



**KENYA ELECTRICITY GENERATING COMPANY LIMITED**

**KGN-FUEL-04-2017**

**TENDER FOR SUPPLY FOR SUPPLY AND DELIVERY OF HEAVY FUEL OIL TO KIPEVU 1  
and III POWER STATIONS FOR KENYA ELECTRICITY GENERATING COMPANY.**

**(CONSIGNMENT STOCKING)**

**Kenya Electricity Generating Company Limited  
Stima Plaza Phase III, Kolobot Road, Parklands  
P.O. BOX 47936-00100  
NAIROBI.**

**Website: [www.kengen.co.ke](http://www.kengen.co.ke)**

**April, 2017**

*Tender for Supply of Heavy Fuel Oil to KenGen Kipevu I & III Power Stations*

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**SECTION I:**  
**INVITATION TO TENDER**

The Company invites sealed tenders from eligible candidates a for the Supply and Delivery of Heavy Fuel Oil to Kipevu I and III for a period of two years ( **One year renewable for another one year upon mutual agreement by both parties**) on **consignment stocking basis**. The specifications are detailed in the Tender Document. Interested eligible candidates may obtain further information from and inspect the Tender Documents during official working hours starting at the date of advert at the office of:

Supply Chain Director

Tel: (254) (020) 3666000

Email: [tenders@kengen.co.ke](mailto:tenders@kengen.co.ke); [tjau@kengen.co.ke](mailto:tjau@kengen.co.ke) , [kmutai@kengen.co.ke](mailto:kmutai@kengen.co.ke)

Where the tender document may be collected upon payment of a non-refundable fee of **KShs. 1, 000.00** paid in cash or through a bankers cheque at any KenGen finance office. The document can also be viewed and downloaded from the website [www.kengen.co.ke](http://www.kengen.co.ke) and [www.suppliers.treasury.go.ke](http://www.suppliers.treasury.go.ke). Bidders who download the tender document from the website **are advised to forward their particulars to facilitate any subsequent tender clarifications and addenda**. Downloaded documents are free of charge. Bidders are advised from time to time to be checking the website for any uploaded further information on this tender. They are also advised to be keen on the information provided under the “tender data sheet” and the “Special conditions of the contract” sections.

Tenders must be accompanied by a Tender Securing Declaration Form, duly filled, signed and stamped and must be submitted in a plain sealed envelope and marked “**Tender for Supply and Delivery of Heavy Fuel Oil to Kipevu I and III**” and addressed to:

**Company Secretary & Legal Affairs Director**  
**Kenya Electricity Generating Company Limited**  
**7<sup>th</sup> Floor, Stima Plaza Phase III**  
**Kolobot Road, Parklands**  
**P O Box 47936 - 00100**  
**NAIROBI, KENYA**

**Tenders must be dropped in the tender box located on the ground floor of Stima plaza iii on or before: Thursday, 15<sup>th</sup> May, 2017 at 10.00am**

There will be a mandatory site visit on **Wednesday 9<sup>th</sup> May 2017** at Kipevu Power Station at 10.00 am.

Tenders will be opened on **Thursday, 15<sup>th</sup> May, 2017 at 10.30am** in the presence of the candidates’ representatives who choose to attend at Stima Plaza III, Executive Committee Room, 7<sup>th</sup> Floor.

**SUPPLY CHAIN DIRECTOR**

*Tender for Supply of Heavy Fuel Oil to KenGen Kipevu I & III Power Stations*

## SECTION II:

### INSTRUCTIONS TO TENDERERS Table of Clauses

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## 2.1 Eligible Tenderers

- 2.1.1 This Invitation for Tenders is open to all tenderers eligible as described in the Invitation to Tender. Successful tenderers shall complete the supply of goods by the intended completion date specified in the Schedule of Requirements (Section VI).
- 2.1.2 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.
- 2.1.3 Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring entity 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.
- 2.1.4 Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices.

## 2.2 Eligible Goods

- 2.2.1 All goods to be supplied under the contract shall have their origin in eligible source countries.
- 2.2.2 For purposes of this clause, "origin" means the place where the goods are mined, grown, or produced. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially-recognized product results that is substantially different in basic characteristics or in purpose or utility from its components
- 2.2.3 The origin of goods is distinct from the nationality of the tenderer.

## 2.3 Cost of Tendering

- 2.3.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the procuring entity, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 2.3.2 The price to be charged for the tender document collected from the Procuring Entity shall not exceed Kshs.1,000/= . Downloaded copies are free of charge.
- 2.3.3 All firms found capable of performing the contract satisfactorily in accordance with the set prequalification criteria shall be prequalified.

## 2.4. The Tender Document

- 2.4.1 The tender document comprises the documents listed below and addenda issued in accordance with clause 2.6 of these instructions to Tenderers
  - (i) Invitation to Tender
  - (ii) Instructions to tenderers

- (iii) General Conditions of Contract
- (iv) Special Conditions of Contract
- (v) Schedule of requirements
- (vi) Technical Specifications
- (vii) Tender Form and Price Schedules
- (viii) Tender Security Form
- (ix) Contract Form
- (x) Performance Security Form
- (xi) Manufacturer's Authorization Form
- (xii) Confidential Business Questionnaire

2.4.2 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.

## 2.5 Clarification of Documents

2.5.1 A prospective tenderer requiring any clarification of the tender document may notify the Procuring entity in writing or by post at the entity's address indicated in the Invitation to Tender. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives not later than **seven (7) days prior to the deadline for the submission of tenders**, prescribed by the procuring entity. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers that have received the tender document.

2.5.2 The procuring entity shall reply to any clarifications sought by the tenderer **within 3 days** of receiving the request to enable the tenderer to make timely submission of its tender.

## 2.6 Amendment of Documents

2.6.1 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.

2.6.2 All prospective candidates that have received the tender documents will be notified of the amendment in email and will be binding on them.

2.6.3 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.

## 2.7 Language of Tender

2.7.1 The tender prepared by the tenderer, as well as all correspondence and documents relating to the tender exchange by the tenderer and the Procuring entity, shall be written in English

language, provided that any printed literature furnished by the tenderer may be written in another language provided they are accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the tender, the English translation shall govern.

## **2.8 Documents Comprising of Tender**

2.8.1 The tender prepared by the tenderers shall comprise the following components:

- (a) a Tender Form and a Price Schedule completed in accordance with paragraph 2.9, 2.10 and 2.11 below
- (b) documentary evidence established in accordance with paragraph 2.1 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 2.2 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 2.14

## **2.9 Tender Forms**

2.9.1 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.

## **2.10 Tender Prices**

2.10.1 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

2.10.2 Prices indicated on the Price Schedule shall include all costs including taxes, insurances and delivery to the premises of the entity.

