



REPUBLIC  
OF  
KENYA



*Poverty Reduction Through Sustainable NRM*



**MINISTRY OF WATER AND IRRIGATION**  
**STATE DEPARTMENT OF WATER**  
**UPPER TANA NATURAL RESOURCES MANAGEMENT PROJECT**  
**(UTaNRMP)**

Financed by;

Government of Kenya;

International Fund for Agricultural Development Loan No I-867-KE and Spanish Trust

Fund Loan No I-E-8-KE

And Beneficiaries

Lead agency;

Ministry of Water and Irrigation

**TENDER FOR SUPPLY AND DELIVERY OF 33 No. MOTOR CYCLES TRAIL 170-200cc**

**TENDER NO: - EBU/CC/039/2016-017**

**CLOSING DATE AND TIME:**

**21<sup>st</sup> OCTOBER 2016 AT 10.00 AM**

Compiled by;  
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**TABLE OF CONTENTS:**

<b>Section A. Invitation to tender.....</b>	<b>3</b>
<b>Section B. Instructions to tenderers .....</b>	<b>5</b>
<b>Section C:-General Conditions of Contract.....</b>	<b>20</b>
<b>Section D. Special Conditions of Contract .....</b>	<b>25</b>
<b>Section E. SCHEDULE OF REQUIREMENTS .....</b>	<b>27</b>
<b>Section F:TECHNICAL SPECIFICATIONS.....</b>	<b>27</b>
<b>Section G. Standard Tender Forms .....</b>	<b>32</b>
<b>Section H: Goods Supply Contract .....</b>	<b>49</b>

**Section A. Invitation to tender**



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Poverty Reduction Through Sustainable NRM



**MINISTRY OF WATER AND IRRIGATION**

**STATE DEPARTMENT OF WATER**

**UPPER TANA NATURAL RESOURCES MANAGEMENT PROJECT (UTaNRMP)**

**NATIONAL COMPETITIVE TENDER**

**TENDER NO: EBU/CC/039/2016-017- FOR: SUPPLY AND DELIVERY OF 33 No. MOTOR CYCLES**

1. The Government of Kenya has received financial assistance from the International Fund for Agricultural Development (IFAD) and the Spanish Trust Fund towards financing an eight year (2012-2020) Upper Tana Natural Resources Management Project (UTaNRMP). The goal of the project is to contribute to rural poverty reduction in the Upper Tana River catchment through increased sustainable food production, income and sustainable management of natural resources for provision of environmental services. The project Lead Agency is the Ministry of Water and Irrigation.
2. The project intends to apply part of the proceeds to procure 33 no. Motor Cycle, Trail, 170- 200 cc
3. The Upper Tana Natural Resources Management Project (UTaNRMP) now invites sealed tenders from eligible bidders for the **supply and delivery** of 33NO. Motor Cycle, Trail, 170- 200 cc.
4. A complete set of tender documents may be downloaded **free of charge** from UTaNRMP website [www.utanrmp.or.ke/downloads](http://www.utanrmp.or.ke/downloads) and IFIMIS Kenya Suppliers Portal: [supplier.treasury.go.ke](http://supplier.treasury.go.ke) and register at [utanrmp@gmail.com](mailto:utanrmp@gmail.com) with the purchaser giving information shown in the in Table 1 below before the deadline for submission of tenders.

**Table 1: Information to register for UTaNRMP Website**

Tender No.	
Bidder Name	
Country	
Postal Address	
Telephone Number(s)	
Contact Person	

Email Address	
Lot (s) bidding for	

5. Tenders must be accompanied by a bid security of not less **2% of the quoted amount** issued in the form of a bank guarantee and valid for **120 days** from the date of tender opening.
6. Tenderers **MUST** prove that they qualify to participate in public procurement by providing copies of the following documents or evidence:
  - i) Certificate of Incorporation.
  - ii) Valid Tax Compliance Certificate
  - iii) Certified audited accounts for year 2014 and 2015
  - iv) **Current CR 12 from registrar of companies** or a copy of business registration certificate for sole proprietorship or the equivalent document for partnerships that clearly indicates the ownership of the companies
  - v) Valid manufacture's authorization
7. Bids must remain valid for a period of ninety (90) days from the date of tender opening.
8. Bidders are informed to submit their tenders which are properly bound and that ALL pages including blank ones MUST be serialized with indelible ink otherwise their tenders will be rejected.

The completed tender documents in plain sealed envelopes with no indication of the supplier clearly marked "**TENDER NO: - EBU/CC/039/2016-017 for the Supply and Delivery of 33No. Motor cycles**" shall be addressed to:

**The Project Coordinator,  
UTaNRMP  
P.O. Box 996-60100 EMBU  
Tel: 038-31376  
Email:utanrmp@gmail.com**

**and** deposited in the **Tender Box** located at **reception of Upper Tana Natural Resources Management Project Offices situated on Embu –Meru road opposite Kangaru DEB Primary school** so as to reach the above named address not later than **10.00 am on 21<sup>st</sup> October 2016**. Opening of the tenders will take place immediately thereafter in the **MKEPP Documentation Centre** at the Upper Tana Natural Resources Management Project offices in the presence of bidders' representatives who wish to attend. *Late bids will not be considered regardless of the circumstances*

Project Coordinator  
**FOR: Principal Secretary, State Department of Water Services  
Ministry of Water and Irrigation  
State Department of Water**

## **Section B. Instructions to tenderers**

### **1. Eligible Tenderers**

- 1.1 This Invitation for Tenders is open to all tenderers eligible as described in the tender documents. Successful tenderers shall complete the supply of materials and goods by the intended completion date specified in the tender documents.
- 1.2 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.
- 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 UTaNRMP to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods under this Invitation for tenders.
- 1.4 Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices.

### **2. Cost of Tendering**

- 2.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and UTaNRMP, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

## **3 The Tender Document**

### **3.1 Contents**

The tender document comprises the documents listed below and addenda issued in accordance with clause 5 of these instructions to tenders.

- (i) Invitation to Tender
- (ii) General Instructions
- (iii) Appendix to General Instructions
- (iii) General Conditions of Contract
- (iv) Special Conditions of Contract
- (v) Schedule of Requirements and Price Schedules
- (vi) Technical Specifications
- (vii) Tender Form
- (viii) Tender Security Form
- (ix) Contract Form
- (x) Performance bond Form
- (xi) Bank Guarantee for Advance Payment Form
- (xii) Manufacturer's Authorization Form

- 3.2 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tender documents. Failure to furnish all information required by the tender documents or to

submit a tender not substantially responsive to the tender documents in every respect will be at the tenderers risk and may result in the rejection of its tender.

#### **4. Clarification of Documents**

4.1 A prospective tenderer requiring any clarification of the tender document may notify The Procuring Entity in writing. The Procuring Entity will respond in writing to any request for clarification of the tender documents, which it receives no later than seven (7) days prior to the deadline for the submission of tenders, prescribed by The Procuring Entity. Written copies of The Procuring Entity response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers that have purchased the tender document.

#### **5. Amendment of Documents**

- 5.1 At any time prior to the deadline for submission of tenders, The Procuring Entity, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by amendment / addendum.
- 5.2 All prospective candidates that have received the tender documents will be notified of the amendment in writing or by cable, and will be binding on them.
- 5.3 In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, The Procuring Entity, at its discretion, may extend the deadline for the submission of tenders.

#### **Preparation of Tenders**

#### **6. Language of Tender**

The tender prepared by the tenderer, as well as all correspondence and documents relating to the tender exchanged by the tenderer and The Procuring Entity, shall be written in English language, except for any printed literature furnished by the tenderer which 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.

#### **7. Documents Comprising the Tender**

- 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 9, 10 and 11 below.
  - (b) Documentary evidence established in accordance with paragraph 12 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;

- (c) Documentary evidence established in accordance with paragraph 13 that the goods and ancillary services to be supplied by the tenderer are eligible goods and services and conform to the tender documents; and
- (d) Tender security furnished in accordance with paragraph 14

## **8. Tender Form**

8.1 The tenderer shall complete the Tender Form and the appropriate Price Schedule furnished in the tender documents, indicating the goods to be supplied, a brief description of the goods, their country of origin, quantity, and prices.

## **9. Tender Prices**

- 9.1 The tenderer shall indicate on the appropriate Price Schedule the unit prices and total tender price of the goods it proposes to supply under the contract.
- 9.2 Prices indicated on the Price Schedule shall include all duties and taxes payable in the country and charges for inland transportation, insurance, and other local costs incidental to delivery of the goods to their final destination; and
- 9.3 Prices quoted by the tenderer shall be fixed during the Tender's performance of the contract and not subject to variation on any account. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 22.

## **10. Tender Currency**

10.1 Prices shall be quoted in Kenya Shillings irrespective of their source.

## **11. Tenderer's Eligibility.**

- 11.1 Pursuant to paragraph 1 (Eligible tenderers), the tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.
- 11.2 The documentary evidence of the tenderers eligibility to tender shall establish to The Procuring Entity's satisfaction that the tenderer, at the time of submission of its tender, is from an eligible source country as defined under paragraph 1 above.

