SD WAN Equipment Provider
1	Headquarter	30	7	ISP
2	Nakuru	6	2	ISP
3	Kisumu	6	2	ISP
4	Garissa	6	2	ISP
5	Kitui	6	2	ISP
6	Malindi	6	2	ISP

SITE SURVEY

Bidders are required to contact the following NGECE Officers for the purpose of conducting Site Survey:

No	Site	Location	Contact
1	Headquarter	1st Floor, Solution Tech Place, 5 Longonot Rd, Upper Hill, Nairobi, Kenya	John 0720360187 or Dan 0706246184
2	Nakuru	Tamoh Plaza, 1st Floor, Kijabe Street	Mwaniki 0721200204
3	Kisumu	Reinsurance Plaza, Plaza, 3rd Floor Wing B Oginga Odinga Street, Kisumu	Davis 0727649959
4	Garissa	KRA Route Off Lamu Road, Garissa Town	Ibrahim 0721898828
5	Kitui	Nzambani Park, Off Kitui Referral Hospital	Fiona 0780989092

6	Malindi	Malindi Complex,Lamu Road	Beatrice 0721774787
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SECTION VI - STANDARD FORMS

Notes on the Standard Forms

1. **Form of Tender** - The form of Tender must be completed by the tenderer and submitted with the tender documents. It must also be duly signed by duly authorized representatives of the tenderer.
2. **Price Schedule Form** - The price schedule form must similarly be completed and submitted with the tender.
3. **Contract Form** - The contract form shall not be completed by the tenderer at the time of submitting the tender. The contract form shall be completed after contract award and should incorporate the accepted contract price.
4. **Confidential Business Questionnaire Form** - This form must be completed by the tenderer and submitted with the tender documents.
5. **Tender Security Form** - When required by the tender document the tenderer shall provide the tender security either in the form included hereinafter or in another format acceptable to the NGEN.
6. **Performance security Form** - The performance security form should not be completed by the tenderer at the time of tender preparation. Only the successful tenderer will be required to provide performance security in the form provided herein or in another form acceptable to the NGEN.

Form of Tender

To:
Name and address of NGENC

Date

Tender No.
Tender Name

Gentlemen and/or Ladies:-

1. Having examined the Tender documents including Addenda No. (*Insert numbers*) the receipt of which is hereby duly acknowledged, we the undersigned, offer to provide **Internet and WAN** Services under this tender in conformity with the said Tender document for the _____ sum of _____
[*Total Tender amount in words and figures*] or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.
2. We undertake, if our Tender is accepted, to provide Internet and WAN Services in accordance with the conditions of the tender.
3. We agree to abide by this Tender for a period of[*number*] days from the date fixed for Tender opening of the Instructions to Tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
4. This Tender, together with your written acceptance thereof and your notification of award, shall constitute a Contract between us subject to the signing of the contract by both parties.
5. 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 _____

Price Schedule Form

Pricing (All inclusive)

Package 1 (MANDATORY)

	Price in Ksh. All Inclusive
One off Installation Cost	
Recurring Monthly and amortized SD WAN Equipment	
Yearly 1 Domain Renewal	
Total	

Package 2

	Price in Ksh. All Inclusive
One off Installation Cost	
Recurring Monthly and amortized SD WAN Equipment	
Yearly 1 Domain Renewal	
Total	

Package 3

	Price in Ksh. All Inclusive
One off Installation Cost	
Recurring Monthly and amortized SD WAN Equipment	
Yearly 1 Domain Renewal	
Total	

AUTHORIZED BY _____ DATE _____ SIGN _____

OFFICIAL STAMP

Contract Form

THIS AGREEMENT made the..... day of..... 20..... between The NATIONAL GENDER & EQUALITY COMMISSION of Kenya (hereinafter called “the NGEC”) of the one part and[name of tenderer] of[city and country of tenderer] (hereinafter called “the tenderer”) of the other part:

WHEREAS the NGEC invited tenders for the Internet and WAN and has accepted a tender by the tenderer for the supply of the services in the sum of _____ [contract price in words in figures] (hereinafter called “the Contract Price”).

NOW THIS AGREEMENT WITNESSTH 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
 - (d) the General Conditions of Contract
 - (e) the Special Conditions of Contract; and
 - (f) the NGEC’s Notification of Award
3. In consideration of the payments to be made by the NGEC to the tenderer as hereinafter mentioned, the tenderer hereby covenants with the NGEC to provide the Internet and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The NGEC hereby covenants to pay the tenderer in consideration of the provision of the services 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 NGEC)

Signed, sealed, delivered by _____ the _____(for the tenderer) in the presence of _____

Part 2(c) – Registered Company:

Private or public.....

State the nominal and issued capital of the company –

Nominal Kshs.

Issued Kshs.....

Give details of all directors as follows

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

Date.....

Signature of Tenderer

If a citizen, indicate under “Citizenship Details” whether by Birth, Naturalization or Registration

PERFORMANCE SECURITY FORM

To:
[Name of procuring entity]

WHEREAS *[name of tenderer]*
(Hereinafter called "the tenderer") has undertaken, in pursuance of Contract No. _____
[reference number of the contract] dated _____ 20 _____ to
supply
[description of Internet and WAN (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 a 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 of money within the limits of *[Amount of guarantee]* as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the _____ day of _____ 20 ____

Signature and seal of the Guarantors

[Name of bank of financial institution]

[Address]

[Date]

(Amend accordingly if provided by Insurance Company)