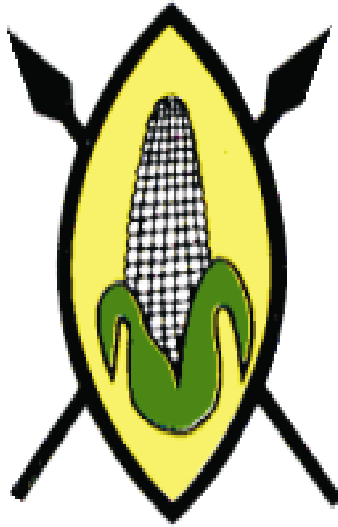


NATIONAL CEREALS AND PRODUCE BOARD



TENDER DOCUMENT FOR:

**FRAMEWORK AGREEMENT FOR SUPPLY AND DELIVERY OF
PETROLEUM PRODUCTS AND SERVICING OF MOTOR VEHICLES**

TENDER NO. NCPB/PROV/PFTM/05/2017-2018

**NATIONAL CEREALS AND PRODUCE BOARD
NYUMBA YA NAFKA
MACHAKOS/ENTERPRISE ROADS
INDUSTRIAL AREA
P.O. BOX 30586 - 00100
NAIROBI, KENYA
Website: www.ncpb.co.ke**

NATIONAL CEREALS AND PRODUCE BOARD
TENDER INVITATION FOR FRAMEWORK AGREEMENT FOR SUPPLY AND DELIVERY OF
PETROLEUM PRODUCTS AND SERVICING OF MOTOR VEHICLES
TENDER NO. NCPB/PROV/PFTM/05/2017-2018

PART I - INVITATION TO TENDER

The National Cereals & Produce Board (hereinafter referred to as "the Board" or "NCPB") invites bid offers from reputable firms for supply and delivery of petroleum products and servicing of motor vehicles under a framework contract for a period of twelve (12) months, with an option of renewal for a further twelve (12) months subject to satisfactory performance.

The tender documents containing detailed instructions for the requirement may be obtained from the office of the NCPB's **Procurement Manager** during normal working hours upon payment of a non-refundable fee of Kshs. 1,000 (one thousand only) per set in cash or a **banker's cheque** drawn in favour of National Cereals and Produce Board or at NCPB headquarters cash office in Nafaka house, Industrial Area between 9.00 am and 3.00 pm.

The completed tender document should be submitted in a plain sealed envelope clearly marked in Bold Letters: **NCPB/PROV/PETM/05/2017 – 2018** addressed to:-

THE MANAGING DIRECTOR,
NATIONAL CEREALS AND PRODUCE BOARD,
NYUMBA YA NAFKA,
MACHAKOS/ENTERPRISE ROADS,
INDUSTRIAL AREA,
P.O BOX 30586,
NAIROBI.

and physically deposited in the tender box situated in **Nafaka House, Ground Floor, by the Reception Area**, so as to be received on or before **10th October, 2017 at 12.00 noon**

Tenders shall be opened soon thereafter in the presence of bidders or their representatives who wish to attend in the **NCPB Boardroom, 1st Floor, Room 104, Nyumba ya Nafaka, Machakos/Enterprise Road.**

Late tenders shall be rejected and returned un-opened.

Canvassing will lead to automatic disqualification.

PART II - INSTRUCTIONS TO TENDERERS

1.0 INTRODUCTION

- 1.1 This invitation to tender is open to all the eligible tenderers.
- 1.2 NCPB's employees, committee members, Board members and their relatives (spouse and children) are not eligible to participate in the tender.
- 1.3 Tenderers shall not be under a declaration of ineligibility for corrupt or fraudulent practices.
- 1.4 The Board wishes to contract an eligible firm to supply and deliver petroleum products and service of motor vehicles in various depots/ stations across the country.
- 1.5 The prices quoted should be net inclusive of all taxes and should be indicated as a **discount (in Kenya Shillings) per litre** on the prevailing pump price published by the Energy Regulatory Commission (ERC) for a specific town where vehicle is being fuelled
- 1.6 The discount shall remain fixed for the entire duration of the framework contract.

2.0 COST OF BIDDING

The bidder will bear the cost associated with preparation and submission of the bid and the Board will not be responsible for this cost or any other costs incurred by the bidder regardless of the outcome of the tender process.