## **12. Tenderer's Qualifications.**

- 12.1 The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall establish to The Procuring Entity's satisfaction:
  - (a) that, in the case of a tenderer offering to supply goods under the contract which the tenderer did not manufacture or otherwise produce, the tenderer has been duly authorized by the goods' Manufacturer or producer to supply the goods;

- (b) that the tenderer has the financial, technical, and production capability necessary to perform the contract;
- (c) that, in the case of a tenderer not doing business within Kenya, the tenderer is or will be (if awarded the contract) represented by an Agent in Kenya equipped, and able to carry out the Tenderers' maintenance, repair, and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.

### **13. Goods' Eligibility and Conformity to Tender Document.**

13.1 The tenderer shall furnish, as part of its tender, documents establishing the eligibility and conformity to the tender documents of all goods, which the tenderer proposes to supply under the contract.

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

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

- (a) a detailed description of the essential technical and performance characteristics of the goods;
- (b) a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the goods for a period of two (2) years, following commencement of the use of the goods by The Procuring Entity;- (requires physical presence and stocks of the spares, special tools etc) and;
- (c) a clause-by-clause commentary on The Procuring Entity's Technical Specifications demonstrating substantial responsiveness of the goods and services to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.

13.4 For purposes of the commentary to be furnished pursuant to paragraph 13.3(c) above, the tenderer shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by The Procuring Entity in its Technical Specifications, are intended to be descriptive only and not restrictive. The tenderer may substitute alternative standards, brand names, and/or catalogue numbers in its tender, provided that it demonstrates to The Procuring Entity's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

### **14. Tender Security**

- 14.1 The tenderer shall furnish, as part of its tender, a tender security for the amount specified in the Invitation to tender.
- 14.2 The tender security is required to protect The Procuring Entity against the risk of Tenderer's conduct, which would warrant the security's forfeiture, pursuant to paragraph 14.7
- 14.3 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form of a bank guarantee or a bank draft issued by a reputable bank located in Kenya or abroad, in the form provided in the tender documents or another form acceptable to The Procuring Entity and valid for thirty (30) days beyond the validity of the tender.
- 14.4 Any tender not secured in accordance with paragraph 14.1 and 14.3 will be rejected by The Procuring Entity as non-responsive, pursuant to paragraph 22.
- 14.5 Unsuccessful Tenderer's tender security will be discharged or returned as promptly as possible, but not later than thirty (30) days after the expiration of the period of tender validity prescribed by The Procuring Entity.
- 14.6 The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 30, and furnishing the performance bond, pursuant to paragraph 31.
- 14.7 The tender security may be forfeited:
- (a) If a tenderer withdraws its tender during the period of tender validity specified by The Procuring Entity on the Tender Form; or
  - (b) In the case of a successful tenderer, if the tenderer fails:
    - (i) To sign the contract in accordance with paragraph 30
    - or**
    - (ii) To furnish performance bond in accordance with paragraph 31.

## **15. Validity of Tenders**

- 15.1 Tenders shall remain valid for 90 days or as specified in the tender documents after date of tender opening prescribed by The Procuring Entity, pursuant to paragraph 18. A tender valid for a shorter period shall be rejected by The Procuring Entity as non-responsive.
- 15.2 In exceptional circumstances, The Procuring Entity 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 14 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

## **16. Format and Signing of Tender**

- 16.1 The tenderer shall prepare TWO COPIES of the tender, clearly marking each "ORIGINAL TENDER" and "COPY OF TENDER," as appropriate. In the event of any discrepancy between them, the original shall govern.
- 16.2 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. The latter authorization shall be indicated by written power-of-attorney accompanying the tender. All pages of the tender, except for un-amended printed literature, shall be initialed by the person or persons signing the tender.
- 16.3 The tender shall have no interlineation, 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.

## **Submission of Tenders**

### **17. Sealing and Marking of Tenders**

- 17.1 The tenderer shall seal the original and each copy of the tender in separate envelopes, duly marking the envelopes as "ORIGINAL" and "COPY." The envelopes shall then be sealed in an outer envelope.
- 17.2 The inner and outer envelopes shall:
- (a) Be addressed to UTaNRMP at the following address:  
**The Project Coordinator**  
UTaNRMP,  
**P.O BOX 996-60100**  
**EMBU**
  - (b) Bear, the Project name the Invitation for tenders (IFT), and the words: "DO NOT OPEN BEFORE," **21<sup>st</sup> October 2016 at 10.00 AM**
- 17.3 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".
- 17.4 If the outer envelope is not sealed and marked as required by paragraph 17.2, UTaNRMP will assume no responsibility for the tender's misplacement or premature opening.

### **18. Deadline for Submission of Tenders**

18.1 Tenders must be received by The Procuring Entity at the address specified under paragraph 17.2 not later than **21<sup>st</sup> October 2016 at 10.00 AM**

18.2 UTaNRMP may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 6, in which case all rights and obligations of The Procuring Entity and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

## **19. Modification and Withdrawal of Tenders**

19.1.1 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 The Procuring Entity prior to the deadline prescribed for submission of tenders.

19.2 The Tenderer's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 17. A withdrawal notice may also be sent by cable, but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.

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

19.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the Tenderer's forfeiture of its tender security, pursuant to paragraph 14.7.

## **Opening and Evaluation of Tenders**

### **20. Opening of Tenders**

20.1.1 All tenders will be opened in the presence of tenderers' representatives who choose to attend at the MKEPP Documentation Centre in **Upper Tana Natural Resources Management Project Offices situated on Embu –Meru road opposite Kangaru DEB Primary.**

The tenderers' representatives who are present shall sign a register evidencing their attendance.

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

20.2. **Upper Tana Natural Resources Management Project** will prepare minutes of the tender opening.

## **21. Clarification of Tenders**

- 21.1 To assist in the examination, evaluation and comparison of tenders The Procuring Entity 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.
- 21.2 Any effort by the tenderer to influence The Procuring Entity in its tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderers' tender.

## **22. Preliminary Examination**

- 22.1 The Procuring Entity 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.
- 22.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected. If there is a discrepancy between words and figures, the amount in words will prevail. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security may be forfeited.
- 22.3 The Procuring Entity 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.
- 22.4 Prior to the detailed evaluation, pursuant to paragraph 23, The Procuring Entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one, which conforms to all the terms and conditions of the tender documents without material deviations. The Procuring Entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.
- 22.5 If a tender is not substantially responsive, it will be rejected by The Procuring Entity and may not subsequently be made responsive by the tenderer by correction of the nonconformity.

## **23. Evaluation and Comparison of Tenders**

- 23.1 The Procuring Entity will evaluate and compare the tenders, which have been determined to be substantially responsive, pursuant to paragraph 22.

23.2 The evaluation of a tender will exclude and not take into account:

- (a) in the case of goods manufactured in Kenya or goods of foreign origin already located in Kenya, sales and other similar taxes, which will be payable on the goods if a contract is awarded to the tenderer; and
- (c) Any allowance for price adjustment during the period of execution of the contract, if provided in the tender.

23.3 The comparison shall be of the delivered price of the goods offered from within Kenya, such price to include all costs, as well as duties and taxes paid or payable on components and raw material incorporated or to be incorporated in the goods.

23.4 The evaluation of a tender will take into account, in addition to the tender price and the price of incidental services, the following factors, in the manner and to the extent indicated in paragraph 23.5 and in the technical specifications:

- (a) Delivery schedule offered in the tender;
- (b) Deviations in payment schedule from that specified in the Special Conditions of Contract;
- (c) The cost of components, mandatory spare parts, and service;
- (d) The availability in Kenya of spare parts and after-sales services for the equipment offered in the tender;

23.5 Pursuant to paragraph 23.4 the following evaluation methods will be applied:

- (a) *Delivery schedule.*
  - (i) The Procuring Entity requires that the goods under the Invitation for Tenders shall be delivered at the time specified in the Schedule of Requirements. Tenders offering deliveries longer than The Procuring Entity's required delivery time will be treated as non-responsive and rejected.
- (b) *Deviation in payment schedule.*

Tenderers shall state their tender price for the payment of 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. The Procuring Entity may consider the alternative payment schedule offered by the selected tenderer.

- (c) *Spare parts and after sales service facilities.*  
Tenderers must offer items with service and spares part back up. Documentary evidence and locations of such back- up must be given. Where a tenderer offers items without such back-up in the country, he must give documentary evidence and assurance that he will establish adequate back-up for items supplied.

## **23.6 Preference**

23.6.1 For purposes of the Public Procurement and Asset Disposal Act 2015, public entities shall grant exclusive preference to local contractors offering–

- (a) Motor vehicles, plant and equipment that are assembled in Kenya;
- (b) construction material and other material used in the transmission and conduction of an activity of which such material is made in Kenya;
- (c) Furniture, textiles, foodstuffs and other goods made or locally available in Kenya.

