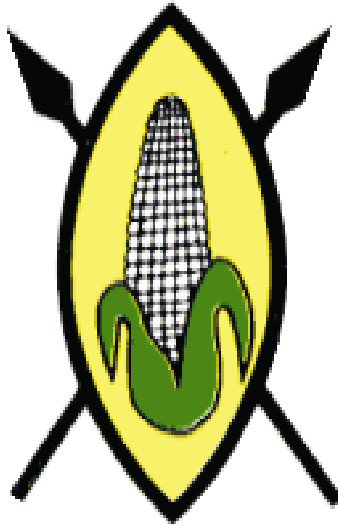


NATIONAL CEREALS AND PRODUCE BOARD



TENDER DOCUMENT FOR

FRAMEWORK AGREEMENT FOR SUPPLY AND DELIVERY OF AUTOMOTIVE DIESEL OIL (ADO)

TENDER NO. NCPB/ADO/03/2017-2018

**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
SUPPLY AND DELIVERY OF AUTOMOTIVE DIESEL OIL (ADO)
TENDER NO. NCPB/ADO/03/ 2017-2018

PART 1: INVITATION TO TENDER

The National Cereals & Produce Board (hereinafter referred to as NCPB) invites sealed bids from eligible candidates for the supply & delivery of Automotive Diesel Oil (ADO) to various depots/stations across the country under a framework contract for a period of twelve (12) months, with an option of renewal for a further twelve (12) months.

The tender document with further detailed information may be obtained from **the office of the Procurement Manager** during normal working hours **upon payment of non-refundable fees of Kshs. 1,000.00 (Kshs. One thousand)** 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.

Bidders may also download details of the tender document from the IFMIS supplier portal: supplier.treasusry.go.ke or/and NCPB's website: www.ncpb.co.ke free of charge. Bidders who opt to download the tender documents shall be required to send/e-mail their company names and contact details to the addresses provided in the tender document for purposes of recording in the tender register.

Interested eligible bidders may peruse the tender documents free of charge at the Procurement Manager's office during normal office hours before purchasing their own set.

The tenderer shall submit his/her bid as a single bound document **inserted in** a plain envelope boldly and clearly marked: **TENDER NO. NCPB/ADO/03/2017-2018**, addressed to:

The Managing Director,
National Cereals & Produce Board,
Machakos/Enterprise Rd,
Industrial Area,
P.O. Box 30586
NAIROBI.

and physically deposited in the tender box provided at the reception area of NCPB's Head Quarters, Nyumba ya Nafaka, situated along Machakos Road, Industrial Area - Nairobi so as to be received on or before **10th October, 2017 at 12.00 noon.**

Tenders shall be opened soon thereafter at the Boardroom, Room 104, in the presence of bidders or their representatives who wish to attend.

Late tenders shall be rejected and returned un-opened.

Canvassing will lead to automatic disqualification

PART I - INSTRUCTIONS TO TENDERERS

1.0 INTRODUCTION

- (a) The National Cereals & Produce Board (hereinafter referred to as "NCPB") invites sealed bids from eligible candidates for the supply & delivery of Automotive Diesel Oil (ADO) to various depots/stations across the country under a framework contract for a period of twelve (12) months, with an option of renewal for a further twelve (12) months.
- (b) Once the framework contract is in place the Board will be placing orders through issuance of Local Purchase Order (LPO) "as and when" the fuel is required.
- (c) Tenderers may apply for one or more lot(s) and are required to indicate for which lot(s) they are applying. Tenderers are requested to provide a comprehensive response for each of the lot(s) they are applying as each lot will be evaluated separately and will establish its own framework.
- (d) The prices quoted should be net inclusive of all taxes and delivery cost 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 the silo plant is situated.
- (e) The discount shall remain fixed for the entire duration of the framework contract.

2.0 QUANTITY AND PERIOD FOR SUPPLY

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

NO.	STATION	APPROXIMATE ADO REQUIREMENT FOR 12 MONTHS (LITRES)	PEAK SEASON (WHEN FUEL CONSUMPTION IS HIGH)
01.	Nairobi Silos - Donholm	40,000	March - Dec
02.	Kitale depot	15,000	Oct - April
03.	Eldoret Silos	100,000	Nov - March
04.	Moi's Bridge Silos (<i>close proximity to Eldoret</i>)	190,000	Oct - April
05.	Kisumu silos	8,000	Oct - Jan
06.	Nakuru Silo	20,000	Oct - Jan
07.	Narok Silo	30,000	July - Oct & Dec - Feb
08.	Bungoma silos	5,000	Nov - March
09.	Webuye Depot	5,000	Nov - March
TOTAL		413,000	

The supply shall be as per KEBS standards.