3.0 ENQUIRIES/CLARIFICATIONS

For all enquiries or clarifications required, please contact Procurement Manager. For such requests for clarifications and / or enquires please use any of the following communication facilities:-

- i) **Tel: +254-020- 6536028**
- ii) **Fax No. +254-020- 6557622**
- iii) **Email address: supplies@ncpb.co.ke and ncpbsupplies@gmail.com**
- iv) **Letter delivered by hand/post**

4.0 SUBMISSION OF BIDS

- a) It is the duty of the tenderer to ensure that he/she carefully reads the tender document to enable him/her adequately complete the bid documents. Failure to furnish all information required by the tender documents or to complete/submit the bid in conformity with the requirements of this tender document may result to its disqualification/rejection.
- b) The tenderer has been provided with the following forms to complete in Part III of this tender document:
 - i) Form T1 - Declaration Form
 - ii) Form T2 - Power of Attorney
 - iii) Form T3 - Tender Securing Form
 - iv) Form F1 - Financial Bid Form

N.B. these forms constitute part of the tender and failure to complete will lead to tender being rejected/disqualified.

- c) All bids must be completed in indelible ink and signed by the tenderer or a person who is duly authorized. Any alteration or over writing should be initialed by the person signing the bid document. A bid not duly signed shall be considered non-responsive and shall be disqualified.
- d) Where the bidder submits unsealed or improperly marked envelopes, the bid may be disqualified and the Board will not assume responsibility for the bids' misplacement or mishandling.
- e) Before the deadline for submission of tenders, the Board may modify the tendering documents by issuing an addendum. Any addendum thus issued shall be part of the tender documents and shall be communicated in writing to all tenderers who will have purchased the tender document.
- f) All documents relating to the tender and any correspondence shall be in English Language.
- g) The tenderer shall bear all costs associated with preparation and submission of his tender and the Board shall not be responsible or liable for the costs.
- h) The bidder shall submit the bid document as a single package i.e both technical and financial as a set.

5.0 AMENDMENTS

- 5.0.1 At any time prior to the deadline for submission of tenders the Board for any reason whether at its own initiative or in response to a clarification requested by a prospective bidder, may modify the tender document by issuing an addendum.
- 5.0.2 All bidders who have been issued with the tender document shall be notified of any amendment by post, fax or email and such amendment will be binding on them.
- 5.0.3 Bidders seeking clarifications must do so within the first 7 days from the date of issuance of the tender. Clarifications sought thereafter may not be considered

6.0 BID BOND AND VALIDITY PERIOD

6.1 BID BOND

- 6.1.0 All tenders must be accompanied by an **original Bid Bond of Kshs 200,000**(Kenya shillings **Two hundred thousand**) . The Bond must be valid for ninety (90) calendar days from the date of the closing of the tender. The Bid Bond shall be issued in the following form:-

- i. cash;
- ii. a bank guarantee;
- iii. insurance guarantee from the list of the approved insurance companies by PPOA
- iv. A deposit taking microfinance institution, Sacco society, the Youth Enterprise Development Fund or the Women Enterprise Fund
- v. A letter of credit

- 6.1.1 Any offer not accompanied by a Bid Bond shall be deemed to be non-responsive and shall be disqualified.
- 6.1.2 Unsuccessful bidders may have their Bid Bonds surrendered to them on expiry of ninety (90) calendars days, however, it is the duty of the bidder to claim his/her bid bond. The successful bidder will have his bid bond surrendered by the Board on raising of the requisite Performance Bond and signing of the contract.
- 6.1.3 The tenderer registered under Youth Women and Persons living with Disability (**YWPD**) shall fill and submit the **Tender Securing Declaration Form** in the format provided herein. Tenderers under this category need not to submit a bid bond.
- 6.1.4 The Tender securing declaration is required to protect NCPB against any of the risks which would warrant the security's forfeiture.
- 6.1.5 Any Tender not accompanied by a dully filled and signed Declaration shall be rejected by NCPB as non-responsive.

6.2 BID VALIDITY PERIOD

The tenders shall remain valid for ninety (90) calendar days after date of opening and any tender valid for a shorter period shall be considered non-responsive.

7.0 GUIDES TO EVALUATION CRITERIA.

Bids shall be evaluated in three stages as follows: -

- 7.1 Mandatory requirements
- 7.2 Technical evaluation
- 7.3 Negotiation and comparison of financial bids

7.1 Mandatory Requirements

The bidders should be reputable service providers. It is imperative that the bidder carefully ensures that bids submitted meet all the mandatory requirements.