23.6.2 For the purposes of the Public Procurement and Asset Disposal Act 2015 and Regulations, the threshold below which exclusive preference shall be given to citizen contractors, shall be the sum of –

- (a) one billion shillings for procurements in respect of road works, construction materials and other materials used in transmission and conduction of it of which the material is made in Kenya;
- (b) five hundred million shillings for procurements in respect of other works;
- (c) one hundred million shillings for procurements in respect of goods; and
- (d) fifty million shillings for procurements in respect of services.

23.6.3 For the purpose of benefiting from preference and reservations schemes, an enterprise owned by youth, women or persons with disabilities shall be a legal entity that –

- (a) is registered with the relevant government body; and
- (b) has at least seventy percent membership of youth, women or persons with disabilities and the leadership shall be one hundred percent youth, women and persons with disability, respectively

23.6.4 For the purpose of ensuring sustainable promotion of local industry, all foreign tenderers participating in international tenders shall source at least forty percent of their supplies from

citizen contractors. Tenderer shall provide documentary evidence to assure The Procuring Entity of compliance with the requirements.

## **24. Contacting the Procuring Entity**

- 24.1 Subject to paragraph 21, no tenderer shall contact The Procuring Entity on any matter relating to its tender, from the time of the tender opening to the time the contract is awarded.
- 24.2 Any effort by a tenderer to influence The Procuring Entity in its decisions on tender evaluation, tender comparison, or contract award may result in the rejection of the Tenderer's tender's bid proposal.

## **25. Award of Contract**

### **Post-qualification**

- 25.1 In the absence of pre-qualification, The Procuring Entity will determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.
- 25.2 The determination will take into account the Tenderer's financial, technical, production and after sales backup capabilities. It will be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the tenderer, pursuant to paragraph 12.3, as well as such other information as The Procuring Entity deems necessary and appropriate.
- 25.3 An affirmative determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the Tenderer's tender, in which event The Procuring Entity will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

## **26. Award Criteria**

- 26.1 Subject to paragraph 10, 23 and 28 The Procuring Entity will award the contract to the successful tenderer(s) whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

## **27. The Procuring Entity's Right to Vary quantities**

27.1 The Procuring Entity reserves the right at the time of contract award to increase or decrease the quantity of goods originally specified in the Schedule of requirements without any change in unit price or other terms and conditions.

## **28. The Procuring Entity Reserves Right to Accept or Reject Any or All Tenders**

28.1 The Procuring Entity reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for The Procuring Entity's action.

## **29. Notification of Award**

29.1 Prior to the expiration of the period of tender validity, The Procuring Entity will notify the successful tenderer in writing that its tender has been accepted.

29.2 The notification of award will constitute the formation of the Contract.

29.3 Upon the successful Tenderer's furnishing of the performance bond pursuant to paragraph 31, The Procuring Entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 14.

## **30. Signing of Contract**

30.1 At the same time as The Procuring Entity notifies the successful tenderer that its tender has been accepted, it will send the tenderer the Contract Form provided in the tender documents, incorporating all agreements between the parties.

30.2 Within fourteen (14) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to The Procuring Entity.

## **31. Performance bond**

31.1 Within fourteen (14) days of the receipt of notification of award from The Procuring Entity, the successful tenderer shall furnish the performance bond in accordance with the Conditions of Contract, in the Performance bond Form provided in the tender documents, or in another form acceptable to it (The Procuring Entity).

31.2 Failure of the successful tenderer to comply with the requirement of paragraph 30 or paragraph 31 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event The Procuring Entity may make the award to the next lowest evaluated Candidate or call for new tenders.

## **32. Corrupt and Fraudulent Practices**

32.1 The Procuring Entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts. In pursuance of this policy, The Procuring Entity:-

(a) Defines, for the purposes of this provision, the terms set forth below as follows:

(i) “corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution; and

(ii) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of The Procuring Entity, and includes collusive practice among tenderer (prior to or after tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive The Procuring Entity of the benefits of free and open competition;

(b) 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;

(c) will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded any contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a contract.

32.2 Furthermore, tenderers shall be aware of the provision stated in the General Conditions of Contract.

## Appendix to the General Instructions to Tenderers

The following information regarding the particulars of the tender shall complement/ supplement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provision of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers.

<b>Instructions to tenderers reference</b>	<b>Particulars of appendix to instructions to tenders</b>
<b>13. Goods' Eligibility and Conformity to Tender Document.</b>	There shall be a mandatory pre delivery inspection by the Chief Mechanical and Transport Engineer, Ministry of Transport and Infrastructure, Machakos Road Industrial area, Nairobi, prior to delivery to the project site
<b>22.4: Preliminary Evaluation</b>	All documentation catalogues and Manufacturers' Authorizations MUST accompany the bid. KBS certificates MUST be attached.  Bidders must also provide information on their compliance with statutory requirements such tax compliance certificate,
23.5 (c) Spare parts and after sales service facilities.	Tenderers are required to indicate names and physical addresses of dealers/agents within the project area where back-up service for the motor cycles can be obtained.
<b>26.1: Award criteria</b>	The award will be made to the lowest evaluated bidder who will have been determined to be able to supply the motor cycles and also provide proof of after sales maintenance service in the project area that is Embu, Meru, Tharaka Nithi, Kirinyaga, Nyeri and Muranga Counties.
<b>31.1 Performance bond</b>	The performance bond shall be 10% of the Contract Price,

	issued by a commercial bank located within the Republic of Kenya in the form provided in the tender documents.
--	--

## **Section C:-General Conditions of Contract**

### **1. Definitions**

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

- (a) "The Contract" means the agreement entered into between The Procuring Entity and the tenderer, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- (b) "The Contract Price" means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations.
- (c) "The Goods" means all of the equipment, machinery, and/or other materials, which the tenderer is required to supply to The Procuring Entity under the Contract.
- (d) "UTaNRMP" means Upper Tana Natural Resources Management Project in the MINISTRY OF WATER AND IRRIGATION, which is the organization purchasing the Goods under this Contract.
- (e) "The tenderer" means the individual or firm supplying the Goods under this Contract.

### **2. Application**

2.1 These General Conditions shall apply in all Contracts made by The Procuring Entity for the procurement of goods.

### **3. Country of Origin**

3.1 For purposes of this Clause, "origin" means the place where the Goods were mined, grown, or produced.

3.2 The origin of Goods and Services is distinct from the nationality of the tenderer.

### **4. Standards**

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

### **5. Use of Contract Documents and Information**

- 5.1 The Candidate shall not, without The Procuring Entity'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 Procuring Entity in connection therewith, to any person other than a person employed by the tenderer in the performance of the Contract.
- 5.2 The tenderer shall not, without The Procuring Entity prior written consent, make use of any document or information enumerated in paragraph 5.1 above.
- 5.3 Any document, other than the Contract itself, enumerated in paragraph 5.1 shall remain property of The Procuring Entity and shall be returned (all copies) to The Procuring Entity on completion of the Tenderer's performance under the Contract if so required by The Procuring Entity.

## **6. Patent Rights**

- 6.1 The tenderer shall indemnify The Procuring Entity 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.

## **7. Performance bond**

- 7.1 Within fourteen (14) days of receipt of the notification of Contract award, the successful tenderer shall furnish to The Procuring Entity the performance bond in the amount specified in Special Conditions of Contract.
- 7.2 The proceeds of the performance bond shall be payable to The Procuring Entity as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.
- 7.3 The performance bond shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to The Procuring Entity and shall be in the form of a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in Kenya or abroad, acceptable to The Procuring Entity, in the form provided in the tender documents.
- 7.4 The performance bond will be discharged by The Procuring Entity and returned to the Candidate not later than thirty (30) days following the date of completion of the Tenderer's performance obligations under the Contract, including any warranty obligations, under the Contract.

## **8. Inspection and Tests**

- 8.1 The Procuring Entity or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Contract specifications. The Procuring Entity shall notify the tenderer 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 tenderer or its subcontractor(s), at point of delivery, and/or at the Goods' final destination. If conducted on the premises of the tenderer or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to The Procuring Entity.
- 8.2 Should any inspected or tested Goods fail to conform to the Specifications, The Procuring Entity may reject the Goods, and the tenderer shall either replace the rejected Goods or make alterations necessary to meet specification requirements free of cost to The Procuring Entity.
- 8.4 The Procuring Entity'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 Procuring Entity or its representative prior to the Goods' delivery.
- 8.5 Nothing in paragraph 8 shall in any way release the tenderer from any warranty or other obligations under this Contract.

## **9. Packing**

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

## **10. Delivery and Documents**

- 10.1 Delivery of the Goods shall be made by the tenderer in accordance with the terms specified by The Procuring Entity in its Schedule of Requirements and the Special Conditions of Contract.

## **11. Insurance**

- 11.1 The Goods supplied under the Contract shall be fully insured against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery in the manner specified in the Special conditions of contract

## **12. Payment**

- 12.1 The method and conditions of payment to be made to the tenderer under this Contract shall be specified in Special Conditions of Contract.

