

R E P U B L I C O F K E N Y A



MINISTRY OF AGRICULTURE AND LIVESTOCK DEVELOPMENT

STATE DEPARTMENT FOR AGRICULTURE

NATIONAL VALUE CHAIN SUPPORT PROGRAMME (NVSP)

TENDER DOCUMENT

FOR

PROCUREMENT OF AGRO-DEALER SERVICES IN THE E-VOUCHER SCHEME TO SUPPLY QUALITY INPUTS AND SERVICES TO PARTICIPATING FARMERS IN 47 COUNTIES THROUGH THE E-VOUCHER INPUT SYSTEM OF THE NATIONAL VALUE CHAIN SUPPORT PROGRAMME (NVSP) FY 2023/2024).

TENDER NO: MOALD/SDA/NVSP/T001/2023-2024

LAUNCHING DATE: 21st NOVEMBER, 2023

SUBMISSION DEADLINE: 15TH DECEMBER, 2023 AT 11.00 A.M.

(OPEN TENDER)

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INVITATION TO TENDER

**FROM: STATE DEPARTMENT FOR AGRICULTURE
TENDER NO: MOALD/SDA /NVSP/T001/2023-2024**

TENDER NAME: PROCUREMENT OF AGRO-DEALER SERVICES IN THE E-VOUCHER SCHEME TO SUPPLY QUALITY INPUTS AND SERVICES TO PARTICIPATING FARMERS IN 47 COUNTIES THROUGH THE E-VOUCHER INPUT SYSTEM OF THE NATIONAL VALUE CHAIN SUPPORT PROGRAMME (NVSP) FY 2023/2024).

1. State Department for Agriculture invites sealed tenders for **Procurement of Agro-Dealers services in the E-Voucher scheme to supply quality inputs and services to Participating farmers in 47 Counties through the E-voucher input system of the National Value Chain Support Programme (NVSP) FY 2023/2024).** Tendering will be conducted under Open Tender using a standardized tender document.
2. A complete set of tender documents may be obtained **free of charge** by interested tenders electronically from the Ministry of Agriculture and Livestock Development Website (www.kilimo.go.ke) More details on the Services are provided in Section V - Description of Services of the Tender Document
3. The Tenderer shall chronologically serialize all pages of the tender documents submitted.
4. Completed tenders' documents enclosed in plain sealed envelopes clearly marked with the **COUNTY NAME**, Tender name and Tender number **MUST** be deposited in the tender box marked "Ministry of Agriculture" at **KILIMO HOUSE** Cathedral road ground floor reception as addressed below on or before **11.00 AM on 15TH December 2023**. Electronic Tenders *will not* be permitted.

**The Principal Secretary,
State Department for Agriculture
P.O. Box 30028-00100 GPO,
Nairobi.**

Email address: nvspkilimo@gmail.com

5. Tenders will be opened immediately thereafter in the presence of the candidates or their designated representatives who choose to attend at: **Kilimo House off Cathedral Road, ASCU Boardroom UPPER FLOOR**
6. Late tenders will be rejected.

Address for Submission of Tenders.

*The Principal Secretary,
State Department for Agriculture
P.O. Box 30028-00100 GPO,
Nairobi.*

The Original and Copy of the tender should be sealed in a single outer envelope,
clearly marked: - **COUNTY YOU ARE BIDDING FOR; TENDER NO. MOALD/SDA /NVSP/T001/2023-2024: PROCUREMENT OF AGRO-DEALER SERVICES IN THE E-VOUCHER SCHEME TO SUPPLY QUALITY INPUTS AND SERVICES TO PARTICIPATING FARMERS IN 47 COUNTIES THROUGH THE E-VOUCHER INPUT SYSTEM OF THE NATIONAL VALUE CHAIN SUPPORT PROGRAMME (NVSP) FY 2023/2024).**

The list of **FEW Agro-dealers in each county** who have active contract with the State Department for Agriculture are spread as indicated below:

County Code	County Name	Number of Agro-Dealers with Active Contract
001	Mombasa	0
002	Kwale	7
003	Kilifi	0
004	Tana River	2
005	Lamu	0
006	Taita-Taveta	10
007	Garissa	0
008	Wajir	0
009	Mandera	0
010	Marsabit	0
011	Isiolo	1
012	Meru	26
013	Tharaka-Nithi	10
014	Embu	14
015	Kitui	14
016	Machakos	10
017	Makueni	12
018	Nyandarua	32
019	Nyeri	10
020	Kirinyaga	10
021	Muranga	9
022	Kiambu	9
023	Turkana	1
024	West Pokot	9
025	Samburu	1
026	Trans-Nzoia	26
027	Uasin Gishu	25
028	Elgeyo-Marakwet	18
029	Nandi	19
030	Baringo	5
031	Laikipia	11
032	Nakuru	40
033	Narok	14
034	Kajiado	7
035	Kericho	14
036	Bomet	5
037	Kakamega	7
038	Vihiga	2
039	Bungoma	20
040	Busia	8
041	Siaya	5
042	Kisumu	6
043	Homa Bay	6
044	Migori	9
045	Kisii	8
046	Nyamira	5
047	Nairobi	0

Note: Agro-dealers with active contracts need not to re-apply

SECTION 2. INSTRUCTIONS TO BIDDER AND DATA SHEET

Section 2(a). Instructions to Bidder (ITB)

GENERAL PROVISIONS

1. Meanings/Definitions

- a) "Affiliate(s)" means an individual or an entity that directly or indirectly controls, is controlled by, or is under common control with the bidder.
- b) "Applicable Law" means the laws and any other instruments having the force of law in Kenya.
- c) "Procuring Entity" means the entity that is carrying out the selection process and signs the Contract for the Services with the selected bidder.
- d) "Bidder/Agro dealer" means a legally-established firm or an entity that may provide or provides the Services to the Procuring Entity under the Contract.
- e) "Contract" means a legally binding written agreement signed between the Procuring Entity and the bidder and includes all the attached documents listed in its Clause 1 (the General Conditions of Contract (GCC), the Special Conditions of Contract (SCC), and the Appendices).
- f) "Data Sheet" means an integral part of the Instructions to Bidder (ITB) Section 2 that is used to reflect specific assignment conditions to supplement, but not to over-write, the provisions of the ITB.
- g) "Day" means a calendar day unless otherwise specified as "Business Day". A Business Day is any day that is an official working day in Kenya and excludes official public holidays.
- h) "Experts" means, collectively, Key Experts, Non-Key Experts, or any other personnel of the bidder, Sub-consultant or Joint Venture member(s).
- i) "Government" means the Government of the Republic of Kenya.
- j) "In writing" means communicated in written form such as by mail, e-mail, fax, including, if specified in the Data Sheet, distributed or received through the electronic-procurement system used by the Procuring Entity with proof of receipt.
- k) "Joint Venture (JV)" means an association with or without a legal personality distinct from that of its members, of more than one Consultant where one member has the authority to conduct all business for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Procuring Entity for the performance of the Contract.
- l) "Key Expert(s)" means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose CV is considered in the technical evaluation of the Bidder's proposal.
- m) "ITB" (this Section 2 of the RFP) means the Instructions to Bidder that provides the bidder with all information needed to prepare their Proposals.
- n) "Non-Key Expert(s)" means an individual professional provided by the Bidder and who is assigned to perform the Services or any part thereof under the Contract and whose CVs are not evaluated individually.
- o) "Proposal" means the Technical Proposal and the Financial Proposal of the Bidder.
- p) "Public Procurement Regulatory Authority (PPRA)" means the statutory authority of the Government of Kenya that is mandated with the role of regulating and monitoring compliance with the public procurement law and regulations.
- q) "RFP" means the Request for Proposals to be prepared by the Procuring Entity for the selection of bidder.
- r) "Services" means the work to be performed by the bidder pursuant to the Contract.