These are as detailed in the table below:

NO.	ITEM	SCORE
1	A Copy of Certificate of Registration /incorporation	Yes/No
2	Valid Tax Compliance Certificate (shall be one issued by the relevant tax authorities and valid for at least up to the tender closing date).	Yes/No
3	A copy of valid Petroleum Business licence issued by Energy Regulatory Commission (ERC)	Yes/No
4	Bid bond equivalent to Kshs 200,000 YWPD shall fill and submit the Tender Securing Declaration Form in the format provided herein (FORM T3).	Yes/No
5	2 years Audited accounts for financial year 2015 and 2016	Yes/No
6	Duly filled and signed power of Attorney	Yes/No

NB:

ny bid that fails to meet any of the mandatory requirements as defined above shall not proceed to the next stage which is technical evaluation.

7.2 Technical Evaluation

Technical evaluation shall be based on the following criteria:-

No.	Item of Evaluation	Score
1.	Track record and references List of at least three (4) reputable corporate clients to whom you have provided similar services with recommendation letters or supporting evidence in the form of formal contracts or LPOs. (Each reference=10 marks)	40
2.	Average volume of business handled in year 2014 and 2015 i. Over Kshs. 50 million (30 marks) ii. Over Kshs. 10 million and below 50 million (20 marks) iii. Over 5million and Below 10 million (15 marks) iv. Below 5million (10 marks)	30
3.	Financial Health <i>(to be calculated from the submitted audited accounts)</i> Liquidity Ratio (15mks) i) 1 : 2 & above = 15 marks ii) 1 : 1-1.99 = 10 marks iii) 1 : 0.5 – 0.99 = 5 marks iv) 1 : < 0.5 = 3 marks Profitability ratio (15mks) i) 20% and above = 15 marks ii) 15% - 19% = 10 marks iii) 10% - 14% = 5 marks iv) 1% - 9% = 3 marks	30
TOTALS		100%

NB: Only bids that attain a score equal to or above 70% of the marks applicable to the technical evaluation stage shall proceed to the next stage of evaluation.

7.3 Negotiation and comparison of financial bids

7.3.1 The Board shall negotiate with technically qualified bidders based on their scorings with an aim of reaching into agreement on the scope of services and the methods of engagement.

7.3.2 The negotiations shall include but not be limited to the following: -

- ❖ Use of fuel card and the various types of cards offered
- ❖ Overall benefits of using the card
- ❖ Fuel card reports
- ❖ Fuel card network coverage
- ❖ Administration and control of the cards

7.3.3 Upon fruitful negotiations, NCPB and the selected firm will enter into a formal contract. If negotiations fail, NCPB will invite the second lowest technically qualified firm to negotiate with.

7.3.3 The technically qualified firm with the most favorable terms during the negotiations shall be considered for award.

8.0 AWARD OF CONTRACT

8.0.1 Successful bidder(s) shall be one with the highest discount offer on the prevailing pump price published by the Energy Regulatory Commission (ERC)

8.0.2 The contents of the contract shall be derived mainly from this tender document and the bid document submitted. Successful bidder(s) shall sign a contract with the Board within 30 days and not earlier than 14 days from the date of award.

8.0.3 The Laws of Kenya shall be applicable to the formal contract.

9.0 PERFORMANCE BOND

9.0.1 Within 14 working days from notification of award of the tender, the successful tenderer shall prior to signing the contract furnish NCPB with a Performance Bond of Kshs 200,000 (Kenya shillings two hundred thousand) valid for the entire contract duration (i.e. at least 12 months).

9.0.2 Such Performance Bond must be issued by or through a reputable commercial bank resident in Kenya.

9.0.3 The proceeds of the Performance Bond shall be payable to the Board as compensation for any loss resulting from Supplier's failure to discharge any of its obligations.

10.0 BOARD'S RIGHTS

10.0.1 The Board, reserves the right to accept or reject the lowest or any bid without having to assign reason for its actions or at its sole discretion annul the whole tender process and reject all the bids at any time prior to award without thereby incurring any liability to the concerned bidders or bearing any obligation to inform them of the grounds of NCPB's actions.

10.0.2 The Board reserves the right to decide on awards and can therefore award the tender to one or several tenderers or apportion the awards as it may deem fit.

11.0 PROHIBITIONS

Canvassing in any form is strictly prohibited and will lead to automatic disqualification.

Yours Faithfully

M. Letting
FOR. MANAGING DIRECTOR

Date_____

FORM T1 – DECLARATION FORM

Having studied the tender document for fuelling, service and repair services for NCPB vehicles for a period of 12 months, We/I hereby state.