12.2 Payments shall be made promptly by The Procuring Entity as specified in the contract.

### **13.Prices**

13.1 Prices charged by the tenderer for Goods delivered and Services performed under the Contract shall not, with the exception of any price adjustments authorized in Special Conditions of Contract, vary from the prices by the tenderer in its tender.

### **14.Assignment**

14.1 The tenderer shall not assign, in whole or in part, its obligations to perform under this Contract, except with The Procuring Entity's prior written consent.

### **15.Sub-contracts**

15.1 The tenderer shall notify The Procuring Entity in writing of all subcontracts awarded under this Contract if not already specified in the tender. Such notification, in the original tender or later, shall not relieve the tenderer from any liability or obligation under the Contract.

### **16. Termination for Default**

16.1 The Procuring Entity may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the tenderer, terminate this Contract in whole or in part:

- (a) if the tenderer fails to deliver any or all of the Goods within the period(s) specified in the Contract, or within any extension thereof granted by The Procuring Entity.
- (b) if the tenderer fails to perform any other obligation(s) under the Contract.
- (c) if the tenderer, in the judgment of The Procuring Entity has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

16.2 In the event The Procuring Entity 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 tenderer shall be liable to The Procuring Entity for any excess costs for such similar Goods.

### **17. Liquidated Damages**

17.1 If the tenderer 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 goods up to a maximum deduction of 10% of the delayed goods. After this the tenderer may consider termination of the contract.

## **18. Resolution of Disputes**

18.1 The Procuring Entity and the tenderer 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.

18.2 If, after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute, either party may require adjudication in an agreed national forum using the laws of the Republic of Kenya.

## **19. Language and Law**

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

## **20. Force Majeure**

20.1 The tenderer 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*.

## Section D. Special Conditions of Contract

### General

Special Conditions of Contract supplement the General Conditions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract.

#### 1.0 Definitions (Clause 1.1)

**The Purchaser is:**

The Upper Tana Natural Resources Management Project (The Procuring Entity)  
P. O. Box 996-60100  
EMBU

#### 2.0 Inspection and Tests (Clause 8)

2.1 The Tenderer **MUST** submit as part of its bid, documentation catalogues and manufacturers' Authorizations.

2.2 Before deliver, the Tenderer shall make arrangements for a pre-delivery inspection by the Chief Mechanical and Transport Engineer and submit a compliance certificate as part of the delivery documents at the point of delivery.

2.3 The purchaser or its representative shall have the right to inspect and to test the motor vehicles upon delivery to confirm their conformity to the Agreement specifications. Should any inspected or tested motor cycles fail to conform to the specifications, the purchaser may reject the motor cycles, and the Tenderer shall make alterations necessary to meet specification requirements free of cost to the purchaser.

2.4 The purchaser may conduct such tests and investigations as it deems reasonably necessary to confirm that the Tenderer has remedied all the aforesaid deficiencies. Such tests and investigations shall be conducted at the Tenderer's expense.

2.5 Should the motor cycles be rejected, the tenderer must remove the rejected materials from the premises of the purchaser within 14 days failure to which the government of Kenya will auction them without any further reference to the tenderer.

**3.0 Delivery and Documents (Clause 10)**

The materials and goods shall be delivered as indicated to **UTaNRMP Offices, in Embu Town. The desired delivery period is 60 days from date of award of tender**

**4.0 Payment (Clause 12)**

One Hundred (100) percent of the contract price of the materials and goods delivered shall be paid within ninety (90) days upon the delivery, inspection, testing and acceptance of the same by the purchaser.

**5.0 Resolution of Disputes (Clause 18)**

In case of a dispute between the Purchaser and the Supplier, the dispute shall be referred to Arbitration in accordance with the arbitration laws of Kenya.

**6.0 Notices (Clause 19)**

For the purposes of this Sub-Clause, the respective addresses are:

The Purchaser:

**The Project Coordinator**

**UTaNRMP**

**P. O. Box 996-60100**

**EMBU.**

## Section E. SCHEDULE OF REQUIREMENTS

	Item Description	Quantity	Remarks
1	Motor Cycle, Trail, 170- 200 cc	33	

## Section F: TECHNICAL SPECIFICATIONS

### GENERAL

1. These specifications describe the basic requirements for Motor Cycles. Tenderers are requested to submit with their offers the detailed specifications, drawings, catalogues, manufactures' authorization etc. for the products they intend to supply.
2. Tenderers must indicate on the specifications sheets whether the equipment offered comply with each specified requirement.
3. All the dimensions and capacities of the equipment to be supplied shall not be less than those required in these specifications. Deviations from the basic requirements, if any shall be explained in detail in writing with the offer, with supporting data such as calculation sheets, etc. UTaNRMP reserves the right to reject the products, if such deviations shall be found critical to the use and operation of the products.
4. The tenderers are requested to present information along with their offers as follows:
  - i) Shortest possible delivery period of each product.
  - ii) Information on proper representative and/or workshop for back-up service/repair and maintenance including their names and addresses **WITHIN** the project area.

**DETAILED TECHNICAL SPECIFICATIONS FOR SUPPLY AND DELIVERY OF 33NO. MOTOR CYCLE, TRAIL, 170 200 CCS**

The Motor Cycles and Related Services shall comply with following Technical Specifications and Standards:

**TENDERER'S Column to be completed by tenderer**

<b>SPECIFICATION</b>	<b>REQUIREMENT</b>	<b>TENDERER'S</b>
MAKE	-	-----
MODEL	-	-----
COUNTRY OF ORIGIN	-	-----
MANUFACTURER'S LITERATURE, AUTHORITY AND SPECIFICATIONS SUPPLIED	Yes (Mandatory)	------(Y/N)
Manufacturer of motorcycles should have been in the motorcycle manufacturing business for 15 years	Yes	.....(Y/N)
<p>All specifications are 'minimum' based, except where maximum (specifically stated), ranges (obviously stated) and exactitudes (specifically stated) are used</p> <p>For example " 15 years min "means a minimum of 15 years ,15 years max means a maximum of 15 years ,15-18 years is a range and 15 years ex. is an exactitude</p>		

**1: GENERAL**

a) A Standard production, motorbike, trail type, of latest design in class, in current production and proven performance.	Yes	----- (Y/N)
b) Capable of operating in tropical road conditions and off road.	Yes	----- (Y/N)
c) Supplied new.	Yes	----- (Y/N)

**2. DIMENSIONS AND WEIGHTS**

a) Overall length, Minimum	2,100mm	-----mm
b) Overall width, range	850-950mm	-----mm
c) Overall height, Minimum	1,100mm	-----mm
d) Seat (saddle) height, Minimum.	820mm	-----mm
e) Wheelbase, Minimum	1,300mm	-----mm

f)	Ground Clearance, Minimum.	260mm	-----mm
g)	Dry weight, Minimum.	100Kg	-----Kg

### 3. ENGINE

a)	Make	-	-----
b)	Model	-	----- --
c)	Country of origin	-	----- -
d)	2/4 strokes, air-cooled, petrol engine.	Yes	----- (Y/N)
e)	Single cylinder	Yes	----- (Y/N)
f)	Piston displacement range	170 - 200cc	-----cc
g)	Ignition system	specify	-----
h)	Starter system	specify	-----
i)	Maximum power output /rpm Min	16HP /8,500rpm	----- HP/rpm
j)	Maximum torque /rpm Min.	19Nm /7,000rpm	----- Nm/rpm
k)	Fuel tank capacity, Minimum	7Lt	-----Lt

### 4. TRANSMISSION, BRAKES, TIRES AND SUSPENSION

a)	Transmission, speed, min.	5 No.	-----No.
b)	Final transmission.	Chain drive	-----
c)	Front and rear brakes.	Drum	
d)	Front and rear tire sizes.	2.75-21-4PR 4.10-18-4PR	----- -----
e)	Front and rear suspension, telescopic forks/ Monocross.	Specify Front  Rear	----- -----

5. AL SYSTEM

a)	Full lighting to conform to Cap 403 Subs.23-Kenya Traffic Act.	Yes	----- (Y/N)
b)	Standard, major function gauges (Speedometer, Tachometer, Odometer, trip counter, etc.) / and warning lights (oil warning light etc.) fitted.	Yes	----- (Y/N)

6. MOTORCYCLE WARRANTY

a)	Each motorcycle supplied should carry a statement of warranty.	Yes (Mandatory)	----- (Y/N)
b)	Motorcycle warranty min., 6 Months or 6,000 Km whichever occurs first.	specify	-----Km  ----- Months

7. MANUALS AND EQUIPMENT

a)	All literature in English language	Yes	----- (Y/N)
b)	Repair Manual/ CD, supplied.	1no. Mandatory	----- (Y/N)
c)	Parts catalogue/ CD, supplied.	1no. Mandatory	----- (Y/N)
d)	Rider's handbook and service schedule supplied.	1 no. per m/cycle.	----- (Y/N)
e)	Motorcycle fitted with 2No. rear view mirrors.	Yes	----- (Y/N)
f)	Suitable size box at rear carrier with lock and key to carry small parcels.	Yes (Mandatory)	----- (Y/N)
g)	Motor cycle supplied with suitable crash helmet 2No. and eyes protector 2No.	Yes (Mandatory)	----- (Y/N)
h)	Gloves & reflector jackets 2sets supplied.	Yes (Mandatory)	----- (Y/N)