2.10.3 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 2.22

2.10.4 The validity period of the tender shall be **90 days after** the date of opening of the tender.

## **2.11 Tender Currencies**

2.11.1 Prices shall be quoted in Kenya Shillings unless otherwise specified in the Appendix to Instructions to Tenderers.

## **2.12 Tenderers Eligibility and Qualifications**

2.12.1 Pursuant to paragraph 2.1. The tenderer shall furnish, as part of its

Tender, documents establishing the tenderers eligibility to tender and Its qualifications to perform the contract if it's tender is accepted.

- 2.12.2 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 2.1
- 2.12.3 The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall be established 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 Tenderer's maintenance, repair, and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.

### **2.13 Goods Eligibility and Conformity to Tender Documents**

- 2.13.1 Pursuant to paragraph 2.2 of this section, 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
- 2.13.2 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.
- 2.13.3 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 characteristic of the goods;
  - (b) a list giving full particulars, including available source 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 (*if applicable*); and
  - (c) a clause-by-clause commentary on the Procuring entity's Technical Specifications demonstrating substantial responsiveness of the goods and service to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.
- 2.13.4 For purposes of the documentary evidence to be furnished pursuant to paragraph 2.13.3(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 Procurement 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 Procurement entity's satisfaction that the



substitutions ensure substantial equivalence to those designated in the Technical Specifications.

## **2.14 Tender Security**

2.14.1 The tenderer shall furnish, as part of its tender, a tender security for the amount specified in the Appendix to Invitation to Tenderers.

2.14.2 The tender security shall be in the amount as specified in the appendix to instruction to tenderers

2.14.3 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 2.14.7

2.14.4 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form of an on-demand bank guarantee issued by a reputable bank located in Kenya or where the bank is located abroad, it must have a local correspondent bank.

The Tender Security may also be in the form of an on-demand guarantee issued by a reputable insurance company approved by the Authority and in the form provided in the tender documents or another form acceptable to the Procuring entity.

The tender security must be valid for at least thirty (30) days beyond the validity of the tender.

2.14.5 Any tender not secured in accordance with paragraph 2.14.1 and 2.14.3 will be rejected by the Procuring entity as non-responsive, pursuant to paragraph 2.22

2.14.6 Unsuccessful Tenderer's tender security will be discharged or returned as promptly as possible, but not later than thirty (30) days after the expiration of the period of tender validity prescribed by the Procuring entity.

2.14.7 The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 2.27 and furnishing the performance security, pursuant to paragraph 2.28

2.14.8 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 2.27

or

(ii) to furnish performance security in accordance with paragraph 2.28

## **2.15 Validity of Tenders**

2.15.1 Tenders shall remain valid for **90 days after** the date of tender opening prescribed by the Procuring entity, pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the Procuring entity as non-responsive.

2.15.2 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 2.14 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.

## **2.16 Format and Signing of Tender**

2.16.1 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.

2.16.2 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.**

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

## **2.17 Sealing and Marking of Tenders**

2.17.1 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.

2.17.2 The inner and outer envelopes shall:

(a) be addressed to the Procuring entity at the address given in the Invitation to Tender:

(b) bear, tender number and name in the Invitation for Tenders and the words, “DO NOT OPEN BEFORE,” **15<sup>th</sup> May 2017 at 10.00am**

2.17.3 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”.

2.17.4 If the outer envelope is not sealed and marked as required by paragraph 2.17.2, the Procuring entity will assume no responsibility for the tender’s misplacement or premature opening.

## **2.18 Deadline for Submission of Tenders**

2.18.1 Tenders must be received by the Procuring entity at the address specified under paragraph 2.17.2 no later than **15<sup>th</sup> May 2017 at 10.00**

2.18.2 The Procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 2.6, in which case all rights and obligations of the Procuring entity and candidates previously subject to the deadline will therefore be subject to the deadline as extended

## **2.19 Modification and Withdrawal of Tenders**

- 2.19.1 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.
- 2.19.2 The Tenderer's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 2.17. A withdrawal notice may also be sent by cable, telex but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.
- 2.19.3 No tender may be modified after the deadline for submission of tenders.
- 2.19.4 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 2.14.7
- 2.19.5 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 2.19.6 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

## **2.20 Opening of Tenders**

- 2.20.1 The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, at **10.30am ,15<sup>th</sup> May 2017** and in the location specified in the Invitation to Tender.

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

- 2.20.2 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.
- 2.20.3 The Procuring entity will prepare minutes of the tender opening.

## **2.21 Clarification of Tenders**

- 2.21.1 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.

2.21.2 Any effort by the tenderer to influence the Procuring entity in the Procuring entity's tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderers' tender.

## **2.22 Preliminary Examination**

2.22.1 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.

2.22.2 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 the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security forfeited. If there is a discrepancy between words and figures the amount in words will prevail

2.22.3 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.

2.22.4 Prior to the detailed evaluation, pursuant to paragraph 2.23 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.

2.22.5 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 non-conformity.

## **2.23 Conversion to Single Currency**

2.23.1 Where other currencies are used, the procuring entity will convert these currencies to Kenya Shillings using the selling exchange rate on the date of tender closing provided by the Central Bank of Kenya.

## **2.24 Evaluation and Comparison of Tenders**

2.24.1 The Procuring entity will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.22

2.24.2 The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.

2.24.3 A tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

## **2.25 Preference**

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

## **2.26 Contacting the Procuring entity**

2.26.1 Subject to paragraph 2.21 no tenderer shall contact the Procuring entity on any matter related to its tender, from the time of the tender opening to the time the contract is awarded.

2.26.2 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.

## **2.27 Award of Contract**

### **(a) Post-qualification**

2.27.1 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.

2.27.2 The determination will take into account the tenderer financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 2.12.3 as well as such other information as the Procuring entity deems necessary and appropriate.

2.27.3 A positive 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.

### **(b) Award Criteria**

2.27.4 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.

### **(c) Procuring entity's Right to Vary quantities**

2.27.5 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

### **(d) Procuring entity's Right to accept or Reject any or All Tenders**

2.27.6 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

## **2.28 Notification of Award**

- 2.28.1 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.
- 2.28.2 The notification of award will constitute the formation of the Contract but will have to wait until the contract is finally signed by both parties
- 2.28.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 2.28, the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.14

## **2.29 Signing of Contract**

- 2.29.1 At the same time as the Procuring entity notifies the successful tenderer that its tender has been accepted, the Procuring entity will send the tenderer the Contract Form provided in the tender documents, incorporating all agreements between the parties.
- 2.29.2 The parties to the contract shall have it signed within **fifteen (15) days** from the date of notification of contract award unless there is an administrative review request.
- 2.29.3 Within **fifteen (15) days** of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to the Procuring entity.