- s) “Sub-consultant” means an entity to whom the Bidder intends to subcontract any part of the Services while the Agro dealer remains responsible to the Procuring Entity during the whole performance of the Contract.
- v) “Terms of Reference (TORs)” means the Terms of Reference that explains the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of the Procuring Entity and the Consultant, and expected results and deliverables of the assignment.

2. Introduction

- 2.1 The Procuring Entity named in the Data Sheet intends to select a Agro dealers from those listed in the Request for Proposals (RFP), in accordance with the method of selection specified in the Data Sheet.
- 2.2 The Agro dealers are invited to submit a Technical Proposal, for services required for the assignment named in the Data Sheet. The Proposal will be the basis for negotiating and ultimately signing the Contract with the selected Agro dealer.
- 2.3 The Agro dealer should familiarize themselves with the local conditions and take them into account in preparing their Proposals.

3. Conflict of Interest

- 3.1 The Agro dealer is required to provide professional, objective, and impartial advice, always holding the Procuring Entity's interest's paramount, strictly avoiding conflicts with other assignments or its own corporate interests and acting without any consideration for future work.
- 3.2 The Agro dealer has an obligation to disclose to the Procuring Entity any situation of actual or potential conflict that impacts its capacity to serve the best interest of the Procuring Entity. Failure to disclose such situations may lead to the disqualification of the Agro dealer or the termination of its Contract.
 - i) *Others*
Any other types of conflicting relationships as indicated in the Data Sheet.

4. Unfair Competitive Advantage

- 4.1 Fairness and transparency in the selection process require that the Agro dealer or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided services related to the assignment in question. To that end, the Procuring Entity shall indicate in the Data Sheet and make available to all Agro dealer together with this RFP all information that would in that respect give such bidder any unfair competitive advantage over competing bidders.

5. Corrupt and Fraudulent Practices

- 5.1 Agro dealer firms or any of its members shall not be involved in corrupt, coercive, obstructive, collusive or fraudulent practice. Agro dealer firms or any of its members that are proven to have been involved in any of these practices shall be automatically disqualified and would not be awarded a contract.

5.2 Collusive practices

- 5.2 The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any Agro dealer found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Agro dealer shall be required to complete and sign the “Certificate of Independent Proposal Determination” annexed to the Proposal Form.
- 5.3 In further pursuance of this policy, Agro dealer shall permit and shall cause their agents (where declared or not), subcontractors, sub-consultants, service providers, suppliers, and their personnel, to permit the Government and its agencies to inspect all accounts, records and other documents relating to any short-listing process, Proposal submission, and contract performance (in the case of award), and to have them audited by auditors, investigators or compliance officers.

6. Eligibility

- 6.1 In selection of Agro dealers, short-listing shall be composed of firms who belong to the same line of professional business and who are almost of the same capability.
- 6.2 Unless otherwise specified in the Data Sheet, the Procuring Entity permits Agro dealers including proposed experts, joint ventures and individual members from all countries and categories to offer consulting services. The maximum number of members so far JV shall be specified in the TDS.
- 6.3 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for submission of proposals, but it shall be a condition of contract award and signature. AJV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website www.cak.go.ke
- 6.4 Public Officers of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.
- 6.5 It is the Agro dealer's responsibility to ensure that it's Experts, joint venture members, Sub-consultants, agents (declared or not), sub-contractors, service providers, suppliers and/or their employees meet the eligibility requirements.
- 6.6 As an exception to the foregoing ITB 6.1 and 6.2 above:
 - a) Sanctions-A firm or an individual that has been debarred from participating in public procurement shall be ineligible to be awarded a contract, or to benefit from the contract, financially or otherwise, during the debarment period. The list of debarred firms and individuals is available from the website of PPRA www.ppra.go.ke.
 - b) Prohibitions-Firms and individuals of a country or goods in a country maybe ineligible if:
 - i) As a matter of law or official regulations, Kenya prohibits commercial relations with that country; or
 - ii) By an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or services from that country or any payments to any country, person, or entity in that country.
 - c) Restrictions for Government-owned Enterprises-Government-owned enterprises or institutions in Kenya shall be eligible only if they can establish that they
 - i) Are legally and financially autonomous,
 - ii) Operate under commercial law, and
 - iii) That they are not dependent agencies of the Procuring Entity.
 - d) Restrictions for public employees - Government officials and civil servants and employees of public institutions shall not be hired for consulting contracts.
- 6.7 Margin of Preference and Reservations-no margin of preference shall be allowed in the selection of Agro dealer. Reservations may however be allowed to a specific group of businesses (these groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case may be), and who are appropriately registered as such by the authority to be specified in the Data Sheets. A procuring entity shall ensure that the invitation to submit proposals specifically includes only businesses or firms belonging to one group.

B. Preparation of Proposals

7. General Considerations

- 7.1 In preparing the Proposal, the Agro dealer is expected to examine the RFP in detail. Material deficiencies in providing the information requested in the RFP may result in rejection of the Proposal.

8 Cost of Preparation of Proposal

- 8.1 The Agro dealer shall bear all costs associated with the preparation and submission of its Proposal, and the Procuring Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the selection process. The Procuring Entity is not bound to accept any proposal and reserves the right to annul the selection process at any time prior to Contract award, without there by incurring any liability to the Agro dealer.

9 Language

- 9.1 The Proposal, as well as all correspondence and documents relating to the Proposal exchanged between the Agro dealer and the Procuring Entity shall be written in the English language.

10 Documents Comprising the Proposal

- 10.1 The Proposal shall comprise the documents and forms listed in the Data Sheet.
- 10.2 The Agro dealer shall declare in the Self Declaration Form SD2 that the Person/Tenderer Will Not Engage in Any Corrupt or Fraudulent Practice, that in competing for and executing a contract, it shall undertake to observe the laws of Kenya against fraud and corruption including bribery, as well as against anti-competitive practices including bid rigging.