- (b) The minimum order quantity per order placed under the framework agreement shall be 5,000 litres.
- (c) These are not firm quantities, and may vary depending on grain drying activities at the plants.
- (d) The stations above may be further categorized per region e.g. Nairobi/Eastern, North Rift, South Rift, Lake Western region.

3.0 ORDERS FOR DELIVERY

- (a) The Board shall inform the contracted supplier of any requirement under the framework contract through a Local Purchase Order (LPO).
- (b) The contracted supplier shall deliver the quantity indicated on the LPO within a maximum of 48 hours from the date of receipt of the order.
- (c) The contracted supplier shall bill the Board for the quantity delivered following the issuance of an LPO and the Board shall make payment within 30 days from the date of receipt of invoice after delivery.

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 II of this tender document:
 - i) Form T1 - Declaration Form
 - ii) Form T2 - Power of Attorney
 - iii) Form T3 - Tender Securing Declaration
 - iv) Form F1 - Financial Bid Form

N.B. Failure to adequately complete or provide the information requested in each of the above forms shall lead to the rejection of the tender.

- (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.

5.0 BID BOND

- 5.0.1 All tenders must be accompanied by an **original Bid Bond of Kshs. 200,000 (two hundred thousand)** and valid for not less than ninety (90) calendar days from the date of 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

5.0.2 Any offer not accompanied by a Bid Bond shall be deemed to be non-responsive and shall be disqualified.

5.0.3 The tender security is required to protect the Board against the risk of tenderer's conduct which would warrant the security's forfeiture in the following circumstances: -

- (i) If a tenderer withdraws its tender during the period of tender validity specified in paragraph 7.0 or
- (ii) In the case of a successful tenderer, if the tenderer fails:
 - a) to sign the contract in accordance with Clause 7.0 or
 - b) to furnish performance security in accordance with Clause 6.0
 - c) If the tenderer rejects, correction of an error in the tender.

5.0.4 Unsuccessful bidders may have their Bid Bonds surrendered to them on expiry of sixty (60) calendar 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 rising of the requisite Performance Bond and signing of the contract.

5.0.5 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.

5.0.6 The Tender securing declaration is required to protect NCPB against any of the risks which would warrant the security's forfeiture.

5.0.7 Any Tender not accompanied by a duly filled and signed Declaration shall be rejected by NCPB as non-responsive.

6.0 PERFORMANCE BOND

- (a) 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 equivalent to **Kshs. 500,000.00 (five hundred thousand)** valid for the entire contract duration (i.e. at least 12 months).
- (b) Such Performance Bond must be issued by or through a reputable commercial bank resident in Kenya.
- (c) 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.

7.0 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.

8.0 CONTRACT

8.0.1 Successful bidder(s) shall be required to enter into a formal contract with NCPB whose contents shall be derived mainly from this tender document and the Bid document submitted.

8.0.2 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 COST OF TENDER DOCUMENTS

9.0.1 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.

9.0.2 A set of the tender documents will be issued to prequalified service providers free of charge.

10.0 AMENDMENTS

10.0.1 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.

10.0.2 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.

10.0.3 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.

11.0 GUIDES TO EVALUATION CRITERIA.

The tender shall be evaluated in three stages: -

11.0.1 Compliance with mandatory requirements.

11.0.2 Technical evaluation

11.0.3 Comparison of price offers

11.0.1 Compliance with Mandatory Requirements

Bidders must ensure that the documents listed hereunder are attached to their submitted bid. Failure to meet any one the mandatory requirements (a - f) shall lead to the automatic disqualification of a tenderer's bid: -

a) Copy of the firm's Certificate of Registration/Incorporation

b) Valid Tax Compliance Certificate issued by Kenya Revenue Authority and valid for at least up to the tender closing date.

- c) Original Bid Bond equivalent to **Kshs. 200,000**. The tenderer registered under YWPD shall fill and submit the Tender Securing Declaration Form in the format provided herein.
- d) 2 years Audited accounts of financial year 2015 and 2016
- e) Valid local authority/ trading licence
- f) Duly filled and signed Power of Attorney
- g) A copy of valid Petroleum Business licence issued by Energy Regulatory Commission (ERC)

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

11.0.2 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 four (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
3.	Average volume of business handled in year 2015 and 2016 <ul style="list-style-type: none"> i. Over Kshs. 50 million (30 marks) ii. Over Kshs. 30 million and below 50 million (20 marks) iii. Over 15 million and Below 30 million (15 marks) iv. Over 10 million and Below 15 million (10 marks) v. Below 10 million (5marks) 	30
4.	Financial Health <i>(to be calculated from the submitted audited accounts)</i> Liquidity Ratio (15 mks) <ul style="list-style-type: none"> i) 1: 2 & above = 15 marks ii) 1 :1.99 =10 marks iii) 1: 0.5 – 0.99 = 5 marks iv) 1:>0< 0.5 =3 marks Profitability ratio (15 mks) <ul style="list-style-type: none"> i) 20% and above = 15 marks ii) 15% - 19% = 10 marks iii) 10% - 14% = 5 marks i) 1% -9% = 3 marks ii) < 0.9 =0 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 the evaluation which is comparison of price offers.