- a) The information furnished in my/our application is accurate to the best of our knowledge.
- b) I/We shall not engage in corrupt practices with the Board/Members of Staff, in connection with the tender No. NCPB/PROV/PETM/05/2017-2018 for or in subsequent performance of the contract if I/We, am/are successful.
- c) I/We have not been debarred from participating in public tenders.
- d) When my/our legal, technical or financial conditions or the contractual capacity of the firm changes, I/We shall inform you of the status and acknowledge your right to review the award made.
- e) I/We are not insolvent, in receivership, bankrupt or in the process of being wound up and also not subject of any legal proceedings related to the foregoing.

Date

Tenderer's Name

Name of the Tenderer's Representative

Signature and Official Rubber Stamp

FORM T2 – POWER OF ATTORNEY

We,[Tenderer's Name] of Post Office Box Number In the Republic of Kenya do hereby appoint Mr/Ms/Mrs of Post Office Number aforesaid to be our true and lawful Attorney and representative in the tendering process for provision of electronic fuel card for use in fueling of NCPB's vehicles for a period of 12 months at various towns across the country of Post Office Box Number 30586 – 00100 Nairobi for us and in our name to do and execute the following acts and things that is to say:-

1. To quote and sign tender documents for fuelling, service and repair services to **National Cereals and Produce Board (NCPB)** vehicles at its various stations across the country as aforesaid.
2. Generally to sign and execute all acts, documents and writings which may be necessary or proper in or about the matters and things aforesaid or any of them for carrying out and perfecting the same as amply and effectually to all intents and purposes as we might or could do if personally present and confirm and agree to ratify and confirm whatsoever the said representative shall lawfully do or cause to be done by virtue of these presents.

IN WITNESS WHEREOFF the corporate Seal of [Tenderer's Name] has been hereunto affixed on this Power of Attorney and witnessed by the duly authorized Directors of the Company.

This Day of

ATTEST
(Corporate Seal)

TENDERER'S NAME

.....

.....

By..... [Name]
Director

By..... [Name]
Director

FORM T3: TENDER SECURING DECLARATION

This form is an integral part in evaluating the technical qualification of each tenderer and should be submitted as part of the technical proposal.

To: National Cereals and Produce Board,
Nyumba ya Nafaka, Industrial Area,
P.O Box 30586- 00100,
NAIROBI

Date:.....

Tender No: NCPB/PROV/PFTM/05/2017-2018

Tender Name: Supply and Delivery of Petroleum Products and Servicing of Motor Vehicles

Dear Sir/Madam,

We, the undersigned, declare that:

1. We understand that, according to your conditions, bids must be supported by a Bid-Securing Declaration
2. We accept that we will automatically be suspended from being eligible for bidding in any contract with the Purchaser for the period of one (1) year starting from time of default, if we are in breach of our obligation(s) under the bid conditions, because we:-
 - (a) have withdrawn our Bid during the period of bid validity specified by us in the Bidding Data Sheet; or
 - (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, and
 - (i) fail or refuse to execute the Contract, if required, or
 - (ii) fail or refuse to furnish the Performance Security, in accordance with **paragraph 9.0.**
3. We understand that this Bid Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of (i) our receipt of a copy of your notification of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of our Tender.
4. We understand that if we are a Joint Venture, the Bid Securing Declaration must be in the name of the Joint Venture that submits the bid, and the Joint Venture has not been legally constituted at the time of bidding, the Bid Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed:

[Insert signature of person whose name and capacity are shown in the capacity of [insert legal capacity of person signing the Bid Securing Declaration]

Name:

[Insert complete name of person duly authorized to sign the bid for and on behalf of the bidder]

Dated on day of,

PART III – SCOPE OF SERVICES

12.0 The services to be provided shall include:-

- i) Fuelling of NCPB's vehicles
- ii) Minor service and repairs including but not limited to:-
 - ❖ Lubricant top-up
 - ❖ Oil draining
 - ❖ Filter replacement
 - ❖ Tyre repairs and balancing
 - ❖ Minor adjustments e.t.c

12.0.1 The Board requires provision of these services in various stations/depots across the country as listed in the table below:-