11 Only One Proposal

- 11.1 The Agro dealer shall submit only one Proposal, either in its own name or as part of a Joint Venture in another Proposal. If Agro dealer, including any Joint Venture member, submits or participates in more than one proposal, all such proposals shall be disqualified and rejected. This does not, however, preclude Sub-consultant, or the Agro dealer's staff from participating as Key Experts and Non-Key Experts in more than one Proposal when circumstances justify and if stated in the Data Sheet.
- 11.2 Members of a joint venture may not also make an individual Proposal, be a subcontractor in a separate proposal or be part of another joint venture for the purposes of the same Contract.
- 11.3 Should a Joint Venture subsequently win the Contract, it shall consider whether an application for exemption from the Competition Authority of Kenya is merited pursuant to Section 25 of the Competition Act 2010.

12 Proposal Validity

a. Proposal Validity Period – 120 days

- 12.1 During this period, the Agro dealer shall maintain its original Proposal without any change.
- 12.2 The Data Sheet indicates the period during which the Agro dealer's Proposal must remain valid after the Proposal submission deadline.

b. Extension of Validity Period

- 12.3 The Procuring Entity will make its best effort to complete the negotiations within the proposal's validity period. However, should the need arise, the Procuring Entity may request, in writing, all Agro dealers who submitted Proposals prior to the submission deadline to extend the Proposals' validity.
- 12.4 The Agro dealer has the right to refuse to extend the validity of its Proposal in which case such Proposal will not be further evaluated.

c. Sub-Contracting

- 12.5 The Agro dealer shall not subcontract the whole or part of the Services without reasonable justification and written approval of the Procuring Entity.

13. Clarification and Amendment of RFP

- 13.1 The Agro dealer may request a clarification of any part of the RFP during the period indicated in the Data Sheet before the Proposals' submission deadline. Any request for clarification must be sent in writing, or by standard electronic means, to the Procuring Entity's address indicated in the Data Sheet. The Procuring Entity will respond in writing, or by standard electronic means, and will send written copies of the response (including an explanation of the query but without identifying its source) to all Agro dealers. Should the Procuring Entity deem it necessary to amend the RFP as a result of a clarification, it shall do so following the procedure described below:
- 13.2 At any time before the proposal submission deadline, the Procuring Entity may amend the RFP by issuing an amendment in writing or by standard electronic means. The amendment shall be sent to all invited Agro dealers and will be binding on them. The Agro dealers shall acknowledge receipt for amendments in writing.
- 13.3 If the amendment is substantial, the Procuring Entity may extend the proposal submission deadline to give the Agro dealers reasonable time to take an amendment in to account in their Proposals.
- 13.4 The Agro dealer may submit a modified Proposal or a modification to any part of it at any time prior to the proposal submission deadline. No modifications to the Technical or Financial Proposal shall be accepted after the deadline.

14. Preparation of Proposals–Specific Considerations

- 14.1 While preparing the Proposal, the Agro dealer must give particular attention to the following:
- (a) If an agro dealer considers that it may enhance its expertise for the assignment by associating with other consultants in the form of a Joint Venture or as Sub-consultants, it may do so long as only one Proposal is submitted, in accordance with ITC 11. Above. A Consultant cannot associate with shortlisted Consultant(s). When associating with non-shortlisted/non-invited firms in the form of a joint venture or a sub-consultancy, the shortlisted/invited Consultant shall be a lead member. If shortlisted/invited Consultant associates with each other, any of them can be a lead member.

15. Technical Proposal Format and Content

- 15.1 The Technical Proposal shall be prepared using the Standard Forms provided in Section 3 of the RFP and shall comprise the documents listed in the Data Sheet under ITB 10.1. The Technical Proposal shall not include any financial information. A Technical Proposal containing material financial information shall be declared non- responsive.

a. Price Adjustment

- 16.1 For assignments with a duration exceeding 18 months, a price adjustment provision for foreign and/or local inflation for remuneration rates apply if so, stated in the Data Sheet.

b. Taxes

- 16.2 The Agro dealers are responsible for meeting all tax liabilities arising out of the Contract unless stated otherwise in the Data Sheet. Information on taxes in Kenya is provided in the Data Sheet.

c. Currency of Proposal

- 16.3 The Consultant may express the price for its Services in the currency or currencies as stated in the Data Sheet. If indicated in the Data Sheet, the portion of the price representing local cost shall be stated in Kenya Shillings.

d. Currency of Payment

- 16.4 Payment under the Contract shall be made in the currency or currencies in which the payment is requested in the Proposal.

C. SUBMISSION, OPENING AND EVALUATION

16. Submission, Sealing, and Marking of Proposals

- 17.1 The Agro dealer shall submit a signed and complete Proposal comprising the documents and forms in accordance with ITB 10 (Documents Comprising Proposal).
- 17.2 An authorized representative of the Agro dealer shall sign the original submission letters in the required format for the Technical Proposal shall initial all page. The authorization shall be in the form of a written power of attorney attached to the Technical Proposal.
- 17.3 A Proposal submitted by a Joint Venture shall be signed by all members so as to be legally binding on all members, or by an authorized representative who has a written power of attorney signed by each member's authorized representative.
- 17.4 Any modifications, revisions, interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Proposal.
- 17.5 The signed Proposal shall be marked "ORIGINAL", and its copies marked "COPY" as appropriate. The number of copies is indicated in the Data Sheet. All copies shall be made from the signed original. If there are discrepancies between the original and the copies, the original shall prevail.

17. Sealing and Marking of Proposals

- 18.1 The firm shall deliver the Proposals in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the assignment, addressed to the Procuring Entity and a warning "DO NOT OPEN BEFORE 15TH December, 2023 (The time and date for proposal opening date)". Within the single envelope, package or container, the Firm shall place the following separate, sealed envelopes:
- 18.2 In the single sealed envelope, or in a single sealed package, or in a single sealed container the following documents shall be closed and shall be addressed as follows:
- i) in an envelope or package or container marked "ORIGINAL", all documents comprising the Technical Proposal, as described in ITB11;
 - ii) in an envelope or package or container marked "COPIES", all required copies of the Technical Proposal;
- 18.3 The inner envelopes or packages or containers shall:
- i) Bear the name and address of the Procuring Entity.
 - ii) Bear the name and address of the Firm; and
 - iii) Bear the name and Reference number of the Assignment.
- 18.4 If an envelope or package or container is not sealed and marked as required, the *Procuring Entity* will assume no responsibility for the misplacement or premature opening of the proposal. Proposals that are misplaced or opened prematurely will not be accepted.
- 18.5 The Proposal or its modifications must be sent to the address indicated in the Data Sheet and received by the Procuring Entity no later than the deadline indicated in the Data Sheet, or any extension to this deadline. Any Proposal or its modification received by the Procuring Entity after the deadline shall be declared late and rejected, and promptly returned unopened.