11.0.4 Comparison of Price Offers

The tender shall be awarded to the firm offering the highest price discount on the prevailing ERC's retail pump price per litre for a specific town.

12.0 BOARD'S RIGHTS

- (a) 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.
- (b) 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.

13.0 ENQUIRIES/CLARIFICATIONS

- (a) 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- 6536028/6555288**
 - ii) Fax No. +254-020- 6557622/6650710**
 - iii) Email address: supplies@ncpb.co.ke ; ncpbsupplies@gmail.com**
 - iv) Letter delivered by hand/post**

14.0 PROHIBITIONS

- (a) Canvassing in any form is strictly prohibited and will lead to automatic disqualification.

**M.LETTING
FOR. MANAGING DIRECTOR**

Date_____

FORM T1 – DECLARATION FORM

Having studied the tender document for supply and delivery of ADO 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/ADO/03/2017-2018 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 Supply and Delivery of Automotive Diesel Oil to **National Cereals and Produce Board (NCPB)** at its various stations 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 supply and delivery of Automotive Diesel Oil to **National Cereals and Produce Board (NCPB)** 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]

By..... [Name]

Director

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/ADO/03/2017-2018

Tender Name: supply & delivery of Automotive Diesel Oil (ADO).

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 6.0.**
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,

FORM F 1 – FINANCIAL BID FORM

Column 1	Column 2	Column 3			Column 4
Lot	Delivery Point	Discount in Kshs on ERC's Published Pump Prices Per Litre of Diesel			Flat Discount in Kshs Per Litre regardless of quantity requested
		5,000 – 10,000 Litres order	10,001 – 20,000 Litres order	20,001 – 30,000 Litres order	5,000 – 30,000 Litres order
01.	Nairobi Silos - Donholm				
02.	Kitale Depot				
03.	Eldoret Silos				
04.	Moi's Bridge Silos (close proximity to Eldoret)				
05.	Kisumu Silos				
06.	Nakuru Silos				
07.	Narok Silos				
08.	Bungoma				
09.	Webuye Depot				

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 _____ 2017 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 supply of Automotive Diesel Oil (ADO) for its various depots across the country and has accepted a bid by the supplier for a consideration of Kshs. discount of the 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 I - 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 Automotive Diesel Oil (ADO), 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 The inspections and tests may be conducted on the premises of the Supplier, at point of delivery, and/or at the good's final destination. If conducted on the premises of the Supplier, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Board.
- 8.3 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.
- 8.4 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.
- 9.1 Payment shall be made promptly by the Board as specified in the contract.

10. Packing

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

11. Delivery and Documents

Delivery of the Goods shall be made by the supplier in accordance with the terms specified by Board in its Schedule of Requirements and the Special Conditions of Contract.

12. 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

13. Termination

13.1 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.

13.2 Termination for Default

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.

13.3 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.

14. 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.

15. Resolution of Disputes

15.1 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

15.2 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.

16. 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.

17. Force Majeure

17.1 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.

17.2 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.

18. Notices

18.2 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.

18.2 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 deliver the Automotive Diesel Oil (ADO) to designated Board's depots/stations across the country. The Cost should be inclusive of all applicable taxes.

2. Type of Product and Quality

The Supplier shall meet the Automotive Diesel Oil (ADO) needs of the Board as indicated hereafter, meeting the specifications at Delivery Point, as indicated in Section III.

3. Period and Quantity of Supply

3.1 The quantity of ADO covered under this Contract is approximately 413,000 Litres for various Board's depots/silos across the country.

These are not firm quantities, and will vary from month to month depending on demand for grain drying services.

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

3.3 The contract for supply of the ADO shall be signed by and commence on 1st November 2017

3.4 Orders for Delivery

- (d) The orders for delivery shall be communicated to the Supplier through the Board's Local Purchase Order (LPO).
- (e) The Supplier shall deliver the quantity indicated on the Local Purchase Order (LPO) within a maximum of 48 hours after receipt of the order. Delivery shall be made to the Board's depot indicated on the LPO.
- (f) The Board shall avail storage facilities for delivered IDO and the Supplier shall invoice the Board the amount determined and verified by the Board's Authorized representatives.

4. Verification and Measurement

4.1 Quality of ADO

The Supplier shall guarantee fuel quality delivered to designated depot/silo as specified in Table of Technical Specifications of this Contract and shall provide quality test certificate of the fuel in advance of offloading for acceptance by the Board. Quality testing shall be conducted by an independent laboratory certified by a recognized standards body and acceptable to the Board.