HEAD OFFICE				
NO	REG.NO	MAKE/TYPE	FUEL TYPE	TANK CAPACITY
1	KAV 703E	MOTORBIKE	PETROL	10
2	KCD 317G	TOYOTA SALOON	PETROL	55
3	KBN 964E	TOYOTA PICKUP	DIESEL	80
4	KBG 185C	SUZUKI VITARA	PETROL	65
5	KBB 307S	TOYOTA SALOON	PETROL	55
6	KAV 564E	TOYOTA PRADO	DIESEL	180
7	KAT 436X	UD NISSAN LORRY	DIESEL	160
8	KAE 299F	PGT.504 PICK UP	PETROL	60
09	GENERATOR	CUMMINS	DIESEL	800
10	KCD 826G	CHEV.TRAILBLAZER	DIESEL	76
11	LAWNMOWER		PETROL	10
NAIROBI/EASTERN				
NO	REG.NO	MAKE/TYPE	FUEL TYPE	TANK CAPACITY
12	KAT 313X	TOYOTA PICKUP	DIESEL	70
13	KAA 948P	TRUCTOR	DIESEL	80
14	KCE 912D	ISUZU FSR	DIESEL	200
15	KCH 586Q	ISUZU D/CABLE	DIESEL	80
NORTHERN				
NO	REG.NO	MAKE/TYPE	FUEL TYPE	TANK CAPACITY
16	KAW 920Z	NISSAN PICKUP	PETROL	45
17	KAV 403E	ISUZU LORRY	DIESEL	100
18	KCH 585Q	ISUZU D/CABLE	DIESEL	80
COAST				
NO	REG.NO	MAKE/TYPE	FUEL TYPE	TANK CAPACITY
19	KAW 933Z	NISSAN PICKUP	PETROL	45
20	KAV 199E	MOTORBIKE	PETROL	10
21	KAL 304U	PGT.504U SALOON	PETROL	60
22	KAL 757U	PGT.504U SALOON	PETROL	60
23	KAN 590U	LORRY ISUZU	DIESEL	100
24	KBB 195S	TOYOTA SALOON	PETROL	55

SOUTH RIFT				
NO	REG.NO	MAKE/TYPE	FUEL TYPE	TANK CAPACITY
25	KCD 488G	TOYOTA D/CABIN	DIESEL	80
26	KAW 085Z	NISSAN PICKUP	PETROL	45
27	KBB 893S	ISUZU LORRY	DIESEL	80
28	KZG 497	FORD TRACTOR	DIESEL	80
29	KLK 823	FORD TRACTOR	DIESEL	80
30	KAV 200E	MOTORBIKE	PETROL	10
31	KAV 701E	MOTORBIKE	PETROL	10

NORTH RIFT				
NO	REG.NO	MAKE/TYPE	FUEL TYPE	TANK CAPACITY
32	KBB 196S	TOYOTA D/CABIN	DIESEL	80
33	KAW 086Z	NISSAN PICKUP	PETROL	45
34	KBN 887E	ISUZU LORRY	DIESEL	80
35	KWR 493	FORD TRACTOR	DIESEL	80
36	KAC 844G	M.F TRACTOR	DIESEL	80
37	G618	JOHN DEER TRACTOR	DIESEL	80

LAKE/WESTERN REGION				
NO	REG.NO	MAKE/TYPE	FUEL TYPE	TANK CAPACITY
38	KAV 527E	TOYOTA D/CABIN	DIESEL	80
39	KAW 926Z	NISSAN PICKUP	PETROL	45
40	KBR 618U	ISUZU LORRY	DIESEL	200
41	KAB 170B	M.F TRACTOR	DIESEL	80

12.0.2 Approximated Quantities of Fuel consumed by Board's vehicles for a Period of one year

(a) The projected annual requirement for each region is as detailed hereunder:-

NO.	REGION/STATION	APPROXIMATE PETROL REQUIREMENT FOR 12 MONTHS (LITRES)	APPROXIMATE DIESEL REQUIREMENT FOR 12 MONTHS (LITRES)
01.	Head office - Nairobi	15000	15000
02.	Nairobi/Eastern region	3,000	15000
03.	South rift region	5000	12000
04.	North rift region	3000	15000
05.	Lake/ western region	3000	15000
06.	Northern region	3000	10000
07.	Coast region	10000	10000
TOTAL		39000	92000

(b) These are not firm quantities, and may vary depending on the demand of fuel and nature of engagements in various stations.

(c) The fuel will be supplied "as and when required" for a period of 12 months.

12.1 Methods of Engagement/Transacting

12.1.2 The Board shall inform the contracted supplier of any requirement under the framework contract through the use of Fuel Card or a Local Purchase Order (LPO) for the filling stations that are not equipped with the fuel card facility.

12.1.3 The contracted supplier shall offer to NCPB a fuel card which is safe and simple to use with a unique pin code for security reasons.