18. Confidentiality/Canvassing

- 19.1 From the time the Proposals are opened to the time the Contract is awarded, the Agro dealer should not contact the Procuring Entity on any matter related to its Technical Proposal. Information relating to the evaluation of Proposal and award recommendations shall not be disclosed to the Agro dealer who submitted the Proposals or to any other party not officially concerned with the process, until the

publication of the Contract award information.

- 19.2 Any attempt by Agro dealers or any one on behalf of the Agro dealer to influence improperly the Procuring Entity in the evaluation of the Proposals or Contract award decisions may result in the rejection of its Proposal and may be subject to the application of prevailing PPRA's debarment procedures.
- 19.3 Notwithstanding the above provisions, from the time of the Proposals' opening to the time of Contract award publication, if an Agro dealer wishes to contact the Procuring Entity on any matter related to the selection process, it should do so only in writing.

19. Opening of Technical Proposals

- 20.1 The Procuring Entity's opening committee shall conduct the opening of the Technical Proposals in the presence of the Consultants' authorized representatives who choose to attend (in person). The opening date, time and the address are stated in the Data Sheet.
- 20.2 At the opening of the Technical Proposals the following shall be read out: (i) the name and the County of the Agro dealer or, in case of a Joint Venture, the name of the Joint Venture, the name of the lead member and the names and the countries of all members; (ii) any modifications to the Proposal submitted prior to proposal submission deadline; and (iv) any other information deemed appropriate or as indicated in the Data Sheet.

20. Proposals Evaluation

- 21.1 The Agro dealer is not permitted to alter or modify its Proposal in anyway after the proposal submission deadline except as permitted under ITC12.7. While evaluating the Proposals, the Evaluation Committee will conduct the evaluation solely on the basis of the submitted Technical Proposals.

21. Evaluation of Technical Proposals

- 22.1 The Procuring Entity's evaluation committee shall evaluate the Technical Proposals that have passed the eligibility and mandatory criteria, on the basis of their responsiveness to the Terms of Reference and the RFP. The eligibility and mandatory criteria shall include the following and any other that may include in the Data sheet.
 - a) Firm has submitted the required number of copies of the Technical Proposals.
 - b) The Proposal is valid for the required number of days.
 - c) The Technical Proposal is signed by the person with power of attorney, without material deviation, reservation, or omission.
 - d) The Technical Proposal is complete with all the forms and required documentary evidence submitted.
 - e) A valid tax compliance certificate or tax exemption certificate issued by the Kenya Revenue Authority in accordance with ITT 3.14 for Kenyan firms.
 - f) The Agro dealer is not insolvent, in receivership, bankrupt or in the process of being wound up.
 - g) The Agro dealer has not engaged in or been convicted of corrupt or fraudulent practices.
 - h) The Agro dealer is neither precluded from entering into a Contract nor debarred by PPRA.
 - i) The firm has not proposed employing public officials, civil servants and employees of public institutions.
 - j) The Agro dealer has no conflicts of interest.

d. Technical and Evaluation Report

- 29.1 The evaluation committee shall prepare a technical evaluation report, with specific recommendations for award or otherwise and subject to the required approvals within the Procuring Entity prior to notifications.

22. Notification of Intention to enter into a Contract/Notification of Award

- 30.1 The Procuring Entity shall send to each Agro dealer (that has not already been notified that it has been unsuccessful) the Notification of Intention to Award the Contract to the successful Agro dealer. The **Notification of Intention to enter into a Contract / Notification of Award** shall contain, at a minimum, the following information:
- i) The name and address of the successful Agro dealer;
 - ii) a statement of the reasons why the recipient's Proposal was unsuccessful
 - iii) the expiry date of the Standstill Period, and
 - iv) instructions on how to request a debriefing and/or submit a complaint during the standstill period;

23. Standstill Period

- 31.1 The Standstill Period shall be the number of days stated in the Data Sheet. The Standstill Period commences the day after the date the Procuring Entity has transmitted to each Agro dealer (that has not already been notified that it has been unsuccessful) the Notification of Intention to Award the Contract. The Contract shall not be signed earlier than the expiry of the Standstill Period. This period shall be allowed for aggrieved Agro dealer to lodge an appeal. The procedure for appeal and the authority to determine the appeal or complaint is as indicated in the Data Sheet.

D. AWARD

- 34.1 Upon expiry of the Standstill Period, specified in ITB 28.1, after satisfactorily addressing any appeal that has been filed within the Standstill Period, and upon successful negotiations, the Procuring Entity shall send a Letter of Award to the successful Agro dealer. The letter shall confirm the Procuring Entity's award of Contract to the successful Agro dealer and requesting the Agro dealer to sign and return the draft negotiated Contract within Twenty-One (21) Days from the date of the Letter of Award.

24. Signing of Contract

- 35.1 The Contract shall be signed prior to the expiration of the Proposal Validity Period and promptly after expiry of the Standstill Period, specified in ITB 28.1 and upon satisfactorily addressing any complaint that has been filed within the Standstill Period.
- 35.2 The Agro dealer is expected to commence the assignment on the date and at the location specified in the Data Sheet.

25. Publication of Procurement Contract

- 36.1 Within the period specified in the Data Sheet, the Procuring Entity shall publish the awarded Contract which shall contain, at a minimum, the following information: (a) name and address of the Procuring Entity; (b) name and reference number of the contract being awarded, (c) the selection method used; (d) names of the consultants that submitted proposals; (e) names of all Consultants whose Proposals were rejected or were not evaluated; (f) the name of the successful consultant, the final total contract price, the contract duration and a summary of its scope.
- 36.2 Consider carefully the information on Consultants to be published, particularly evaluation by the Procuring Entity, to avoid disclosing information which can facilitate bid-rigging formation going forward. Suggest amendment as follows:
- 36.3 The awarded Contract shall be published on the Procuring Entity's website with free access if available and in the official procurement tender portal.

26. Procurement Related Complaint and Administrative Review

- 37.1 The procedures for making Procurement-related Complaints shall be specified in the **TDS**.