## **2.30 Performance Security**

- 2.30.1 Within **fifteen (15) days** of the receipt of notification of award from the Procuring entity, the successful tenderer shall furnish the performance security in accordance with the Conditions of Contract, in the Performance Security Form provided in the tender documents, or in another form acceptable to the Procuring entity.
- 2.30.2 Failure of the successful tenderer to comply with the requirements of paragraph 2.27 or paragraph 2.28 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.

## **2.31 Corrupt or Fraudulent Practices**

- 2.31.1 The Procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts when used in the present regulations, the following terms are defined 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;

2.31.2 The procuring entity will reject a proposal for award if it determines that the tenderer recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question.

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

### Appendix to 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

INSTRUCTIONS TO TENDERERS REFERENCE	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
Eligibility	Only registered suppliers who meet the tender requirements are eligible.
Clarification Request	Bidders must send request for clarification to <a href="mailto:tenders@kengen.co.ke">tenders@kengen.co.ke</a> and copy to <a href="mailto:tnjau@kengen.co.ke">tnjau@kengen.co.ke</a> . This must be received not less than 5days prior to tender closure.
Tender Security	<i>Must submit the <b>Tender Security</b> in the amount of (Kshs 10,000,000.00 to be furnished in the form of Cash, Bank guarantee, or through approved insurance companies</i>
Tender Closing date	<i>The tender will close on <b>15<sup>th</sup> May 2017 at 10.30 am</b></i>
Tender validity	<i>Tender validity is 90days</i>
Evaluation requirements	<p>a) <u>Mandatory Evaluation Criteria</u>            Bidders Must submit the following ;</p> <ol style="list-style-type: none"> <li>1) Certificate of Registration/incorporation in Kenya</li> <li>2) Audited financial statement for the last two years (2014, 2015). (KenGen may at its discretion confirm the authenticity of the document with KRA. Financial statements should be those of the bidding firm and financial statements of related companies will not be considered. The Accounts shall be used to determine the following:-</li> <li>3) Duly completed Price Schedule (The price quoted <b>must be in the format provided and no other</b> – Failure to comply to this requirement shall be <b>considered a non- compliance and lead to disqualification</b>)</li> <li>4) Duly Completed Tender Submission Form</li> <li>5) Tender security in the stipulated amount</li> </ol>

	<p>6) Copy of a valid Tax compliance certificate from KRA</p> <p>7) Copy of a valid Energy Regulatory Commission (ERC) License authorizing the supplier to trade in Fuels. KenGen will at its discretion confirm authenticity of the documents with ERC.</p> <p>8) Evidence of site visit</p> <p>9) Duly signed , filled and stamped Mandatory confidential business questionnaire ( KenGen may at its discretion make a site visit to ascertain the physical location of the bidder)</p> <p><b>b) <u>Technical Evaluation Criteria</u></b></p> <p>10) Financial capacity</p> <ul style="list-style-type: none"> <li>- Minimum average annual turnover of Ksh.3,000,000,000.00 (Ksh <math>\geq</math> 3 billion)</li> <li>- Current ratio must <math>\geq</math> 1</li> <li>- Acid test ratio must <math>\geq</math> 0.5</li> <li>- Positive closing cash balance on cash flow statement.</li> <li>- Where the above financial capability is not met , the bidders MUST provide Letter(s) of support specific to this tender from reputable bank(s)</li> </ul> <p>11) Documentary evidence of additional storage capacity for HFO equivalent to a minimum of 10,000,000 Litres with pipeline infrastructure for the transportation of HFO to Kipevu Plant / Station.</p> <p>12) Documentary evidence of Pipeline arrangement and or other pumping logistics necessary for usage of Pipeline for pump- over to Kipevu Station</p> <p>13) Bidders must sign the Technical Specifications sheet indicating compliance.</p> <p>14) Submission of Risk Mitigation Plan</p> <p>15) Submission of Quality Assurance Policy</p> <p>Only bidders who fulfil the above requirements will be considered for financial evaluation.</p> <p><b>c) <u>Financial Evaluation Criteria</u></b></p> <p>16) The most competitive financial proposals shall be considered for the award.</p>
2.27.5	<p>Procuring entity's Right to mitigate risk of supply through not award to a single bidder</p> <p>In order to spread the Purchasers risks, the award for the tenders for Kipevu I and III will not necessarily be awarded to a single bidder. Where the most competitive bidder is the same for both stations, the</p>



2.27.7	<p>second most competitive bidder may be awarded the bid for one station subject to successful negotiations based on the lowest bidder's offer.</p> <p><i>KenGen may at its own discretion conduct due diligence on the eligible bidders to establish their ability to perform the contract.</i></p>
Corruption & Fraudulent Practice	<p>KenGen adheres to high standards of integrity in its business operations. Report any unethical behavior immediately to the provided anonymous hotline service.  Call Toll Free: 0800722626 2)  Free Fax: 00800 007788  Email: <a href="mailto:kengen@tip-offs.com">kengen@tip-offs.com</a> , Website: <a href="http://www.tip-offs.com">www.tip-offs.com</a></p>

**SECTION III:**  
**GENERAL CONDITIONS OF CONTRACT**

**Table of Clauses**

- 3.1 Definitions
- 3.2 Application
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**3.1 Definitions**

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

- (a) “The Contract” means the agreement entered into between the 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) “The Procuring entity” means the organization purchasing the Goods under this Contract.
- (e) “The Tenderer” means the individual or firm supplying the Goods under this Contract.

## 3.2 **Application**

3.2.1 These General Conditions shall apply in all Contracts made by the Procuring entity for the procurement installation and commissioning of equipment

## 3.3 **Country of Origin**

3.3.1 For purposes of this clause, "Origin" means the place where the Goods were mined, grown or produced.

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

## 3.4 **Standards**

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

## 3.5 **Use of Contract Documents and Information**

3.5.1 The tenderer shall not, without the Procuring entity's prior written consent, disclose the Contract, or any provision therefore, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring entity in connection therewith, to any person other than a person employed by the tenderer in the performance of the Contract.

3.5.2 The tenderer shall not, without the Procuring entity's prior written consent, make use of any document or information enumerated in paragraph 3.5.1 above

3.5.3 Any document, other than the Contract itself, enumerated in paragraph 3.5.1 shall remain the 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

## 3.6 **Patent Rights**

3.6.1 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 the Procuring entity's country

## 3.7 **Performance Security**

3.7.1 Within **fifteen (15) days** of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the performance security in the amount specified in Special Conditions of Contract.

3.7.2 The proceeds of the performance security 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.

3.7.3 The performance security 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.

3.7.4 The performance security 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

## 3.8 **Inspection and Tests**

3.8.1 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.