12.1.4 Use of Local Purchase Order:-

- Prior to issuance of fuel, the Board shall provide a duly authorized purchase order. Specimen of authorized signatures shall be availed to the contracted supplier for verification of purchase orders
- Upon verification of the order, the contracted supplier shall endorse the LPO and issue an invoice which shall be signed by the driver and forwarded to the transport officer or authorized officer.
- The contracted supplier shall at the end of the month issue a comprehensive statement for each station/ region summarizing the fuel consumption, lubricants and other services rendered during the period.

FORM F 1 – FINANCIAL BID FORM

Column 1	Column 2	Column 3		Column 4	
No	Region/station	DISCOUNT IN KSHS ON ERC PUBLISHED PUMP PRICE PER LITRE FOR:		FLAT DISCOUNT IN KSHS PER LITRE REGARDLESS OF QUANTITY REQUESTED	
		PETROL (KSHS)	DIESEL (KSHS)	PETROL (KSHS)	DIESEL (KSHS)
01.	Head Office - Nairobi				
02.	Nairobi/Eastern Region				
03.	South Rift Region				
04.	North Rift Region				
05.	Lake/ Western Region				
06.	Northern Region				
07.	Coast Region				

N/B: The Board, reserves the right to utilize the discounts offered under **Column 3** or stick to the flat discount stated under **Column 4** above.

Dated this _____ day of _____ 20 _____

[Signature]

[In the capacity of]

OFFICIAL STAMP

ANNEX 1: SAMPLE CONTRACT

THIS AGREEMENT made the _____ day of _____ 2016 between **NATIONAL CEREALS AND PRODUCE BOARD** of Post Office number 30586, NAIROBI (hereinafter called "Board") of the one part and of P.O Box (Hereinafter called the "Supplier") of the other part;

WHEREAS the Board invited bids for provision of electronic fuel card for fueling its vehicles in various towns across the country and has accepted a bid by the supplier for a consideration of Kshs. Petrol and Kshs..... Diesel Per Litre based on prevailing pump price (in Kenya Shillings) published by the Energy Regulatory Commission (ERC) for a specific region inclusive of all statutory taxes, duties and levies, (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 terms and conditions of the tender;
 - (b) The General Conditions of Contract;
 - (c) The Special Conditions of Contract;
 - (d) The Suppliers bid;
 - (e) The Schedule of Requirements; and
 - (f) The Board's Notification of Award.
3. In consideration of the payments to be made by the Board to the Supplier as hereinafter mentioned, the supplier hereby covenants with the Board to provide the goods and to remedy defects therein in conformity in all respects with the provisions of the Contract
4. The Board hereby covenants to pay the supplier in consideration of the provisions 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 for the Board by:

BOARD'S MANAGING DIRECTOR

In the presence of:

BOARD'S BOARD SECRETARY

Signed for the supplier by:

DIRECTOR

In the presence of:

WITNESS

Section 1: - GENERAL CONDITIONS OF CONTRACT

1. Definitions

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

- (a) "The Contract" means the agreement entered into between the Board and the supplier, 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 supplier under the Contract for the full and proper performance of its contractual obligations
- (c) "Goods" means fuel and lubricants which the supplier is required to supply to the Board under the Contract.
- (d) "The Board" means the National Cereals and Produce Board the organization purchasing the Goods under this Contract.
- (e) "The Supplier" means the firm supplying the Goods under this Contract.
- (f) "Day" means calendar day
- (g) "Duration of the Contract" means the period named in the Special Conditions of Contract and calculated from start due date.
- (h) "Commencement Date" is given in the Special Conditions of Contract. It is the latest date when the service provider shall commence its services under the Contract.
- (i) "Party" means the Board or the Supplier and "Parties" refers to both.

2. Application

These General Conditions shall apply in all Contracts made by the Board for the procurement of goods.

3. Standards

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

4. Use of Contract Documents and Information

The supplier shall not, without the Board'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 Board in connection therewith, to any person other than a person employed by the supplier in the performance of the Contract.

5. Prices

5.1 Prices charged by the Supplier for Goods delivered and Services performed under the Contract shall not, with the exception of any price adjustment authorized in Special Conditions of Contract, vary from the prices by the Supplier in its bid.

5.2 The Contract price shall be inclusive of all applicable taxes.

6. Performance bond

- 6.1 Within fourteen (14) days of receipt of the notification of Contract award, the successful Supplier shall furnish to the Board the performance security in the amount specified in the Special Conditions of Contract.
- 6.2 The proceeds of the performance security shall be payable to the Board as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.
- 6.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Board and shall be in the form of a bank guarantee by a reputable bank located in Kenya, acceptable to the Board, in the form provided in the tender documents.
- 6.4 The performance security will be discharged by the Board and returned to the Supplier not later than thirty (30) days following the date of completion of the Supplier's obligations under the contract, including any warranty obligations, under the contract.