8. OTHER REQUIREMENT

a).	Motor cycle to be registered with the registrar of motor vehicles.	Yes (Mandatory)	------(Y/N)
-----	--	-----------------	-------------

b)	Motor cycle to be inspected by the Chief Mechanical and Transport Engineer prior to delivery to the user.	Yes (Mandatory)	----- (Y/N)
c)	Firm's Status: (Franchise holder/ Dealer/Agent) and proof thereof	Specify	-----
d)	Availability of spare parts	Indicate Motor cycle dealers who stock spare parts.	----- -----
e)	Indicate names and physical addresses of dealers/agents where back-up service can be obtained.	Specify	----- ----- -----
f)	Body construction and all fitments to conform to CAP 403 Kenya Traffic Act.	Yes (Mandatory)	_____ (Y/N)

**Section G. Standard Tender Forms**

**(i) FORM OF TENDER**

Date: \_\_\_\_\_ Tender N°:

\_\_\_\_\_  
To: THE PROJECT COORDINATOR  
UPPER TANA NATURAL RESOURCES MANAGEMENT PROJECT  
P.O. BOX 996-60100, EMBU

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda Nos.....  
*[insert numbers]*, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to supply and deliver.....

*[description of goods ]*

in conformity with the said tender documents 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 deliver the goods in accordance with the delivery schedule specified in the Schedule of Requirements.

3. If our Tender is accepted, we will obtain the guarantee of a bank in a sum equivalent to \_\_\_\_ percent of the Contract Price for the due performance of the Contract, in the form prescribed by The Procuring Entity.

4. 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.

5. Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.

6. 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 \_\_\_\_\_

(ii) BUSINESS QUESTIONNAIRE:            FORM 2            Serial No.....

TENDER NO .....

SUPPLY AND DELIVERY OF.....

Name of the firm ..... Date issued.....

The information provided in this form will enable The Procuring Entity to assess your eligibility to participate in the tendering process and your competence in supplying the goods and services in the tender. The Procuring Entity shall verify the information provided and candidates should note that submission of false information will lead to automatic disqualification.

**A: GENERAL INFORMATION:**

1.1 Business Name: .....

1.2 Date of Registration.....

Indicate the form of Business:.....

1.3 (a) Sole Proprietor..... (b)

Partnership..... (c) Company.....

1.4 What businesses are you licensed to operate?

.....

1.5 Postal Address .....Tel No .....

Fax: .....

Cell Phone.....

Email .....Web page.....

1.6 Location of business premises:

Street/Road.....Building and Floor.....Plot No  
.....

Is the premises Permanent/Temporary?.....  
Residential/Office/shop/warehouse?.....

- 1.7 Current Trade License No ..... Expiring date.....
- 1.8 Who are your Principal Bankers ..... Branch .....
- 1.9 Details of business registration: Please complete the relevant section.

**Part 1.9 (a) – Sole Proprietor**

Your name in full .....

Are you a Kenya Citizen?.....If not, what is your Nationality .....

**Part 1.9(b) – Partnership/Registered Company**

Country of incorporation.....Date.....

	NAME OF PARTNERS/SHARE	NATIONALITY	CITIZENSHIP	OWNERSHIP (SHARES)
1				
2				
3				
4				

**B: ELIGIBILITY:**

- 2.2 Have you or your principals been subject of legal proceedings for insolvency, Bankruptcy, receivership or your business activities suspended for related reasons?.....if yes, when? .....[if yes, You must present legal documentary evidence that you are cleared and your business is now solvent].
- 2.3 Have you fulfilled your obligations to pay taxes and social security contributions for the last three years? Yes.....No.....(*tick*)
- 2.4 Are you or your servants or agents subject of legal proceedings (attached documentary evidence for the respective Government Agents) or have been debarred or suspended for corrupt or unethical business practice. Yes.....No.....
- 2.5 Is the firm making this application or any of its directors been debarred or suspended from participating in public procurement or have any Procurement Entity initiated proceedings of that nature against the firm or one of its Directors, for any reason whatsoever?  
Yes.....No.....

**You must attach copies of your**

- 1. Business Registration Certificate,
- 2. VAT certificate,
- 3. PIN Number and
- 4. the recent 3 years Audited Accounts copies of the bank statements for the last 6 months for your application to be considered.

**C: CAPABILITY AND COMPETENCE TO DELIVER GOODS OR SERVICE:**

- 2.6 What products/service do you want to be considered for.....
- 2.7 How many employees do you have? .....How many are Permanent? .....How many are Temporary?.....
- 2.8 What is the country of origin for those goods or services?.....
- 2.9 Are you a manufacturer/wholesaler/retailer/other (please specify).....
- (a) If you are a manufacturer or a service organization, are your products certified by the Kenya Bureau of Standards or are you affiliated to a recognized accrediting body? Yes.....No.....[Please attach documentary evidence of the current certification].
- (b) If you are not a manufacturer, are you an authorized dealer? Yes.....No.....*please attach documentary evidence of the authority from the manufacturer*
- 2.10 Who are your major customers/clients and what is their telephone contact?
- To what extent is your firm e-enabled with both your suppliers and clients and how do you intend to carry out business with UTaNRMP?
  - What is your average response time to a request quotation, Delivery of goods after issuance of LPO?

	NAME OF	VALUE OF	CONTACT	TEL NO
1				
2				
3				
4				
5				

- 2.11 What is the Maximum value of business which you can handle at any one time: Kshs.....

2.12 If your firm is pre-qualified or awarded the tender, will you abide by the agreed delivery period and supply goods or service within the given specifications by UTaNRMP?

Yes .....No.....?

**D: PAST AND CURRENT PERFORMANCE AND EXPERIENCE**

2.13 Is this firm or its directors in any way associated with any other firm that is currently conducting business with or have applied to be considered for pre-qualification or any other tender in UTaNRMP? If yes, please provide the name(s) of those firm(s), their address, their nature of business and indicate the relationship with the company making this application.

Name of Firm	Address	Nature of Business	Relationship

2.14 Is the firm making this application currently or in previous periods been contracted to supply goods or services to UTaNRMP? Yes.....No..... If yes, please indicate hereunder the financial year, the goods or services that you supplied and their total value.

Financial	Goods or service supplied	Total value

2.15 Have you at any one time been issued with a Purchase Order by the UTaNRMP and failed to deliver the goods or service without assigning any reason for your action?

Yes.....No.....

2.16 Have you at any one time been requested to quote for supply of goods and services and failed to return the quotation without assigning any reason for your action? Yes.....No.....

2.17 If you are a current or previous period supplier of goods or service to UTaNRMP, have you at any one time been issued with a letter of cancellation of LPO for failure to supply goods

within the agreed time or for supplying inferior goods not within the specifications?

Yes.....No.....

2.18 I .....the applicant  
or the authorized person to make this application on behalf of [name of  
company].....does hereby declare that the  
information provided is true and correct.

2.19 The Position in the company of the person making this  
application.....

Signature.....Date.....

OFFICIAL STAMP HERE:

iii) TENDER SECURITY FORM

Whereas..... [name of the tenderer] (hereinafter called "the tenderer") has submitted its tender dated .....[date of submission of tender] for the supply of..... [name and/or description of the goods]

(hereinafter called "the Tender")..... KNOW ALL PEOPLE by these presents that WE..... of..... having our registered office at ..... (hereinafter called "the Bank"), are bound unto UTaNRMP (hereinafter called "Upper Tana natural Resources Management Project") in the sum of ..... for which payment well and truly to be made to the said UTaNRMP, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

THE CONDITIONS of this obligation are:

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

We undertake to pay to UTaNRMP up to the above amount upon receipt of its first written demand, without UTaNRMP having to substantiate its demand, provided that in its demand UTaNRMP will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

This guarantee will remain in force up to and including thirty (30) days after the period of tender validity, and any demand in respect thereof should reach the Bank not later than the above date.

\_\_\_\_\_  
[Signature of the bank]

**iv) TENDER SECURITY DECLARATION FORM**

**(Youth, women and people with disability are required to fill this form)**

Date:.....  
(insert date (as day, month, year) of Bid Submission)

Tender No.....  
(Insert number of bidding process)

To:  
Project Coordinator  
**Upper Tana Natural Resources Management Project**  
P.O BOX 996-60100

Tel: 254-68-2231376/2231517

**Embu**

**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 be automatically be suspended from being eligible for bidding in any contract with the purchaser for the period of the time of (insert the number of months or years) starting on (insert date), 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,
    - i. Fail or refuse the contract, if required, or
    - ii. Fail or refuse to finish the performance security, in accordance with the ITT
  
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 signing the bid securing declaration)  
Duly authorized to sign the bid for and on behalf of: .....  
(insert complete name of bidder)  
Date on..... Day of.....  
(insert date signing)

**v) Performance Bond Form**

**To: Upper Tana Natural Resources Management Project**

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 there in as security for compliance with the Tenderer's performance obligations in accordance with the Contract.