- 3.8.2 The inspections and tests may be conducted in 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.
- 3.8.3 Should any inspected or tested goods fail to conform to the Specifications, the Procuring entity may reject the equipment, and the tenderer shall either replace the rejected equipment or make alterations necessary to make specification requirements free of costs to the Procuring entity.
- 3.8.4 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 equipment having previously been inspected, tested and passed by the Procuring entity or its representative prior to the equipment delivery.
- 3.8.5 Nothing in paragraph 3.8 shall in any way release the tenderer from any warranty or other obligations under this Contract.
- 3.9 Packing**
- 3.9.1 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.
- 3.9.2 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
- 3.10 Delivery and Documents**
- 3.10.1 Delivery of the Goods shall be made by the tenderer in accordance with the terms specified by Procuring entity in its Schedule of Requirements and the Special Conditions of Contract
- 3.11 Insurance**
- 3.11.1 The Goods supplied under the Contract shall be fully insured against loss or damage incidental to manufacturer or acquisition, transportation, storage, and delivery in the manner specified in the Special conditions of contract.
- 3.12 Payment**
- 3.12.1 The method and conditions of payment to be made to the tenderer under this Contract shall be specified in Special Conditions of Contract
- 3.12.2 Payments shall be made promptly by the Procuring entity as specified in the contract
- 3.13 Prices**
- 3.13.1 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.
- 3.13.2 Contract price variations shall not be allowed for contracts not exceeding one year (12 months)
- 3.13.3 Where contract price variation is allowed, the variation shall not exceed 25% of the original contract price.
- 3.13.4 Price variation request shall be processed by the procuring entity within 30 days of receiving the request.
- 3.14. Assignment**
- 3.14.1 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
- 3.15 Subcontracts**

3.15.1 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

### **3.16 Termination for default**

3.16.1 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

3.16.2 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, equipment similar to those undelivered, and the tenderer shall be liable to the Procuring entity for any excess costs for such similar goods.

### **3.17 Liquidated Damages**

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

### **3.18 Resolution of Disputes**

3.18.1 The procuring entity and the tenderer shall make every effort to resolve amicably by direct informal negotiation and disagreement or dispute arising between them under or in connection with the contract

3.18.2 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 or international forum, and/or international arbitration.

### **3.19 Language and Law**

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

### **3.20 Force Majeure**

3.20.1 The tenderer shall not be liable for forfeiture of its performance security or termination for default if and to the extent that it's delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

### **3.21 Taxes**

3.21.1 "Taxes" means all present and future taxes, levies, duties, charges, assessments, deductions or withholdings whatsoever, including any interest thereon, and any penalties and fines with respect thereto, wherever imposed, levied, collected, or withheld pursuant to any regulation having the force of law and "Taxation" shall be construed accordingly.

### **3.21.2 Local Taxation**

Nothing in the Contract shall relieve the Contractor and/or his Sub-Contractors from their responsibility to pay any taxes, statutory contributions and levies that may be levied on them in Kenya in respect of the Contract. The Contract Price shall include all applicable taxes and shall not be adjusted for any of these taxes.

3.21.3 The Contractor shall be deemed to be familiar with the tax laws in the Employer's Country and satisfied themselves with the requirements for all taxes, statutory contributions and duties to which they may be subjected during the term of the Contract.

3.21.4 In instances where discussions are held between the Employer and the Contractor regarding tax matters, this shall not be deemed to constitute competent advice and hence does not absolve the Contractor of their responsibility in relation to due diligence on the tax issue as per 3.21.2 above.

### **Tax Deduction**

3.21.5 If the Employer is required to make a tax deduction by Law, then the deduction shall be made from payments due to the Contractor and paid directly to the Kenya Revenue Authority. The Employer shall upon remitting the tax to Kenya Revenue Authority furnish the Contractor with the relevant tax deduction certificates.

3.21.6 Where the Contractor is paid directly by the Financiers and the Employer is not able to deduct tax, then the Contractor will be required to pay the tax deduction to Kenya Revenue Authority in the name of the Employer and furnish the Employer with an original receipt thereof as evidence of such payment. In absence of the said evidence, the Employer will not process any subsequent payments to the Contractor.

### **Tax Indemnity**

3.21.7 The Contractor shall indemnify and hold the Employer harmless from and against any and all liabilities, which the Employer may incur for any reason of failure by the Contractor to comply with any tax laws arising from the execution of the Contract whether during the term of the Contract or after its expiry.

3.21.8 The Contractor warrants to pay the Employer (within fourteen (14) days of demand by the Employer), an amount equal to the loss, liability or cost which the Employer determines has been (directly or indirectly) suffered by the Employer for or on account of the Contractor's Tax liability arising from the Contract.

3.21.9 Where the amount in 3.21.8 above remains unpaid after the end of the fourteen (14) days moratorium, the Employer shall be entitled to compensation for financing charges.

## SECTION IV:

### SPECIAL CONDITIONS OF CONTRACT

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

4.2 Special conditions of contract as relates to the GCC

REFERENCE OF GCC	SPECIAL CONDITIONS OF CONTRACT
3.7	<p>The contract duration shall be for <b>One year renewable for a further one year upon mutual agreement by both parties</b> for <b>Kipevu I and Kipevu III from the Commencement Date.</b></p> <p>The Commencement Date of this Contract shall be <b>1<sup>st</sup> July 2017.</b></p>
3.7.5	<p>The performance security shall be for <b>Kshs. 100 Million for Kipevu I</b> and <b>Kshs. 150 Million for Kipevu III</b> and shall be in the form of a bank guarantee as outlined in Section J of this document. Supplier shall remit the performance security to Purchaser <b>15 days</b> after receipt of the Notification of award, prior to signing of Contract award, as requested in Purchaser's bid invitation.</p> <p>The performance security shall be for the period of the term of the Contract plus two (2) months.</p> <p>The Supplier would be requested to extend his Performance Security if the Contract is extended.</p>
3.7.6	<p><i>KenGen shall not be required to demonstrate the loss it has suffered</i></p>
3.12.3	<p>Payments shall be within 60 days after presentation of invoice.</p>
3.17.1	<p style="text-align: center;"><b>SUPPLIER'S DEFAULT</b></p> <p><b>a. Failure of the Supplier to Deliver Contracted Fuel at Site</b></p> <p style="padding-left: 40px;"><b>(i)</b> Should there be delays in deliveries, to the extent the Supplier fails to deliver Fuel and maintain adequate stocks at the Purchaser tanks and the consequent to that, the Purchaser Power Plants cannot generate electricity, the Supplier shall pay to the Purchaser an amount equal to <b>Kshs. 2.5 Million</b>, per day in respect to the <b>60MW plant (Kipevu I)</b>, and <b>Kshs. 7 Million</b> per day in respect to the <b>115 MW Diesel Power Plant (Kipevu III).</b></p>