37.2 A request for administrative review shall be made in the form provided under contract forms.

SECTION 2 (B). DATA SHEET

[“Notes to Procuring Entity” shown in brackets throughout the text are provided for guidance to prepare the Data Sheet; they should be deleted from the final RFP to be sent to the Consultants. Where an e-procurement system is used, modify the relevant parts of the Data Sheet to reflect the e-procurement process to be used in the consultant selection]

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
A. General Provisions	
1(j)	Electronic procurement system shall be used: No
2.1	Name of the Procuring Entity: State Department for Agriculture National Value Chain Support Programme (NVSP). The Agro-dealer selection method is: <i>[Responsive in the Criteria given]</i>
2.2	Technical Proposal only to be submitted The name of the assignment is: PROCUREMENT OF AGRO-DEALER SERVICES IN THE E-VOUCHER SCHEME TO SUPPLY QUALITY INPUTS AND SERVICES TO PARTICIPATING FARMERS IN 47 COUNTIES THROUGH THE E-VOUCHER INPUT SYSTEM OF THE NATIONAL VALUE CHAIN SUPPORT PROGRAMME (NVSP) FY 2023/2024).
2.3	A pre-proposal conference will be held: No
2.4	The Procuring Entity will provide the following inputs, project data, reports, etc. to facilitate the preparation of the Proposals: - None
3.3 (iv)	<i>[Insert any other conflicting relationships] __</i>
4.1	<i>[If “Unfair Competitive Advantage” applies to the selection, explain how it is mitigated, including listing the reports, information, documents, etc. and indicating the sources where these can be downloaded or obtained by the Consultants]</i>
6.2	Maximum number of members in the Joint Venture (JV) shall be: <i>[3]</i>
6.6 (a)	The list of debarred firms and individuals is available at the PPRA’s website www.ppra.go.ke or email complaints@ppra.go.ke

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
6.7	<p>The business will be registered with: relevant bodies</p> <ul style="list-style-type: none"> • Current KRA Tax Compliance Certificate • Kenya Plant Health Inspectorate Service (KEPHIS) Certification • Pest Control Products Board (PCPB) Certification • AGMARK Certification is an added advantage
B. Preparation of Proposals	
10.1	<p>The Proposal shall comprise the following: An Envelope with the Technical Proposal: Power of Attorney to sign the Proposal</p> <p>TECH-7: Mandatory Documentary Evidence</p> <ul style="list-style-type: none"> - Copy of current Pest Control Products Board (PCPB) Certification - Copy of current Kenya Plant Health Inspectorate Service (KEPHIS) Certification - Copy of Certificate of Incorporation or Business Registration Certificate as per the tender requirements - Copy of tax compliance certificate valid at least up to the date of tender opening from the applicable Revenue Authority (online verification will be done during evaluation) - Duly filled and signed technical proposal submission form in the format provided in the Request for proposal document (Technical Proposal to be sealed in a different envelope). - Dully filled and signed Confidential Business Questionnaire in the form or format provided in the tender document - Duly filled and signed declaration form in the form provided in the tender document
10.2	There will be no Financial Proposal. All the Financials are incorporated in the E-Voucher subsidy system
11.1	Participation of Sub-consultants, and Key Experts in more than one Proposal is permissible: NO
12.1	Proposals must remain valid for 120 days after the proposal submission deadline.
13.1	<p>Clarifications may be requested not later than 7 days prior to the submission deadline. The contact information for requesting clarifications is: E-mail: nvspkilimo@gmail.com and psagriculture@kilimo.go.ke</p>
16.3	([If the Procuring Entity has obtained a tax exemption applicable to the Contract, insert: “The Procuring Entity has obtained an exemption for the Agro dealer from payment of ____N/A____

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	<p>[insert the tax description such as VAT, withholding tax, duties, etc.] in Kenya as per [insert reference to the applicable official source that issued an exemption].</p> <p>[If there is no tax exemption in Kenya, insert the following: “Information on the Agro dealer’s tax obligations in the Procuring Entity’s country can be found on the Kenya Revenue Authority website: www.kra.go.ke</p>
C. Submission, Opening and Evaluation	
17.1	The Agro dealer “shall not” have the option of submitting their Proposals electronically.
17.5	The Agro dealer must submit: (a) Technical Proposal: one (1) original and 1 copy;
18.5	The Proposals must be submitted not later than: Date: 15th December, 2023 Time: 11:00 East African Time ” The Proposal submission address is: The Principal Secretary, State Department for Agriculture P.O. BOX 30028-00100 Nairobi, Kenya and be deposited in the Tender Box (labelled “Ministry of Agriculture”) situated at the Main Reception of Kilimo House on or before the date and time indicated above
20.2	In addition, the following information will be read aloud at the opening of the Technical Proposals - <i>Name of the Agro dealer submitting the proposal</i> - <i>County of the Agro dealer submitting the Technical Proposal</i>
22.1	Other eligibility and mandatory criteria shall be: <ul style="list-style-type: none"> - Copy of current Pest Control Products Board (PCPB) Certification - Copy of current Kenya Plant Health Inspectorate Service (KEPHIS) Certification - Copy of Certificate of Incorporation or Business Registration Certificate as per the tender requirements - Copy of tax compliance certificate valid at least up to the date of tender opening from the applicable Revenue Authority - Duly filled and signed technical proposal submission form in the format provided in the Request for proposal document (Technical Proposal to be sealed in a different envelope). - Dully filled and signed Confidential Business Questionnaire in the form or format provided in the tender document - Duly filled and signed declaration form in the form provided in the tender document - County Business Permit

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	<p>- Power of Attorney</p>
22.2	<p>The Criteria, sub-criteria, and point system for the evaluation of the Technical Proposals: <u>Points</u> (I) Specific experience of the Agro dealer as a retailer, relevant to the Assignment: 10 points</p> <p>(ii) Inputs to supply</p> <ul style="list-style-type: none"> - Basal fertilizer: 1 Yes () 2. No () 10 points - Top dresser: 1 Yes () 2. No () 10 points - Hybrid/Certified seed: 1 Yes () 2. No () 10 points - Agro-chemical: 1 Yes () 2. No () 10 points - Agric. Lime: 1 Yes () 2. No () 10 points <p>Total points for criterion (ii): 50</p> <p>Other criteria</p> <ul style="list-style-type: none"> - Storage capacity 1 Yes () 2. No () 5 points - Availability of; (a) Smart phone 1 Yes () 2. No () 10 points - Presence or willingness to operate a Till No 1 Yes () 2. No () 10 points - Declaration to commitment of high level of integrity and ethics. 10 points - Proof of existence for last two years. 5 points - Proof of business relationship with a legal Fertilizer Supplier. 1 Yes () 2. No () 5 points - An undertaking to provide quarterly sales returns to the Coordinator NVSP. 5 points <p>Total points for criterion (ii): 50</p> <p>Total weight: 100%</p> <p>The minimum technical score (St) required to pass is: <u>70</u></p>
-25.2	<p>For the evaluation, the Procuring Entity will include separate items of: (a) all local identifiable indirect taxes such as sales tax, excise tax, VAT, or similar taxes levied on the contract's invoices; and (b) all additional local indirect tax on the remuneration of services rendered by experts.</p> <p>If a Contract is awarded, at Contract negotiations, all such taxes will be discussed, finalized using the itemized list and included in the Contract amount as a separate line, also indicating which taxes shall be paid by the Consultant and which taxes are withheld and paid by the Procuring Entity on behalf of the Consultant.</p>
26.1	<p>The single currency for the conversion of all prices expressed in various currencies into a single one is: <u>Kenya shillings</u> [indicate Kenya Shillings or another fully convertible foreign currency]</p> <p>The official source of the selling exchange rate is: CBK</p> <p>The date of the exchange rate is: [The date may be the same as the that for deadline for submission of proposals, or a date that is</p>