4.2 Quantity Verification

Quantity of fuel, supplied to the receiving storage tank(s) at the designated Board's depot/silo, shall be measured by means of dipping, jointly carried out by the Supplier and the Board using calibrated steel tape /measuring dip stick. e provided by the Board. Quantity verification shall include weightment over the Board's truck/lorry weighbridges.

4.3 Rejection of off specification ADO

If the Board rejects any fuel found to be off specification the Supplier shall promptly make immediate arrangement for ADO which meets quality specifications, to ensure minimum disruption of grain drying operations. Failure to dry grains as a result of non-availability of specification fuel will attract liquidated damages as specified in Clause 14 of GCC.

5. Delivery Time and Risk of Loss

The Supplier warrants and represents to the Board that the Supplier shall, at any time of delivery to the Purchaser that the Delivery Tanks, have good and marketable title to the Fuel sold to the Board and that Fuel, when delivered to the receiving tank(s) shall be free and clear of liens and adverse claims of any kind. The Supplier shall indemnify the Board against any and all such adverse claims and liens.

6. Indemnification

6.1 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 on the delivery point.
- 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.

6.2 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.

7. Payment – GCC Clause 9

- 7.1 Invoices shall be submitted after delivery and acceptance of the delivered Fuel.
- 7.2 Payment shall be made in Kenya Shillings, 30 calendar days from the date of invoice submission by the Supplier to the Board.
- 7.3. Any delays in provision of credit noted where required shall result in a similar delay in payment.

8. Price – GCC Clause 5

The price payable per litre by the Board in Kenya Shillings at the time of placing an order shall be calculated as follows:-

$$P = A - B$$

Where

A = Energy Regulatory Commission (ERC's) published pump price per litre prevailing at the time of placing an order.

B = Applicable Price discount (quoted by the Supplier) on ERC's prevailing pump price per litre (at the time of placing an order)

P = Price payable.

The rates of factor B shall remain fixed for the duration of the contract.
In case of extension, the above pricing structure will continue to apply.

9. Resolution of Disputes - GCC Clause 15

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.

10. Performance Security – GCC 6

The performance security shall be for Kshs. 500,000 (five hundred thousand only) 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.

11. Supplier's Default – GCC Clause 13.1

11.1 Failure of Supplier to Deliver Contracted Fuel at Site

- a) Should there be delays on placed orders, to the extent the supplier fails to deliver Fuel which it was required to deliver in response to a Notice properly given by the Board for the delivery of Fuel and consequent to that delay, the Board cannot dry wet grains for its clients, the Supplier shall pay to the Board an amount equal to lost revenue.
- b) If the delay of delivery of fuel continues beyond seventy two (72) hours, the Board shall be entitled to procure fuel from an alternate supplier other than the Supplier.
- c) In such event, the Supplier shall pay to the Board the difference of the cost incurred by the Board in procuring the fuel from an alternative supplier and the cost the Board would have paid the Supplier for the same quantity of fuel.

11.2 Claims for Compensation

- a) The Board shall be entitled to submit a claim for payment under Clause SCC 10.1 as soon as the circumstances giving rise to its rights for indemnification occurs.
- b) Any amounts to be paid by the Supplier to the Board in accordance with Clause 10.1 above, may be deducted by the Board from any payment then due by it to the Supplier or if there are no payments due, such amounts shall be made by the Supplier to the Board on a weekly basis, in the case of liquidated damages. The Board shall be entitled, in case of non-payment by the Supplier, to encash the Supplier's Performance bond in the relevant amount.
- c) Notwithstanding the provision of SCC 4.3, claims arising from use of off specification IDO in grain drying plants will be met by the Supplier, provided that such off specifications IDO is ascertained by an Expert appointed by all parties. Defaulting party will meet the cost of the Expert.

12. Environmental Impact and Mitigation

In case of spillage caused by the Supplier, the Supplier shall clean up the site and restore it to its original condition.

The Supplier shall at all times comply with local environmental, health and safety practices (as provided by the National Environmental Management Coordination Act 1999, its regulations and the Occupational Health and Safety regulations by the department by Occupational Health and Safety Office and any other national regulations deemed relevant.

13. Notices – GCC Clause 18

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: 6536028
 Fax No: 6557622

For Supplier's address shall be:

.....

ANNEX2: SAMPLE WORDING FOR TENDER SECURITY (BID BOND)

(To be on the letterhead of the Bank)

WHEREAS (Hereinafter called "the Tenderer") has submitted his tender dated for One-year framework contract for supply and delivery of ADO

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]

[Signature of the Bank]

[Witness]

[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]