	<p>(ii) If the fuel stocks are below minimum levels for 7 days and delay of the delivery of fuel continues beyond three days, the Purchaser shall be entitled to procure fuel from an alternative supplier other than the Supplier.</p> <p>(iii) In such event, the Supplier shall pay to the Purchaser the difference of the cost incurred by the Purchaser in procuring the fuel from an alternative supplier and the cost the Purchaser would have paid the Supplier for the same quantity of fuel.</p> <p>Should the Supplier stocks be below zero and the Supplier fails to supply by the tenth day of delay, Purchaser will have the right to call the performance bond and terminate the supply contract without any liabilities to Purchaser.</p> <p><b>b. Claims for compensation</b></p> <p>i. Purchaser shall be entitled to submit a claim for payment under the GCC of the contract as soon as the circumstances giving rise to its right for indemnification occur.</p> <p>ii. Any amounts to be paid by the Supplier to Purchaser in accordance with the above, may be deducted by Purchaser from any payment then due by it to the Supplier or if there are no payments due, such amounts shall be paid by the Supplier to Purchaser on a weekly basis, in the case of liquidated damages. Purchaser shall be entitled, in case of non-payment by the Supplier, to enforce the Supplier's Performance Bond in the relevant amount.</p> <p>If there shall be a Dispute relating to compensation, the Dispute resolution procedure specified in the GCC shall apply, and either Party (without prejudice to the right of Purchaser to enforce the Supplier's Performance Bond) may refer the matter thereto.</p> <p>iii. Notwithstanding this provision, claims arising from use of off specification HFO in power generation will be met by Supplier, provided that such off specifications HFO is ascertained by an Expert appointed by all parties. Defaulting party will meet the cost of the Expert.</p>
3.18.3	<i>Arbitration where necessary shall be by the Chartered Institute of Arbitrators Kenya Chapter</i>





## SECTION V:

### SCHEDULE OF REQUIREMENTS

Supplier shall deliver the **Heavy Fuel Oil (HFO)** to designated points in the Power Plants at Kipevu, Mombasa, Kenya.

#### **TYPE OF PRODUCT AND QUALITY**

Supplier shall meet the **Heavy Fuel Oil (HFO)** needs of KenGen as indicated hereafter, meeting the Specification at Delivery Point, as indicated in Section E.

#### **QUANTITY AND PERIOD OF SUPPLY**

The quantity of **HFO** covered under this Contract is approximately **cubic metres (M<sup>3</sup>) 3,500 per month For Kipevu I and 6,000 per month for Kipevu III.**

These are quantities based on the average consumption for the last five months and not firm quantities, and will vary from month to month depending on demand for the power plant by the Kenya Power and Lighting Company.

For purposes of evaluation and invoicing, the standard conversion factors, for HFO, to convert volume measures into weight shall be, 1,073 litres per metric ton at 20<sup>C</sup>.

#### **ORDERS FOR DELIVERIES**

##### (a) Transition

The stock balances in the tank at the beginning of the contract shall be utilized first. The Supplier shall be expected to build up the stocks to maintain minimum stock levels so as to ensure that at any given time at the commencement of the contract, the stock levels shall not fall below the minimum stock.

At the end of this contract the Parties will undertake a final dipping and the Supplier will invoice the Purchaser for the total stocks established at the delivery price.

- (b) The orders for deliveries shall be on consignment stocking. KenGen will only be billed for the fuel when it is removed from the tanks and only for the actual quantity taken.
- (c) The supplier shall provide the purchaser daily stock balance reports for the site under this contract. (The contract is under consignment stocking and the storage facilities have been provided by the purchaser. The responsibility of ownership passes from supplier to the purchaser immediately it passes from tank 1A & 1B.
- (d) The purchaser shall provide storage facilities to the Supplier to maintain adequate stocks of fuel as follows.
  - **Kipevu I: 9,000 M3 Minimum Stocks 2000 MT**
  - **Kipevu III: 14,000 M3 Minimum Stocks 6280 MT.**

**Failure to maintain the minimum stocks shall attract a penalty of Kshs. 100 per MT per day, for the quantity below minimum**

The supplier from time to time determines what quantity of stocks to deliver in order to maintain adequate stocks for purchaser use.

- (f) As and when the plant will be operating the supplier shall deliver fuel through the existing piping system to the generating plant. During the delivery/pump over the supplier or his representative shall be at site throughout the delivery process
- (g) At the end of each month there shall be a joint reading of the tanks and the month's usage shall be determined by the opening stocks, plus the deliveries into the tank less the closing stocks
- (h) The supplier shall invoice the purchaser the amount jointly determined

**VERIFICATION AND MEASUREMENT**

**(a) Quality of HFO**

Supplier shall guarantee fuel quality delivered to Site as specified in Table 1 of Section E of this Contract and shall provide quality test certificate of the fuel in advance of the pump-over for acceptance by Purchaser. Quality testing shall be conducted by a qualified independent laboratory acceptable to the purchaser. The supplier shall bear costs of the testing.

For any vessel for imported fuel, the fuel specification will be approved by the Purchaser before imports. The Purchaser will carry out an independent test on the fuel upon the vessel docking, the supplier will be obligated to pay the purchaser and maximum of Usd 500 for each vessel analysis carried by the purchaser in an independent laboratory.

Simultaneously three samples drawn from the supply tanks one from the bottom the second from the middle and the third from top of the tank shall be forwarded to the Purchaser. On delivery three samples shall be jointly drawn, from the Receiving storage tanks, for further quality test certification by the Purchaser.

**(b) Rejection of off specification HFO**

The Purchaser will not accept any fuel that is out of specification. If Purchaser rejects any fuel found to be off specification the Supplier shall promptly remove such fuel from line up for pump-over and make immediate arrangement for HFO which meets quality specifications, to ensure minimum disruption to power generation. Failure to generate as a result of non-availability of specification fuel will attract liquidated damages as specified in the Special Condition of Contract.

**(c) Measurement of Quantity of Fuel Supplied at delivery Point**

Quantity of fuel, supplied to the receiving storage tanks at Kipevu Station, shall be measured by means of dipping, jointly carried out by Supplier and Purchaser using calibrated steel tape measure provided by the Purchaser. The tank shall be dipped before delivery and after delivery of the fuel. The quantities shall be computed using the storage tanks calibration tables to be provided by the Purchaser.

**(d) Delivery Time and Risk of Loss**

The Supplier warrants and represents to Purchaser that the Supplier shall, at any time of delivery to Purchaser that the Delivery Tanks, have good and marketable title to the Fuel sold to the

Purchaser and that Fuel, when delivered to the receiving Tanks shall be free and clear of liens and adverse claims of every kind. The Supplier shall indemnify the Purchaser against any and all such adverse claims and liens. Title and risk of loss of Fuel delivered hereunder shall pass from the Supplier to Purchaser upon passing through the Delivery Tanks.