7. Patent Rights

The supplier shall indemnify the Board 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

8. Inspection and Tests

- 8.1 The Board's or its representative(s) shall have the right to inspect and/or test the goods to confirm their conformity to the Contract specifications. The Board shall notify the Supplier in writing, in a timely manner, of the Identity of any representatives retained for these purposes.
- 8.2 Should any inspected or tested goods fail to conform to the Specifications, the Board shall reject the goods, and the supplier shall either replace the rejected goods or make alterations necessary to meet specification requirements free of costs to the Board.
- 8.3 The Board'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 goods having previously been inspected, tested and passed by the Board or its representative prior to the goods delivery.
- 8.5 Nothing in this paragraph shall in any way release the supplier from any warranty or other obligations under this Contract.

9. Payment

- 9.1 The method and terms of payment to the Supplier under this contract shall be as specified in the Special Conditions of Contract.
- 9.2 Payment shall be made promptly by the Board as specified in the contract.

10. Assignment

The supplier shall not assign, in whole or in part, its obligations to perform under this Contract, except with the Procuring entity's prior written consent

11. Termination

11.1 Termination for Default

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

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

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

11.2 Termination for insolvency

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

11.3 Termination for Convenience

The Board may by written notice sent to the Supplier terminate the contract in whole or in part, at any time of convenience. The notice of termination shall specify that the termination is for Board's convenience, the extent to which performance of the Supplier of the contract is terminated and the date on which such termination becomes effective.

For the remaining part of the contract after termination the Board may elect to cancel the services and pay to the Supplier an agreed amount for partially completed services.

12. Liquidated Damages

If the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, the procuring entity 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 per day up to a maximum deduction of 10% of the delayed goods. After this the supplier may consider termination of the contract.

13. Resolution of Disputes

- 13.1 The Board and the supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the contract
- 13.2 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 shall refer the dispute to a single arbitrator to be chosen by the parties hereto, **AND** in the event of the parties hereto, being unable to agree to an Arbitrator, the Arbitrator shall be nominated by the Chairman for the time being of the Kenya Chapter of the Chartered Institute of Arbitrators on request of the applying party.

14. Language and Law

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

15. Force Majeure

15.1 Neither party shall be liable for any loss damage or delay caused by war, riots, civil commotion, strikes, lockouts, labour troubles, change in law or any other cause or contingencies beyond its reasonable control which prevent or delay it in performing obligations incurred under or arising out of this Contract.

15.2 Force Majeure shall not include any event, which is caused by the negligence or intentional action of a party or such party's sub-contractor or agents or employees or in any event which diligence could reasonably have been expected to avoid or overcome in the carrying out of their obligations hereunder.

16. Notices

16.1 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 E-mail and confirmed in writing to the other party's address specified in the SCC.

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

SECTION II - SPECIAL CONDITIONS OF CONTRACT

Special Conditions of Contract (herein referred to as SCC) shall supplement the General Conditions of Contract (herein referred to as GCC). Whenever there is a conflict, between the GCC and the SCC, the provisions of the SCC herein shall prevail over these in the GCC.

1. Type of Sale

The Supplier shall provide electronic fuel cards to be used infuelling Board's vehicles in various towns across the country. The Cost should be inclusive of all applicable taxes.

2. Type of Product and Quality

The Supplier shall sufficiently fuel Board's vehicle with either Diesel or Petrol depending on type of fuel consumed by each vehicle.

3. Period and Quantity of Supply

3.1 The quantity of fuel covered under this Contract is approximately 50,000Litres of Petrol and 80,000 litres of Diesel for various Boards'vehicle stationed in various depots across the country.

These are not firm quantities, and will vary from month to month depending on demand of fuel and nature of engagements

3.2 The period of supply under this contract shall be twelve (12) months.

3.3 The contract shall be signed by and commence on

3.4 Fuel Consumption

(a) The Board shall engage the contracted supplier through the use of Electronic Fuel Card at the contracted supplier's filling station as and when the need arises.

(b) The Board shall issue the cards to authorized officers who will have the full authority and access to the cards.