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	<i>five business days prior to the submission deadline]</i>
31	The Standstill Period shall be: <u>14</u> days The procedures for making a procurement related complaint are detailed in the Public Procurement and Asset Disposal Act and Regulations. If an Agro dealer wishes to make a procurement related complaint or appeal, the Consultant shall submit its complaint to the Public Procurement Administrative Review Board.
D. Award	
35.2	Expected date for the commencement of the Services: Date: <i>[February 2023]</i> at Respective counties
36.1	The publication of the contract award information following the completion of the contract signing will be done as following: The publication will be done within ____ days after the contract signing <i>[Insert the legally recognised days for publishing the Contract Award Notice]</i>
37.1	The procedures for making a Procurement-related Complaints are detailed in the “Regulations” available from the PPRA Website www.ppra.go.ke or email complaints@ppra.go.ke . If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to: For the attention: <i>Ricard Bii</i> Title/position: <i>Head Supply Chain Management Services</i> Procuring Entity: <i>State Department for Agriculture</i> Email address: <i>nvsp@kilimo.go.ke</i> In summary, a Procurement-related Complaint may challenge any of the following: (i) the terms of the Tender Documents; and (ii) the Procuring Entity’s decision to award the contract.

SECTION 3. EVALUATION AND QUALIFICATION CRITERIA

1. General Provision

1.1 Wherever a Tenderer is required to state a monetary amount, Tenderers should indicate the Kenya Shilling equivalent using the rate of exchange determined as follows:

- a) For construction turnover or financial data required for each year-Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year are to be converted) was originally established.
- b) Value of single contract-Exchange rate prevailing on the date of the contract signature.
- c) Exchange rates shall be taken from the publicly available source identified in the ITT. Any error in determining the exchange rates in the Tender may be corrected by the Procuring Entity.

1.2 This section contains the criteria that the Employer shall use to evaluate tender and qualify tenderers. No other factors, methods or criteria shall be used other than specified in this tender document. The Tenderer shall provide all the information requested in the forms included in Section IV, Tendering Forms. The Procuring Entity should use **the Standard Tender Evaluation Report for Goods and Works** for evaluating Tenders.

1.3 Evaluation and contract award Criteria

The Procuring Entity shall use the criteria and methodologies listed in this Section to evaluate tenders and arrive at the Lowest Evaluated Tender. The tender that (i) meets the qualification criteria,(ii)has been determined to be substantially responsive to the Tender Documents, and(iii) is determined to have the Lowest Evaluated Tender price shall be selected for award of contract.

2 Preliminary examination for Determination of Responsiveness

The Procuring Entity will start by examining all tenders to ensure they meet in all respects the eligibility criteria and other mandatory requirements in the ITT, and that the tender is complete in all aspects in meeting the requirements provided for in the preliminary evaluation criteria outlined below. The Standard Tender Evaluation Report Document for Goods and Works for evaluating Tenders provides very clear guide on how to deal with review of these requirements. Tenders that do not pass the Preliminary Examination will be considered non- responsive and will not be considered further.

Tenderers are required to submit copies of the following MANDATORY DOCUMENTS which will be used during Preliminary Examination to determine responsiveness:	Remarks
<ul style="list-style-type: none"> • Copy of current Pest Control Products Board (PCPB) Certification 	Must Meet
<ul style="list-style-type: none"> • Copy of current Kenya Plant Health Inspectorate Service (KEPHIS) Certification 	Must Meet
<ul style="list-style-type: none"> • Copy of Certificate of Incorporation or Business Registration Certificate as per the tender requirements 	Must Meet
<ul style="list-style-type: none"> • Copy of Tax Compliance Certificate valid at least up to the date of tender opening from the applicable Revenue Authority 	Must Meet
<ul style="list-style-type: none"> • Valid County Business Permit/Licence 	Must Meet
<ul style="list-style-type: none"> • Duly filled and signed technical proposal submission form in the format provided in the Request for proposal document (Technical Proposal to be sealed in a different envelope). 	Must Meet
<ul style="list-style-type: none"> • Dully filled and signed Confidential Business Questionnaire in the form or format provided in the tender document 	Must Meet
<ul style="list-style-type: none"> • Duly filled and signed declaration form in the form provided in the tender document. (Forms SD1 and SD2) <p>At this stage, the tenderer's submission will either be responsive or non- responsive. The nonresponsive submissions will be eliminated from the entire evaluation process and will not be considered further.</p>	Must Meet

3 Technical Evaluation

	Requirement	Marks	Bidder Response
1.	<p>The Criteria, sub-criteria, and point system for the evaluation of the Technical Proposals: <u>Points</u></p> <p>(I) Specific experience of the Agro dealer as a retailer and relevant to the Assignment: 10 points</p> <p>(ii) Inputs to supply</p> <ul style="list-style-type: none"> - Basal fertilizer: 1 Yes () 2. No () 10 points - Top dresser: 1 Yes () 2. No () 10 points - Hybrid/Certified seed: 1 Yes () 2. No () 10 points - Agro-chemical: 1 Yes () 2. No () 10 points - Agric, Lime: 1 Yes () 2. No () 10 points <p style="text-align: right;">Total points for criterion (ii): 50</p> <p>i) Other criteria</p> <ul style="list-style-type: none"> - Storage capacity 1 Yes () 2. No () 5 points - Availability of; (a) Smart phone 1 Yes () 2. No () 10 points - Presence or willingness to operate a Till No 1 Yes () 2. No () 10 points - Declaration to commitment of high level of integrity and ethics. 10 points - Proof of existence for last two years. 5 points - Proof of business relationship with a legal Fertilizer Supplier. 1 Yes () 2. No () 5 points - An undertaking to provide quarterly sales returns to the Coordinator NVSP. 5 points <p style="text-align: right;">Total points for criterion (ii): 50</p> <p>Total weight: 100%</p> <p>The minimum technical score (St) required to pass is: <u>70</u></p>	50	
	TOTAL SCORE	100	
	PERCENTAGE SCORE (%)	100%	

STAGE 1: Technical evaluation.

Pass Mark = 70% (100 Marks)

The bidders who has passed Mandatory Requirements and Technical will be considered for award.

SECTION IV. TECHNICAL PROPOSAL – STANDARD FORMS

{Notes to Agro dealer shown in brackets { } throughout Section 3 provide guidance to the Agro dealer to prepare the Technical Proposal; they should not appear on the Proposals to be submitted.}

1 FORMTECH-1: TECHNICAL PROPOSAL SUBMISSION FORM

{Location, Date}

To: *State Department for Agriculture*

Dear Sirs:

We, the undersigned, offer to provide Agro dealer Services in accordance with your RFP dated [11th January, 2022] and our Proposal. We are hereby submitting our Technical Proposal.