#### **INSURANCE**

Supplier shall take out and maintain in full force and effect for the Term of this Contract, policies of insurance covering:

**Any damage, loss or destruction caused by the Fuel upstream of the Delivery Point up to a value of Kenya Shillings One billion.**

Supplier shall provide Purchaser copies of all policies taken out by Supplier and evidence that the premiums payable there under have been paid and Purchaser shall have the right to inspect the original policies at the Supplier's offices. The Supplier shall be solely responsible for and shall defend, indemnify and hold Purchaser and its agents free and harmless from any and all claims, demands, debts, damages, losses, causes of action, suits, expenses and costs arising out of or in connection with acts or omissions (whether directly or indirectly) of Supplier which result in injury or death of persons, or damage to or destruction of property (including the Fuel) or the environment caused in any way by the Fuel upstream of the Delivery Point.

#### **PRICE**

The price payable by Purchaser in US Dollars per metric ton but to be converted to Kenya Shillings shall be calculated as follows:

$$P = A + B + C + D$$

Where

**A** = Mean FOB price in US\$ of Fuel oil as quoted in the Platt's Oilgram, basis **Arabian Gulf** for the month preceding the month of consumption.

**All bidders to note this shall not be negotiable upon Contract Award**

**B** Freight charges for shipment to Mombasa for the duration of Contract, Insurance, wharfage, ocean loss and inland transportation cost.

**C** Taxes, duties and levies including but not limited to Excise Duty and Petroleum Development Levy payable to the Kenya Government.

**D** = VAT levy payable to the Kenya Government.

The rates of factors B, C and D shall remain fixed for the duration of Contract unless C and D is changed as may be published in the Kenya Gazette Notice by the Kenya Government.

All the figures in the pricing schedule shall be calculated to the **fourth** decimal.

For evaluation purposes the mean CBK exchange rate and the FOB mean of platts for March 2017 shall be applicable.

For invoicing purposes, the average CBK mean exchange rate and the FOB mean of platts the month preceding the month of consumption shall be used. (Detailed price schedule in Section VII)

In case of contract extension, the above pricing structure will continue to apply.

The rate of factor **B**, shall remain fixed for the duration of Contract unless changed as may be published in the Kenya Gazette Notice by the Kenya Government.

## **PAYMENT**

### **(a) Invoice**

The Price Confirmation schedule shall be submitted within by the 15<sup>th</sup> calendar day of the preceding invoicing month without fail.

Invoices shall be submitted within the first working day after last calendar day of the invoicing month without fail

Any delays in providing the invoices as indicated above shall attract a penalty of Kshs. 100,000.00 per day delayed.

Payment shall be made in Kenya Shillings, within 60 calendar days from the date of invoice submission by Supplier to Purchaser.

Any delays in provision of credit notes where required shall result in a similar delay in payment; for a similar period as that of delay in Credit Note provision.

### **(b) Supporting documents for invoice**

**The following documents shall be provided to support invoices for payment.**

1. Joint signed consumption certificate clearly indicating opening stocks, receipts during the month and closing stocks.
2. Copy of Platt's Oilgram (A.G).

## **PERFORMING OBLIGATIONS**

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

## **TRANSPORTATION, FACILITIES AND POINT OF DELIVERY**

### **a) Transportation of fuel**

The Supplier shall supply and deliver the contracted Fuel to the Site by existing pipeline.

## **b) Receiving Point**

The Receiving Point for Fuel shall be one of the 2 x 9000 M3 storage tanks at Kipevu Power Plant to be specified by Purchaser to which the Supplier delivers the Fuel. One each of the two tanks shall be assigned to Kipevu I and III.

## **NOTICES AND COMMUNICATIONS**

For the Purchase any Communication shall be made to the following:

Julius Odumbe  
Operations Manager - Thermal  
Email: [jodumbe@kengen.co.ke](mailto:jodumbe@kengen.co.ke)  
Tel: +254 20 366 6000, +254 711 035001

Philip Yego  
Supply Chain Director  
Email: [pyego@kengen.co.ke](mailto:pyego@kengen.co.ke)  
Telephone: 254 -203666200

## **ENVIRONMENTAL IMPACT AND MITIGATION**

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

In the absence of national regulation, the supplier shall comply with international regulations and best operating practices. The supplier shall not:

- (a) Engage in activities that create nuisance or potential risk to the adjoining land occupiers (EMCA 1999)
- (b) Cause to release of any contaminants into the atmosphere beyond legal limits (Fossil fuel emission control regulations 2006). First schedule.
- (c) Cause any spillage or waste of any contaminants or noxious substances. In case of such releases, the supplier shall bear the environmental restoration costs (EMCA 1999, Waste Regulation 2006)
- (d) Release untreated affluent (storm water) from Depot into adjoining environment (Water Quality Regulation 2006)

Supplier shall program the pump-over and ensure that fuel spillage does not occur. In the event of a spillage, the Supplier shall clean up the Site and restore it to its original condition.

**SECTION VI:  
TABLE OF TECHNICAL SPECIFICATIONS**

**Heavy Fuel Oil (HFO) Quality Specifications at Delivery Points**

<b>TEST</b>			<b>LIMITS</b>	<b>TEST METHOD</b>
				<b>ASTM</b>
<b>Density at 20<sup>o</sup>C</b>	Kg/m <sup>3</sup>	Max	<b>0.940</b>	D 1298

<b>Flash Point PMCC</b>	°C	Min	65	D 93
<b>Sulphur</b>	% w/w	Max	<b>23</b>	D 1552
<b>Pour point</b>	°C	Max	21	D 97
<b>Net Calorific value</b>	KJ/Kg	MIN	<b>41,000</b>	D 4868
<b>Water content</b>	%v	Max	0.30	D 95
<b>Carbon residue (Conradson)</b>	% w/w	Max	10	D 189
<b>Asphaltenes</b>	% w/w	Max	2/3 of Carbon	IP143/01
<b>Sediment</b>	%w/w	Max	0.15	D 473
<b>Aluminum + silica content</b>	ppm	<b>Max</b>	<b>10</b>	IP 377
<b>Vanadium</b>	ppm	Max	200	IP 288
<b>Viscosity at 50°C</b>	cSt		<b>120 to 150</b>	D 445
<b>Sodium</b>	ppm	Max	50 but less than	IP 288
<b>Ash content</b>	% w/w	Max	0.02	D 482
<b>Calcium</b>	Mg/kg	max	30	IP 470
<b>Phosphorous</b>	Mg/kg	max	15	IP 500
<b>Zinc</b>	Mg/kg	max	15	IP 470

The fuel required is a straight run HFO, cracked components in HFO shall not be permitted or accepted. The

HFO should be free from chemical contaminants and used oil.