4. Indemnification

4.1 Indemnification by Parties

a) The Supplier shall indemnify the Board against, and hold the Board and or its contractors free and harmless from, at all times after the date hereof, any and all loss, damage, liability, payment and obligation (excluding any indirect or consequential loss, damage, liability, payment or obligation), and all expenses (including without limitation reasonable legal fees) (collectively, "Loss"), incurred, suffered, sustained or required to be paid, directly by, or sought to be imposed upon, the Board and/or its contractors for personal injury or death to persons or damage to property arising out of the Supplier's and/or its contractors intentional or reckless acts or omissions or its gross negligence on Fuel .

b) The Board shall indemnify the Supplier against, and hold the Supplier and/or its contractors harmless from, at all times after the date hereof, any and consequential loss, damage, liability, payment and obligation (excluding any indirect or consequential loss, damage, liability, payment or obligation), and all expenses (including without limitation reasonable legal fees) (collectively, "Loss"), incurred, suffered, sustained or required to be paid, directly by, or sought to be imposed upon, the Supplier and/or its contractors for personal injury or death to persons or damage to property arising out of the Board's and/or its contractors intentional or reckless acts or omissions or its gross negligence.

c) Notwithstanding anything to the contrary contained in the preceding paragraphs (a) and (b), nothing in this clause shall apply to any loss in respect of which the Supplier or the Board, as the case may be, is fully indemnified pursuant to the terms of any policy of insurance.

- d) The indemnified party shall notify the indemnifying party of any assessment or claim against the indemnified Party and shall notify the indemnifying Party of any claim, action, suit or proceedings in respect of which, if valid a claim would lie against the indemnified Party under any of the indemnities forthwith upon the indemnified Party becoming aware thereof.

4.2 Liabilities

Except as provided in this Contract, the Board and the Supplier shall not be liable, whether in contract, in tort, or otherwise, for consequential, indirect or special losses or special damages of any kind arising out of, or in any way connected with, the fulfillment or failure to fulfill this agreement.

5. Payment – GCC Clause 9

- 5.1 The contracted supplier shall offer a Post Paid Fuel Card to NCPB.
- 5.2 Payment shall be made in Kenya Shillings, 30 calendar days from the date of invoice submission by the Supplier to the Board.

6. Resolution of Disputes - GCC Clause 13

The existence of any Dispute shall not excuse either Party from performing or continuing to perform its obligations under this Contract except to the extent such performance is expressly excused hereunder.

7. Performance Security – GCC 6

The performance security shall be for Kshs. 200,000 and shall be in the form of a bank guarantee as outlined in Part 1 of the tender document. The Supplier shall remit the performance security to the Board 14 days after receipt of the Notification of award, prior to signing of Contract.

The performance security shall be for the period of the term of the Contract plus two (2) months.

The Supplier shall be requested to extend the Performance Security if the contract is extended.

8. Notices – GCC Clause 16

For **Notices** the Board's address shall be;

Attention: **Managing Director
National Cereals and Produce Board
Nyumba ya Nafaka,
Enterprise/Machakos Road, Industrial Area
P.O. Box 30586 - 00100
NAIROBI.
Telephone No: 536028
Fax No: 557622**

For Supplier's address shall be:

.....

ANNEX 2: FORMAT FOR SUBMITTING TENDER SECURITY (BID BOND)

(To be on the letterhead of the Bank)

WHEREAS (Hereinafter called "the Tenderer") has submitted his tender dated to provide (Name of Contract)

KNOW ALL PEOPLE by these presents that WE having our registered office at(hereinafter called "the Bank"), are bound unto(hereinafter called "the Employer") in the sum of Kshs..... for which payment well and truly to be made to the said Employer, 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 after tender opening the tenderer withdraws his tender during the period of tender validity specified in the instructions to tenderers
Or
2. If the tenderer, having been notified of the acceptance of his tender by the Employer during the period of tender validity:
 - (a) fails or refuses to execute the form of Agreement in accordance with the Instructions to Tenderers, 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 Employer up to the above amount upon receipt of his first written demand, without the Employer having to substantiate his demand, provided that in his demand the Employer will note that the amount claimed by him is due to him, 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 said date.

[Date]

[Witness]

[Signature of the Bank]

[Seal]

ANNEX 3: FORMAT FOR SUBMITTING THE PERFORMANCE BOND BY SUCCESSFUL BIDDER

To: National Cereals and Produce Board
P. O. Box 30586 – 00100 GPO
NAIROBI

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 figure] 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 you needing to prove or to show grounds or reasons for your demand or the sum specified therein.

We accept notably that no amendment to the terms of the Contract can release us from our obligation under this guarantee. We waive the right to be informed of any change, addition or amendment of the Contract.

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

Signed and seal of the Guarantors

[Name of Bank or Financial Institution]

[address]

[date]