{If the Agro dealer is a joint venture, insert the following: We are submitting our Proposal in association/as a consortium/as a joint venture with: {Insert a list with full name and the legal address of each member, and indicate the lead member}. We have attached a copy {insert: “of our letter of intent to form a joint venture” or, if a JV is already formed, “of the JV agreement”} signed by every participating member, which details the likely legal structure of and the confirmation of joint and severable liability of the members of the said joint venture.

OR

{If the Agro dealer’s Proposal includes Sub-consultants, insert the following:} We are submitting our Proposal with the following firms as Sub-consultants: {insert a list with full name and address of each Sub-consultant.}

We hereby declare that:

- a) All the information and statements made in this Proposal are true and we accept that any misinterpretation or misrepresentation contained in this Proposal may lead to our disqualification by the Procuring Entity or maybe sanctioned by the PPRA.
- b) Our Proposal shall be valid and remain binding upon us for the period of time specified in the Data Sheet, Clause 12.1.
- c) We have no conflict of interest in accordance with ITB3.
- d) We meet the eligibility requirements as stated in ITB6, and we confirm our understanding of our obligation to abide by the Government's policy in regard to corrupt, fraudulent and prohibited practices as per ITB5.
- e) In competing for (and, if the award is made to us, in executing) the Contract, we undertake to observe the laws against fraud and corruption, including bribery, as well as laws against anti-competitive practices, including bid rigging in force in Kenya; we hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption or anti-competitive practices.
- f) We confirm that we are not insolvent, in receivership, bankrupt or on the process of being of being wound up.
- g) The Agro dealer shall declare in the Technical Proposal Submission Form, that in competing for and executing a contract, it shall undertake to observe the laws of Kenya against fraud and corruption including bribery, as well as against anti-competitive practices including bid-rigging.

- (h) We are not guilty of any serious violation of fair employment laws and practices. We undertake to observe the laws of Kenya against fraud and corruption including bribery, as well as against collusive and anti-competitive practices, including bid rigging. To this effect we have signed the “Certificate of Independent Proposal Determination” attached below. We also undertake to adhere by the Code of Ethics for persons participating in Public Procurement and Asset Disposal Activities in Kenya, copy available from <http://www.ppoa.go.ke> during the procurement process and the execution of any resulting contract.
- (l) We, along with any of our sub-consultants are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the PPRA.
- (e) Except as stated in the ITB12 and Data Sheet, we undertake to negotiate a Contract on the basis of the proposed TOR. Our Proposal is binding upon us and subject to any modifications resulting from the Contract negotiations.
- (j) We understand that the Procuring Entity is not bound to accept any Proposal that it receives.

We undertake, if our Proposal is accepted and the Contract is signed, to initiate the Services related to the assignment no later than the date indicated in Clause 32.2 of the Data Sheet.

The Telephone number(s) and Mpesa Till that will be used for this service are;

Tel 1)..... 2).....

Till No.....

We remain, Yours sincerely,

Authorized Signature *{In full and initials}*: Name and Title of Signatory:
 Name of Agro dealer *(company's name or JV's name)*:
 Contact information *(phone and e-mail)*:

{For a joint venture, either all members shall sign or only the lead member, in which case the power of attorney to sign on behalf of all members shall be attached }

2 CERTIFICATE OF INDEPENDENT PROPOSAL DETERMINATION

I, the undersigned, in submitting the accompanying TECHNICAL PROPOSAL SUBMISSION FORM to the _____

_____ [Name of Procuring Entity]

for: _____ [Name and number of tender] in response to the request for tenders made by: _____ [Name of Tenderer] do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of _____ [Name of Tenderer] that:

1. I have read and I understand the contents of this Certificate;
2. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;
4. For the purposes of this Certificate and the Tender, I understand that the word “competitor” shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:
 - Has been requested to submit a Tender in response to this request for tenders;
 - could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;
5. The Tenderer discloses that [check one of the following, as applicable]:
 - The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
 - The Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements;
6. In particular, without limiting the generality of paragraphs(5)(a) or (5) (b)above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - prices;
 - methods, factors or formulas used to calculate prices;
 - the intention or decision to submit, or not to submit, a proposal; or
 - the submission of a proposal which does not meet the specifications of the request for proposals; except as specifically disclosed pursuant to paragraph(5)(b) above;
7. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this RFP relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph(5)(b) above;
8. The terms of the RFP have not been, and will not be, knowingly disclosed by the Consultant, directly or indirectly, to any competitor, prior to the date and time of the official proposed opening, or of the awarding of the Contract, which ever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph(5)(b) above.

Name

Title

Signature

Date

[Name, title and signature of authorized agent of Consultant and Date]

3. APPENDIX TO FORM OF PROPOSAL ON FRAUD AND CORRUPTION CLAUSE (for information)

(Appendix shall not be modified)

Purpose

the government of Kenya's Anti-Corruption and Economic Crime laws and their sanction's policies and procedures, Public Procurement and Asset Disposal Act (*no. 33 of 2015*) and its Regulation, and any other Kenya's Acts or Regulations related to Fraud and Corruption, and similar offences, shall apply with respect to Public Procurement Processes and Contracts that are governed by the laws of Kenya.

Requirements

The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts, and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1 above.

Kenya's public procurement and asset disposal act (*no.33 of 2015*) under Section 66 describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted below highlight Kenya's policy of no tolerance for such practices and behavior:

- (1) a person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or asset disposal proceeding;
- (2) A person referred to under sub section (1) who contravenes the provisions of that sub-section commits an offence;
- (3) Without limiting the generality of the subsection (1) and (2), the person shall be: -
 - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
 - b) if a contract has already been entered into with the person, the contract shall be avoidable;
- (4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
- (5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement—
 - i) Shall not take part in the procurement proceedings;
 - ii) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
 - iii) Shall not be a sub-contractor for the tender to whom was awarded contract, or a member of the group of tenderers to whom the contract was awarded, but the sub-contractor appointed shall meet all the requirements of this Act.
- (6) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;
- (7) If a person contravenes sub section (1) with respect to a conflict of interest described in subsection (5)(a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer.
- (8) Incompliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:

- a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
- i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - ii) “fraudulent practice” is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
 - iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
 - iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - v) “obstructive practice” is:
 - i) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
 - ii) Acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3e. below.
- b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:
- "fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contract or, and includes collusive practices amongst tenderers prior to or after tenders 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.
- c) Rejects a proposal or award¹ of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or debar or recommend to appropriate authority (ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;
- e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect² all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and
- f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a “Self-Declaration Form” as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

¹ For the avoidance of doubt, a party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in

A consultancy, and tendering, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and(ii) entering into an addendum or amendment introducing a material modification to any existing contract.

² Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Investigating Authority or persons appointed by the Procuring Entity to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/audit, and making copies thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.