**The Purchaser at his own discretion may accept a pour point of up to 25° degrees Centigrade.**

Acknowledgment of Specifications

We.....do hereby confirm that we shall deliver HFO as per the KenGen specification outlines above specifications.

Signed & Stamp.....

## SECTION VII:

### PRICING SCHEDULE FOR HEAVY FUEL OIL

#### KIPEVU I

<b>PRODUCT: HEAVY FUEL OIL</b>	
<b>For the month of _____</b>	<b>US \$/MT</b>
<b>A: FOB Mean of Fuel Oil Platts Arabian Gulf (For the previous Month)</b>	



<b>B: Freight per MT</b>	
<b>CNF (USD/MT)</b>	
Marine Insurance (1.003 x CNF x 0.0770%)	
War Risk (1.003 x CNF x 0.0275%)	
<b>CIF</b>	
Shore Landing @ USD 2.2+ 16% VAT and Stevedoring 1.65	
IDF fees @ 2.25% of CIF	
<b>LC charges( 1.2% of CNF)</b>	
<b>CIFLW</b>	
Administration Fees (0.25% of CIF)	
Ocean Loss (0.5% of CIFLW)	
Inspection Fees	
Merchant Shipping Levy (0.3USD/MT)	
<b>Profit margin</b>	
<b>Sub-Total (USD/MT)</b>	
Average Exchange Rate (Mean CBK for the previous Month)	
<b>Sub-Total (Kshs. Per MT)</b>	
Base cost conversion factor (MT to M <sup>3</sup> ) @ 1.073	
<b>Total cost before taxes Mombasa (Kshs/M<sup>3</sup>)</b>	
<b>C: Taxes</b>	
Add; Petroleum Development Levy Kshs 400.00 per M3	
Add; Excise Duty @ Kshs 600 per M <sup>3</sup>	
Add; Railway Development Levy (1.5% of CIF)	
<b>Sub total before VAT (Kshs/M<sup>3</sup>)</b>	
<b>D: VAT @ 16%</b>	
<b>Sub total after VAT (Kshs/M<sup>3</sup>)</b>	
<b>Net delivered price (Kshs per M<sup>3</sup>)</b>	

- The FOB mean of Platts must be supported by a copy of the Platts Oilgram average figures.
- Barrel to metric ton conversion shall be at 6.728 barrels per metric ton for HFO.
- All the figures in the pricing schedule shall be calculated to the **fourth decimal**.

**KIPEVU III**

<b>PRODUCT: HEAVY FUEL OIL</b>	
<b>For the month of _____</b>	<b>US \$/MT</b>
<b>A: FOB Mean of Fuel Oil Platts - Arabian Gulf (for the previous Month)</b>	
<b>B: Freight per MT</b>	
<b>CNF (USD/MT)</b>	
Marine Insurance (1.003 x CNF x 0.0770%)	
War Risk (1.003 x CNF x 0.0275%)	
<b>CIF</b>	
Shore Landing @ USD 2.2+ 16%VAT and Stevedoring 1.65	
IDF fees @ 2.25% of CIF	
<b>LC charges( 1.2% of CNF)</b>	
<b>CIFLW</b>	
Administration Fees (0.25% of CIF)	
Ocean Loss (0.5% of CIFLW)	
Inspection Fees	
Merchant Shipment Levy (0.3USD/MT)	
<b>Profit margin</b>	
<b>Sub-Total (USD/MT)</b>	
Average Exchange Rate (Mean CBK for the previous Month)	
<b>Sub-Total (Kshs. Per MT)</b>	
Base cost conversion factor (MT to M <sup>3</sup> ) @ 1.073	
<b>Total cost before taxes Mombasa (Kshs/M<sup>3</sup>)</b>	
<b>C: Taxes</b>	
Add; Excise Duty @ Kshs 600 per M <sup>3</sup>	
<b>Sub total before VAT (Kshs/M<sup>3</sup>)</b>	
<b>D: VAT @ 16%</b>	
Add; Petroleum Development Levy Kshs 400.00 per M <sup>3</sup>	
Add; Excise Duty @ Kshs 600 per M <sup>3</sup>	
Add; Railway Development Levy (1.5% of CIF)	
<b>Sub total after VAT (Kshs/M<sup>3</sup>)</b>	
<b>Net delivered price (Kshs per M<sup>3</sup>)</b>	

- The FOB mean of Platts must be supported by a copy of the Platts Oilgram average figures.
- Barrel to metric ton conversion shall be at 6.728 barrels per metric ton for HFO.
- All the figures in the pricing schedule shall be calculated to the fourth decimal.

**SECTION VIII**  
**STANDARD FORMS**

**8.1 FORM OF TENDER**

Date \_\_\_\_\_  
Tender No. \_\_\_\_\_

To: \_\_\_\_\_  
\_\_\_\_\_  
*[name and address of procuring entity]*

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, Heavy Fuel Oil 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 install and commission the equipment 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 of equivalent to \_\_\_\_\_ percent of the Contract Price for the due performance of the Contract , in the form prescribed by .....*( 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. This Tender, together with your written acceptance thereof and your notification of award, shall constitute a Contract, between us, subject to signing of the Contract by the parties.
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 an on behalf of \_\_\_\_\_

**Note:** In accordance with **Clause 82** of the **Public Procurement and Asset Disposal Act 2015**  
**“The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.**

8.2 CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

**\*MANDATORY CONFIDENTIAL BUSINESS QUESTIONNAIRE**

*(Must be filled by all applicants or Tenderers' who choose to participate in this tender)*

Name of

Applicant(s).....

**You are requested to give the particulars in Part 1 and either Part 2 (a), 2 (b) or 2 (c), whichever applies to your type of business. Part 2 (d) to part 2 (i / j) must be filled. You are advised that giving wrong or false information on this Form will lead to automatic disqualification/termination of your business proposal at your cost.**

**Part 1 – General**

Business Name:.....Certificate of Incorporation /  
Registration No. .... Location of business premises:  
Country ..... Physical address .....  
Town ..... Building.....  
Floor.....Plot No. ....  
Street / Road ..... Postal Address .....  
Postal / Country Code.....Telephone No's.....  
Fax No's. .... E-mail address .....  
Website .....

Contact Person (*Full Names*) ..... Direct / Mobile No's.....  
Title ..... Power of Attorney (**Yes / No**)

If **Yes**, attach written document.

Nature of Business (*Indicate whether manufacturer, distributor, etc*) .....

**(Applicable to Local suppliers only)**

Local Authority Trading License No. .... Expiry Date .....