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

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the tenderer, up to a total of.....  
[*amount of the guarantee in words and figures*], and we undertake to pay you, upon your first written demand declaring the tenderer to be in default under the Contract and without cavil or argument, any sum or sums within the limits of.....  
[*amount of guarantee*] as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Signature and seal of the Guarantors

\_\_\_\_\_  
[*name of bank or financial institution*]

\_\_\_\_\_  
[*address*]

\_\_\_\_\_  
[*date*]

**vi) Manufacturer's Authorization Form**

**To: Upper Tana Natural Resources Management Project**

WHEREAS .....

*[name of the Manufacturer]*

who are established and reputable manufacturers of.....

*[name and/or description of the goods]*

having factories at.....

*[address of factory]*

do hereby authorize.....

*[name and address of Agent]*

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

No.....

*[reference of the Tender]*

for the above goods manufactured by us.

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

---

*[Signature for and on behalf of Manufacturer]*

*Note:* This letter of authority should be on the letterhead of the Manufacturer and should be signed by a competent person.

**vii) BANK GUARANTEE FOR ADVANCE PAYMENT FORM**

To .....  
[name of Procuring entity]  
[name of tender] .....

Gentlemen and/or Ladies:

In accordance with the payment provision included in the Special Conditions of Contract, which amends the General Conditions of Contract to provide for advance payment, ..... [name and address of tenderer](hereinafter called “the tenderer”) shall deposit with The Procuring Entity a bank guarantee to guarantee its proper and faithful performance under the said Clause of the Contract in an amount of ..... [amount of guarantee in figures and words].

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

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

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

Yours truly,

Signature and seal of the Guarantors

\_\_\_\_\_  
[name of bank or financial institution]  
\_\_\_\_\_  
[address]  
\_\_\_\_\_  
[date]

**viii) MANUFACTURER'S AUTHORIZATION FORM**

To *[name of the Procuring entity]* .....

WHEREAS .....*[ name of the manufacturer]* who are established and reputable manufacturers of ..... *[name and/or description of the goods]* having factories at ..... *[address of factory]* do hereby authorize ..... *[name and address of Agent]* to submit a tender, and subsequently negotiate and sign the Contract with you against tender No. .... *[reference of the Tender]* for the above goods manufactured by us.

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

---

*[signature for and on behalf of manufacturer]*

*Note:* This letter of authority should be on the letterhead of the Manufacturer and should be signed by a person competent.

ix) LETTER OF NOTIFICATION OF AWARD

Address of Procuring Entity

\_\_\_\_\_  
\_\_\_\_\_

To: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

RE: Tender No. \_\_\_\_\_

Tender Name \_\_\_\_\_

This is to notify that the contract/s stated below under the above mentioned tender have been awarded to you.

\_\_\_\_\_

1. Please acknowledge receipt of this letter of notification signifying your acceptance.
2. The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.
3. You may contact the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.

(FULL PARTICULARS) \_\_\_\_\_

\_\_\_\_\_

SIGNED FOR ACCOUNTING OFFICER

x) **ANTI-CORRUPTION DECLARATION COMMITMENT/ PLEDGE**

I/We/Messrs.....

of Street, Building, P O Box.....

.....

Contact/Phone/E mail.....

declare that Public Procurement is based on a free and fair competitive Tendering process which should not be open to abuse.

I/We .....

declare that I/We will not offer or facilitate, directly or indirectly, any inducement or reward to any public officer, their relations or business associates, in connection with

Tender/Tender No .....

for or in the subsequent performance of the contract if I/We am/are successful.

Authorized Signature.....

Name and Title of Signatory.....

**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

APPLICATION NO.....OF.....20.....

BETWEEN

.....APPLICANT

AND

.....RESPONDENT (*Procuring Entity*)

Request for review of the decision of the..... (*Name of the Procuring Entity*) of  
.....dated the...day of .....20.....in the matter of Tender No.....of  
.....20...

**REQUEST FOR REVIEW**

I/We.....,the above named Applicant(s), of address: Physical  
address.....Fax No.....Tel. No.....Email ....., hereby request the Public  
Procurement Administrative Review Board to review the whole/part of the above mentioned  
decision on the following grounds , namely:-

- 1.
- 2.

By this memorandum, the Applicant requests the Board for an order/orders that: -

- 1.
- 2.

etc

SIGNED .....(Applicant)

Dated on.....day of ...../.....20.....

**FOR OFFICIAL USE ONLY**

Lodged with the Secretary Public Procurement Administrative Review Board on ..... day of  
.....20.....

SIGNED  
Board Secretary

Section H: Goods Supply Contract



REPUBLIC  
OF  
KENYA



Poverty Reduction Through Sustainable NRM



MINISTRY OF WATER AND IRRIGATION

STATE DEPARTMENT OF WATER

UPPER TANA NATURAL RESOURCES MANAGEMENT PROJECT (UTaNRMP)

PO Box 996-60100 EMBU

Tel: 068-31376

E-mail: [utanrmp@gmail.com](mailto:utanrmp@gmail.com)

AGREEMENT

DATED..... DAY OF .....2016

BETWEEN

UPPER TANA NATURAL RESOURCES MANAGEMENT PROJECT

AND

NAME OF TENDERER

FOR

\_\_\_\_\_

SUPPLY AND DELIVERY OF 33NO MOTOR CYCLES TRAIL

UPPER TANA NATURAL RESOURCES MANAGEMENT PROJECT (UTaNRMP)

TENDER NO. EBU/CC/039/2016-17

\_\_\_\_\_

# AGREEMENT

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## Index of Clauses

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<i>Clause</i>	<i>Page</i>
Recital	.....
1 Definitions	.....
2 Interpretation	.....
3 Agreement	.....
4 Passing of Property	.....
5 Title	.....
6 Payment and Delivery Terms	.....
7 Performance Security	.....
8 Assignment and Sub-Contracting	.....
9 Intellectual Property Rights	.....
10 Inspection and Tests	.....
11 Warranty	.....
12 <i>Force Majeure</i>	.....
13 Termination	.....
14 Liquidated Damages	.....

15 Waiver .....

16 Severability .....

17 Dispute Resolution .....

18 Extraordinary Commercial Costs and Corrupt and Fraudulent Practices...

19 Governing Law and Jurisdiction.....

20 Entire Understanding .....

21 Notices .....

22 Miscellaneous Provisions .....

Schedule .....

## SUPPLY AND DELIVERY OF MOTORCYCLE, TRAIL 170-200CCS

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THIS AGREEMENT is made the.....day of ..... 2016

### BETWEEN

(1) **UPPER TANA NATURAL RESOURCES MANAGEMENT PROJECT (“UTaNRMP”)**, a Project under the Ministry of Water and Irrigation of Kenya and having its principal place of business at Post Office Box Number 996-60100, Embu (hereinafter called “the **Purchaser**”),

**AND**

(2) **NAME OF TENDERER**, a limited liability company incorporated under the laws of Kenya and of **PHYSICAL ADDRESS** (hereinafter called “the **Tenderer**”).

### WHEREAS—

- (a) The purchaser wishes to purchase the Goods (as hereinafter defined in schedule one of this agreement) and has invited candidates to submit tenders for the supply and delivery of the Goods.
- (b) The Tenderer pursuant to the invitation to tender submitted an offer to sell the goods to the purchaser.
- (c) The purchaser has accepted the Tenderer’s bid and is willing to purchase the Goods from the Tenderer subject to and upon the terms and conditions hereinafter appearing.

NOW THIS AGREEMENT WITNESSES as follows—

## 1 DEFINITIONS

In this Agreement, unless inconsistent with the context, or otherwise specified, the following words and phrases shall have the meanings set out below—

- 1.1 “**Agreement**” means this agreement as amended or modified from time to time by the mutual consent of the parties in accordance with the procedure contained in clause 17, and shall include the schedule and appendix to this agreement.
- 1.2 “**Contract Price**” means **Kenya Shillings.....**, the price payable by the purchaser to the Tenderer under this Agreement as consideration for the supply and delivery of the Goods and shall include the price for the Goods, and all costs for delivery, discount, duty and value added tax.
- 1.3 “**the Goods**” means supply and delivery of 33No Motor Cycles

## 2 INTERPRETATION

- 2.1 Any reference in this Agreement to a party shall mean either the Tenderer or the purchaser, and any such reference to parties shall, as the case may be, mean all or any of them.
- 2.2 Any reference in this Agreement to a business day shall mean any day from Monday to Friday both days inclusive but excluding any day that is a public holiday by virtue of the Public Holidays Act (Cap 110 of the Laws of Kenya).
- 2.3 The headings in this Agreement are inserted for ease of reference only and shall not be taken into account in the construction or interpretation of any provision to which they refer.
- 2.4 Words importing the singular number shall include the plural and *vice versa*, and words importing the masculine shall include the feminine and neuter and *vice versa*.