Value Added Tax No.....

Value of the largest single assignment you have undertaken to date (**US D/KShs**) .....

Was this successfully undertaken? **Yes / No**. ....(If **Yes**, attach reference)

Name (s) of your banker (s) .....

Branches ..... Tel. No's. ....

**Part 2 (a) – Sole Proprietor (if applicable)**

Full names .....

Nationality..... Country of Origin.....

.....  
Company Profile ..... (*Attach brochures or annual reports in case of public company*)

**Part 2 (b) – Partnerships (if applicable)**

Give details of partners as follows:

**Full Names Nationality Citizenship Details Shares**

1. ....

2. ....

Company Profile .....(*Attach brochures*)

**Part 2 (c) – Registered Company (if applicable)**

Private or public .....

Company Profile .....(*Attach brochures or annual reports in case of public companies*)

State the nominal and issued capital of the Company

Nominal KShs .....

Issued KShs .....

List of top ten (10) shareholders and distribution of shareholding in the company. Give details of all directors as follows:-

**Full Names Nationality Citizenship Details Shares**

1.....

2.....

**Part 2 (d) – Debarment**

I/We declare that I/We have not been debarred from any procurement process and shall not engage in any fraudulent, corrupt, coercive and obstructive acts with regard to this or any other tender by the KENGEN and any other public or private institutions.

Full Names .....

Signature .....

Dated this ..... day of ..... 2017.

In the capacity of .....

Duly authorized to sign Tender for and on behalf of .....

**Part 2 (e) – Bankruptcy / Insolvency / receivership.**

I/We declare that I/We have not been declared bankrupt or insolvent by the competent Authorities in Kenya and neither are we under receivership:

Full Names .....

Signature .....

Dated this ..... day of ..... 2017.

In the capacity of .....

Duly authorized to sign Tender for and on behalf of .....

**Part 2 (f) – Criminal Offence**

I/We, (Name (s) of Director (s)):-

a) .....

b) .....

Have not been convicted of any criminal offence relating to professional conduct or the making of false statements or misrepresentations as to its qualifications to enter into a procurement contract within a period of three (3) years preceding the commencement of procurement proceedings.

Signed .....

For and on behalf of M/s .....

In the capacity of .....

Dated this ..... day of ..... 2017.

Suppliers’ / Company’s Official Rubber Stamp

**Part 2 (g) – Conflict of Interest**

I/We, the undersigned state that I / We have no conflict of interest in relation to this procurement:

a) .....

b) .....

For and on behalf of M/s .....

In the capacity of .....

Dated this ..... day of ..... 2017

Suppliers’ / Company’s Official Rubber Stamp .....

**Part 2 (h) – Interest in the Firm:**

Is there any person/persons in KENGEN or any other public institution who has interest in the Firm? Yes/No

(Delete as necessary) Institution .....

.....

(Title) (Signature) (Date)

**Part 2(i) – Experience:**

Please list here below similar projects accomplished or companies / clients you have supplied with similar items or materials in the last years.

	Company Name	Country	Contract/Order No.	Value	Contact person (Full Names)	E-mail address	Cell phone No.
1							
2							
3							
4							

**Part 2(i or j) – Declaration**

I / We, the undersigned state and declare that the above information is correct and that I / We give KENGEN authority to seek any other references concerning my / our company from whatever sources deemed relevant, e.g. Office of the Registrar of Companies, Bankers, etc.

Full names .....

Signature.....

For and on behalf of M/s .....

In the capacity of .....

Dated this ..... day of .....2017.

Suppliers' / Company's Official Rubber Stamp

.....

**8.3 TENDER SECURITY FORM  
(To be on the Banks Letterhead)**

**WHEREAS** ..... [name of the tenderer]

(hereinafter called “the tenderer”) has submitted its tender dated ..... [date of submission of tender] for ..... [name and/or description of the equipment] (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 the **Kenya Electricity Generating Company Limited** (hereinafter called “the Procuring entity”) in the sum of ..... for which payment well and truly to be made to you, 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 the Procuring entity 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 security in accordance with the Instructions to tenderers;

We undertake to pay the Procuring entity up to the above amount upon receipt of its first written demand, without the Procuring entity having to substantiate its demand, provided that in its demand the Procuring entity 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 tender 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]* \_\_\_\_\_

*(Amend accordingly if provided by Insurance Company)*

## 8.4 CONTRACT FORM

**THIS AGREEMENT** made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ between ..... [*name of the Employer*] of ..... [*country of the Employer*] (hereinafter called “**the Employer**”) of the one part and ..... [*name of the Supplier*] of ..... [*city and country of the Supplier*] (hereinafter called “**the Supplier**”) of the other part;

**WHEREAS the Employer** invited tenders for ..... ] and has accepted a tender by the tenderer for the supply of ..... in the sum of ..... [*contract price in words and figures*] (hereinafter called “the Contract Price).

### **NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:**

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to:
2. The following documents shall be deemed to form and be read and construed as part of this Agreement viz:
  - (a) the Tender Form and the Price Schedule submitted by the tenderer
  - (b) the Schedule of Requirements
  - (c) the Technical Specifications
  - (d) the General Conditions of Contract
  - (e) the Special Conditions of contract; and
  - (f) the Procuring entity’s Notification of Award and Tenderer’s Acceptance
  - (g) Applicable addenda and clarifications
3. In consideration of the payments to be made by the Procuring entity to the tenderer as hereinafter mentioned, the tenderer hereby covenants with the Procuring entity to provide the goods and to remedy defects therein in conformity in all respects with the provisions of the Contract
4. The Procuring entity hereby covenants to pay the tenderer in consideration of the provisions of the goods and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the contract.

**IN WITNESS** whereof the parties hereto have caused this Agreement to be executed in accordance with their respective laws the day and year first above written.

Signed by \_\_\_\_\_ the \_\_\_\_\_ (for the Procuring entity)

Signed by \_\_\_\_\_ the \_\_\_\_\_ (for the tenderer in the presence of \_\_\_\_\_)

*(Amend accordingly if provided by Insurance Company)*



**8.5 PERFORMANCE SECURITY FORM**

**(To be on the Banks Letterhead)**

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

**WHEREAS** ..... [name of tenderer] (hereinafter called “the tenderer”) has undertaken , in pursuance of Contract No. \_\_\_\_\_ [reference number of the contract] for dated \_\_\_\_\_ 20 \_\_\_\_\_ to supply ..... [description of goods] (hereinafter called “the Contract”).

**AND WHEREAS** it has been stipulated by you in the said Contract that the tenderer shall furnish you with a bank guarantee by a reputable bank for the sum specified therein as security for compliance with the Tenderer’s performance obligations in accordance with the Contract.

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

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

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

Signed and seal of the Guarantors

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

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

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