- 2.5 Subject to clause 5 herein, the expressions “Tenderer” and “the Purchaser” shall include their respective successors in title and permitted assigns, and as such, this Agreement shall be binding upon and be limited to the benefit of the parties and their respective successors in title and permitted assigns.
- 2.6 The recitals in this Agreement and appearing as part of this Agreement form part of and shall be deemed to be incorporated in this Agreement.
- 2.7 References to clauses, sub-clauses, the schedule, and the appendix, are to clauses and sub-clauses of, and the schedule and appendix to, this Agreement, and the words “hereunder”, “hereof”, “hereto”, “herein”, and words of similar meaning, shall be deemed to be references to this Agreement as a whole and not to any particular clause of, or the schedule or appendix to, this Agreement.

### **3 AGREEMENT**

- 3.1 The Tenderer agrees to sell and the purchaser agrees to purchase the motor cycles more particularly described in the second schedule together with the relevant manuals on maintenance, operation, instruction and all other ancillary equipment and parts at the Contract Price and upon the terms and conditions hereinafter provided.
- 3.2 The parties agree to do all such things and to sign and execute all such documents and deeds as may reasonably be required in order to protect or enforce any of the rights transferred pursuant to this Agreement.

### **4 PASSING OF PROPERTY AND RISK**

The property and risk in the stated motor cycles shall pass to the purchaser upon delivery and signing of the Supplier’s inspection certificate by the purchaser.

## **5 TITLE**

The Tenderer hereby covenants that the purchaser shall obtain a good title to the equipment free of any claims, charges and encumbrances.

## **6 PAYMENT AND DELIVERY TERMS**

6.1 Subject to the provisions of this Agreement, the Tenderer shall deliver the stated motor cycles to the purchaser at Upper Tana Natural Resources Management Project (UTaNRMP) in Embu Town within sixty (60) days the effective date which shall be the date of signing this agreement.

6.2 The Contract Price shall be paid within ninety (90) days of delivery of the motor cycles upon presentation of a valid invoice to the purchaser by the Tenderer.

6.3 At the time of delivery, the Tenderer shall simultaneously deliver to the purchaser any requisite document relating to the motor cycles, including the delivery note and original Kenya Revenue Authority Registration Receipt.

6.4 Upon delivery of the motor cycles by the Tenderer, the purchaser shall inspect the same as set out in clause 10 herein for compliance with specifications, and notwithstanding the provisions of sub-clause 6.2, no payment of the Contract Price shall be made unless the motor cycles comply with the specifications set out in the schedule and the suppliers technical proposal.

6.5 The contract price quoted by the Tenderer is fixed and no variation of the contract price shall be permitted under this Agreement.

## **7 PERFORMANCE SECURITY**

7.1 The Tenderer shall provide to the purchaser a performance security equal to 10% of the Contract Price, and such performance security shall be issued by a commercial bank located within the Republic of Kenya in the form provided in the tender documents.

7.2 If the performance security is to be issued in the form of a bond, it shall, subject to the approval and acceptance of the purchaser, be issued by a surety whom the purchaser has determined to be suitable.

7.3 Failure of the Tenderer to comply with the requirement of the entire of clause 7 shall be sufficient grounds for the annulment of the award and the purchaser may make the award to the next suitable bidder.

## **8 ASSIGNMENT AND SUB-CONTRACTING**

8.1 Neither the rights nor the obligations of the Tenderer under this Agreement may be assigned, transferred, or otherwise disposed of, in whole or in part, without the prior written consent of the purchaser.

8.2 No attempted assignment by the Tenderer in contravention of sub-clause 8.1 shall relieve the Tenderer of any of its obligations hereunder.

8.3 The Tenderer shall notify the purchaser in writing of all sub-contracts awarded under this Agreement if not already specified in the Supplier's quotations.

8.4 Notwithstanding the provisions of sub-clause 8.3, the use of sub-contractors to provide any portion of the materials will not relieve the Tenderer from its obligations under this Agreement.

## **9 INTELLECTUAL PROPERTY RIGHTS**

The Tenderer shall indemnify and keep the purchaser fully indemnified against all losses and liabilities, costs, and expenses, in respect of claims on the grounds that the fencing materials or any part thereof, or anything done by the Tenderer hereunder infringes the intellectual property rights of any third party PROVIDED THAT—

9.1 The purchaser shall allow the Tenderer, at the Tenderer's request, to conduct and settle (on such terms as the purchaser may approve, such approval not to be unreasonably withheld or delayed, and provided that any such settlement does not in any event include terms which might in any way restrict the purchaser's use of the motor cycles), all negotiations and litigation, all costs incurred or recovered in such negotiations and litigation being for the Supplier's account; and

9.2 The purchaser shall give the Tenderer all reasonable assistance for the purpose set out in paragraph (9.1) above; and

- 9.3 The purchaser shall not incur any cost or expense for the Tenderer's account without the Tenderer's prior written consent; and
- 9.4 If at any time any allegation of infringement is made or in the Supplier's opinion is likely to be made, the Tenderer may at its own expense procure for the purchaser the right to continue using the infringing items on terms not restricting the purchaser's use of the same as contemplated by this Agreement or modify or replace the infringing items so that the same cease to be infringing PROVIDED THAT such modification or replacement does not detract in any way from the performance or quality of the motor cycles.

## **10 INSPECTION AND TESTS**

- 10.1 The purchaser or its representative shall have the right to inspect and to test the fencing materials to confirm their conformity to the Agreement specifications.
- 10.2 The inspections and tests shall be conducted at such location as shall be appointed by the purchaser and all reasonable facilities and assistance shall be furnished to the inspectors at no charge to the Tenderer
- 10.2 Should any inspected or tested motor vehicles fail to conform to the specifications, the purchaser may reject the motor cycles, and the Tenderer shall make alterations necessary to meet specification requirements free of cost to the purchaser.
- 10.3 The purchaser may conduct such tests and investigations as it deems reasonably necessary to confirm that the Tenderer has remedied all the aforesaid deficiencies. Such tests and investigations shall be conducted at the Tenderer's expense.
- 10.4 Should the materials be rejected, the tenderer must remove the rejected materials from the premises of the purchaser within 14 days failure to which the government of Kenya will auction them without any further reference to the tenderer.

10.5 Nothing in this clause shall in any way release the Tenderer from any warranty or other obligation under this Agreement.

## 11 WARRANTY

11.1 The Tenderer warrants that all motor cycles delivered under this Agreement will be free from defects in material and workmanship, conform to all applicable specifications and to the extent that detailed designs have not been furnished by the purchaser, will be free from design defects and suitable for the purposes intended by the purchaser. Approval by the purchaser of designs furnished by the Tenderer shall not relieve the Tenderer of its obligations under any provision of this Agreement including the warranty contained in this clause.

11.2 The Tenderer's warrants hereunder shall extend to any Manufacturer's defect or non-conformity arising or manifesting itself within six (6) months after erection of the fencing materials, as stipulated in the manufacturer's Warranty appended to this agreement.

11.3 The Tenderer shall, free of charge, either repair or, at its option, replace defective motor cycles where the defects appear at the point of delivery or within six months after erection, PROVIDED THAT—

11.3.1 Notice in writing of the defects complained of shall be given to the Tenderer upon their appearance; and

11.3.2 Such defects shall be found to the Tenderer's satisfaction to have arisen solely from faulty design, workmanship of materials; and

11.3.3 The defective motor cycles shall be returned to the Tenderer's works at the Tenderer's expense if so requested by the purchaser.

11.4 Any repaired or replaced motor cycles shall be re-delivered by the Tenderer free of charge to the original point of delivery subject to the provisions of this Agreement.

## 12 *FORCE MAJEURE*

12.1 Neither party shall be liable or in any way in breach of this Agreement, or termination for default, for any delay in performing or failure to perform any of its obligations under this Agreement caused by events beyond its reasonable control ("*Force Majeure Event*").

12.2 The party claiming the *Force Majeure* Event shall promptly notify the other party in writing of the reasons for the delay or stoppage, and the likely duration of such delay or stoppage, and shall take all reasonable steps to overcome the delay or stoppage.

12.3 If the party claiming the *Force Majeure* Event has complied with sub-clause 12.2, its performance under this Agreement shall be suspended for the period that the *Force Majeure* Event continues, and the party will have an extension of time for performance which is reasonable and in any event at least equal to the period of delay or stoppage PROVIDED that where any amount is due prior to the suspension of this Agreement, it shall still be due when such suspension is lifted.

12.4 For the purposes of this Agreement, a *Force Majeure* Event shall mean any circumstance beyond the reasonable control of the party affected thereby. Without prejudice to the generality of the foregoing, the following shall be regarded as such circumstances—

12.4.1 Acts of God, explosion, lightning, flood, tempest, fire, or accident;

12.4.2 war, (whether war be declared or not), invasion, act of foreign enemies;

12.4.3 outbreak of hostilities, riot, civil disturbance, acts of terrorism;

- 12.4.4 acts, restrictions, regulations, by-laws, refusals to grant any licences or permissions, prohibitions or measures of any kind on the part of any governmental authority;
- 12.4.5 import or export regulations or embargoes;
- 12.4.6 power failure of whatever nature, failure of telecommunications lines, failure or breakdown of machinery or vehicles;
- 12.4.7 theft, malicious damage, strike, lock-out, or industrial action of any kind (whether involving employees of the Tenderer or a third party);
- 12.5 The Tenderer shall not be entitled to relief under this clause in any circumstances where it has caused or substantially contributed to any delay or failure in the performance of its obligations by any default on its part.

### 13 TERMINATION

- 13.1 The purchaser may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the Tenderer, terminate this Agreement in whole or in part—
  - 13.1.1 if the Tenderer fails to provide the fencing materials within the period prescribed under this Agreement, or within any extension thereof granted by the purchaser.
  - 13.1.2 if the Tenderer fails to perform any other obligation under this Agreement.
  - 13.1.3 if the Tenderer, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing this Agreement.
  - 13.1.4 if an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the Tenderer.
  - 13.1.5 if the Tenderer makes any voluntary arrangement with its creditors or becomes subject to an administration order.
  - 13.1.6 if the Tenderer goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company or firm resulting there from effectively agrees to be bound by or assume the obligations imposed on that other party under this Agreement).

- 13.1.7 if the Tenderer ceases, or threatens to cease, to carry on business.
- 13.2 In the event that the purchaser terminates the Agreement in whole or in part as a consequence of breach by the Tenderer, it may procure, upon such terms and in such manner as it deems appropriate, fencing materials similar to the fencing materials that the Tenderer was meant to supply and the Tenderer shall be liable to the purchaser for any excess costs for such similar goods.
- 13.3 Any termination of this Agreement (whether under this clause 13 or otherwise) shall not relieve either party of any obligation under this Agreement which is expressed to continue after termination.

#### **14 LIQUIDATED DAMAGES**

If the Tenderer fails to provide any or all of the motor cycles within the period specified in the Agreement, the purchaser shall, without prejudice to its other remedies under the Agreement, deduct from the Contract Price liquidated damages of a sum equivalent to 0.5% per week of the delivered price of the delayed motor cycles up to a maximum deduction of 10% of the contract price.

#### **15 WAIVER**

- 15.1 No delay, failure, or omission by either party to enforce, exercise, or pursue any of its powers, rights, claims, privileges, or remedies under this Agreement will operate as a waiver of them nor will any single or partial enforcement, exercise, or pursuit of any such powers, rights, claims, privileges, or remedies preclude any other or further enforcement, exercise, or pursuit of them.
- 15.2 Any waiver to be effective must be in writing and must be signed by a director or other duly authorised officer of the party granting the waiver.
- 15.3 The remedies contained in this clause are without prejudice to and in addition to any warranties, indemnities, remedies, or other rights provided by law or under any other provision of this Agreement for the benefit of the purchaser.

## **16 SEVERABILITY**

If any part of this Agreement is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful, or unenforceable, then such part will be severed from the remainder of this Agreement which will continue to be valid and enforceable to the fullest extent permitted by law.

## **17 DISPUTE RESOLUTION**

17.1 The purchaser and the Tenderer shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between the parties under or in connection with this Agreement.

17.2 If after thirty (30) days from the commencement of such informal negotiations the parties have been unable to amicably resolve the dispute, the dispute shall be referred by either party to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an arbitrator, the arbitrator shall be appointed by the chairman of the Chartered Institute of Arbitrators, Kenya Chapter, on the request of the applying party.

17.2 The arbitration shall be carried out in accordance with the provisions of the Arbitration Act, 1995, or any statutory modifications or enactments in replacement thereof.

## **18 EXTRAORDINARY COMMERCIAL COSTS AND CORRUPT AND FRAUDULENT PRACTICES**

18.1 The Tenderer represents that the Agreement has not, does not or shall not give rise to the collection of Extraordinary Commercial Costs.

18.2 For the purposes of sub-clause 18.1 "Extraordinary Commercial Costs" shall mean any commission not mentioned in the Agreement or which does not result from an independent and valid agreement referring to the Agreement, any commission which is not in consideration of an effective legitimate service, any commission to be paid in a tax haven, any commission paid to a beneficiary which is ambiguously identified or to a company that could be considered a sham company.

18.3 The purchaser shall assume that the Tenderer has observed the highest standard of ethics during the procurement process and execution of this Agreement. In pursuance of this policy, the purchaser—

18.3.1 defines, for the purposes of this provision, the terms set forth below as follows—

- (a) “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in the execution of this Agreement; and
- (b) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the purchaser, and includes collusive practice among bidders (prior or after submission of tenders) designed to establish tender prices at artificial non-competitive levels and to deprive the purchaser of the benefits of free and open competition;

18.3.2 will reject a proposal for award if it determines that the Tenderer has engaged in corrupt or fraudulent practices in competing to provide the equipment to which this Agreement relates;

18.3.3 will declare a supplier ineligible, either indefinitely or for a stated period of time, to be awarded any contract if it at any time determines that the Tenderer has engaged in corrupt or fraudulent practices in competing for, or in executing, this Agreement.

## 19 GOVERNING LAW AND JURISDICTION

19.1 This Agreement shall be governed by and construed in accordance with the law of Kenya for the time being.

19.2 The Courts of Kenya shall have exclusive jurisdiction over all matters arising out of or pursuant to this Agreement.

## 20 ENTIRE UNDERSTANDING

- 20.1 This Agreement is the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Agreement and supersedes all previous communications, representations, and other arrangements, oral or written. The parties acknowledge that no reliance is placed on any representation made but not embodied in this Agreement.
- 20.2 Subject to the provisions of any Act of Parliament for the time being in force, the parties may expressly agree in writing any variation in the provisions hereof, PROVIDED that unless expressly so agreed no such agreement shall constitute or be construed as a general waiver of any of the provisions hereof by any of the parties and the rights and obligations of the parties hereunder shall remain in full force and effect notwithstanding any variation agreed between the parties on any particular occasion.
- 20.3 Notwithstanding any provision of this Agreement, no amendment to any provision hereof shall be effective unless such amendment has first been approved by both UTaNRMP and the IFAD.

## 21 NOTICES

- 21.1 All notices to be given under this Agreement shall be in writing and shall be sent to the address of the recipient party shown below or such other address as the recipient party may designate by notice given in accordance with clause 21.
- 21.2 Notices may be delivered personally, by pre-paid registered letter, facsimile transmission, or by electronic mail. Notices shall be deemed to have been received—
- 21.2.1 by hand delivery – at the time of delivery;
- 21.2.2 by pre-paid registered letter – ten (10) clear days after the date of mailing not including the date of mailing.

21.2.3 by facsimile transmission, or electronic mail – immediately on transmission provided that if the date and time of dispatch is not during normal business hours on a business day, it shall be deemed to have been received at the time of the opening of normal business hours on the next following business day.

21.3 The addresses of the parties shall be as follows—

a) **Upper Tana Natural Resources Management Project**

Embu-Meru Road

P. O. Box 996-60100

**EMBU**

Telephone: +254 -068-2231376

E-mail: utanrmp@gmail.com

b) **NAME OF TENDERER AND THEIR ADDRESSES**

## **22 MISCELLANEOUS PROVISIONS**

22.1 The Tenderer shall not, without the prior written consent of the purchaser, disclose the Agreement, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the Tenderer in the performance of the Agreement.

22.2 The Tenderer shall not, without the prior written consent of the purchaser, make use of any document or information enumerated in sub-clause 22.1 above.

22.3 The documents enumerated in sub-clause 22.1 shall remain the property of the purchaser, and all copies of such documents shall be returned to the purchaser, if so required by the purchaser, on completion of the Tenderer's performance under the Agreement.

IN WITNESS WHEREOF this agreement has been duly executed by the parties hereto, the day and year first hereinabove mentioned.

**SCHEDULE ONE (1)**

**THE GOODS**

**THE GOODS SHALL REFER TO MOTOR CYCLES- TENDER NO. ....DETAILS OF WHICH ARE SET OUT BELOW—**

**SIGNED BY:**

**NAME: AUTHORIZED. PERSON..... DATE.....**

**PROJECT COORDINATOR-UTANRMP**

**DULY AUTHORISED FOR AND ON BEHALF OF UTANRMP**

**IN THE PRESENCE OF:**

**COMMON SEAL (COMPANY SEAL)**

**NAME..... SIGNATURE .....**

**AND**

**NAME ..... .DATE.....**

**CHIEF EXECUTIVE OFFICER/AUTHORIZED REPRESENTATIVE - NAME OF TENDERER**

**.....DATE .....**

**IN THE PRESENCE OF:**

**NAME..... SIGNATURE .....**

**COMMON SEAL (COMPANY SEAL) OF**

**NAME OF TENDERER**