6. FORMTECH-7: MANDATORY SUPPORT DOCUMENTS

[The Agro dealer shall use this form to submit all the required support documentary evidence as required in the RFP, especially the mandatory and eligibility criteria specified in the Data Sheet ITC 21.1]

Mandatory Documentary Evidence

- Copy of current Pest Control Products Board (PCPB) Certification
- Copy of current Kenya Plant Health Inspectorate Service (KEPHIS) Certification
- Copy of Certificate of Incorporation or Business Registration Certificate as per the tender requirements
- Copy of tax compliance certificate valid at least up to the date of tender opening from the applicable Revenue Authority
- Duly filled and signed technical proposal submission form in the format provided in the Request for proposal document (Technical Proposal to be sealed in a different envelope).
- Dully filled and signed Confidential Business Questionnaire in the form or format provided in the tender document
- Duly filled and signed declaration form in the form provided in the tender document. (Form SD1 and SD2)

FORM TECH - 8: SELF-DECLARATION FORMS

FORM SD1

SELF DECLARATION THAT THE PERSON/TENDERER IS NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015.

I,, of Post Office Box being a resident of in the Republic of do hereby make a statement as follows: -

1. THAT I am the Company Secretary/Chief Executive/Managing Director/Principal Officer/Director of (Insert name of the Company) who is a Bidder in respect of **Tender No.** for..... (Insert tender title/description) for..... *(Insert name of the Procuring entity)* and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.
3. THAT what is deponed to here in above is true to the best of my knowledge, information and belief.

..... (Title)
..... (Signature) (Date)

Bidder Official Stamp

FORM SD2

SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE.

I, of P. O. Box.....being a resident of in the Republic of do hereby make a statement as follows: -

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of.....
..... (*insert name of the Company*) who is a Bidder in respect of **Tender No.** for (*insert tender title/description*) for (*insert name of the Procuring entity*) and duly authorized and competent to make this statement.

2. THAT the aforesaid Bidder, its servants and/or agents /subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/ or agents of..... (*insert name of the Procuring entity*) which is the procuring entity.

3. THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of..... (*name of the procuring entity*).

4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject tender.

5. THAT what is deponed to herein above is true to the best of my knowledge information and belief.

..... (Title)
..... (Signature) (Date)

Bidder Official Stamp

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

I (person) on behalf of (*Name of the Business/ Company/Firm*) declare that I have read and fully understood the contents of the Public Procurement & Asset Disposal Act,2015, Regulations and the Code of Ethics for persons participating in Public Procurement and Asset Disposal Activities in Kenya and my responsibilities under the Code.

I do here by commit to abide by the provisions of the Code of Ethics for persons participating in Public Procurement and Asset Disposal.

Name of Authorized signatory.....

Sign.....

Position.....

Office address..... Telephone.....

E-mail.....

Name of the Firm/Company.....

Date.....

(Company Seal/ Rubber Stamp where applicable)

Witness

Name

Sign.....

Date.....

FORM TECH - 9: TENDER-SECURING DECLARATION FORM {r 46 and 155(2)}

[The Bidder shall complete this Form in accordance with the instructions indicated]

Date:[insert date (as day, month and year) of Tender Submission]

Tender No.:[insert number of tendering process]

To:[insert complete name of Purchaser]

I/We, the undersigned, declare that:

1. I / We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.
2. I /We accept that I/we will automatically be suspended from being eligible for tendering in any contract with the Purchaser or the period of time of[insert 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 tender during the period of tender validity specified by us in the Tendering 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 to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the instructions to tenders.
3. I / We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer (s), upon the earlier of:
 - a) Our receipt of a copy of your notification of the name of the successful Tenderer; or
 - b) Thirty days after the expiration of our Tender.
4. I/We understand that if I am /we are/in a Joint Venture, the Tender 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 Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed: Capacity / title

(director or partner or sole proprietor, etc.) Name:

.....

Duly authorized to sign the bid for and on behalf of:[insert complete name

of Tenderer] Dated on day of [Insert date of signing]

OTHER FORMS

(a) **TENDERER'S ELIGIBILITY-CONFIDENTIAL BUSINESS**

QUESTIONNAIRE Instruction to Tenderer

Tender is instructed to complete the particulars required in this Form, *one form for each entity if Tender is a JV*. Tenderer is further reminded that it is an offence to give false information on this Form.

(a) ***Tenderer's details***

	ITEM	DESCRIPTION
1	Name of the Procuring Entity	
2	Reference Number of the Tender	
3	Date and Time of Tender Opening	
4	Name of the Tenderer	
5	Full Address and Contact Details of the Tenderer.	1. Country 2. City 3. Location 4. Building 5. Floor 6. Postal Address 7. Name and email of contact person.
6	Current Trade License Registration Number and Expiring date	
7	Name, country and full address (<i>postal and physical addresses, email, and telephone number</i>) of Registering Body/Agency	
8	Description of Nature of Business	
9	Maximum value of business which the Tenderer handles.	
10	State if Tenders Company is listed in stock exchange, give name and full address (<i>postal and physical addresses, email, and telephone number</i>) of state which stock exchange	

General and Specific Details

(b) **Sole Proprietor**, provide the following details.

Name in full _____ Age _____
 Nationality _____ Country of Origin _____
 Citizenship _____

(c) **Partnership**, provide the following details.

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

(d) **Registered Company**, provide the following details.

- i) Private or public Company _____
 ii) State the nominal and issued capital of the Company _____

Nominal Kenya Shillings (Equivalent).....

Issued Kenya Shillings (Equivalent).....

iii) Give details of Directors as follows.

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

(e) **DISCLOSURE OF INTEREST - Interest of the Firm in the Procuring Entity.**

- i) Are there any person/persons in..... (Name of Procuring Entity) who has/have an interest or relationship in this firm? Yes/No.....

If yes, provide details as follows.

	Names of Person	Designation in the Procuring Entity	Interest or Relationship with Tenderer
1			
2			
3			

(i) **Conflict of interest disclosure**

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
1	Tenderer is directly or indirectly controls, is controlled by or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Tender has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process.		
5	Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works		

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
	that are the subject of the tender.		
6	Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract specified in this Tender Document.		
7	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract.		
8	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision of the such Contract.		
9	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.		

Certification

On behalf of the Tenderer, I certify that the information given above is complete, current and accurate as at the date of submission.

Full _____

Name _____

Title or Designation _____

(Signature)

(Date)

.....

.....

SECTION 5. TERMS OF REFERENCE

Background

The Ministry of Agriculture and Livestock Development and other government agencies are implementing the Bottom-up Economic Transformation Agenda (BETA) 2022-2027 which has identified five key areas of focus, Agriculture being one of the key areas with three pillars namely; food security, reduction of food imports and increase agricultural exports. In all these three pillars several crop value chains have been identified for enhancement of their production and productivity.

The government has also identified agricultural value chains as key in employment and wealth creation. Therefore, increasing agricultural productivity is key in ensuring food security, surplus products for export and abundant raw materials for the cottage industries in the country.

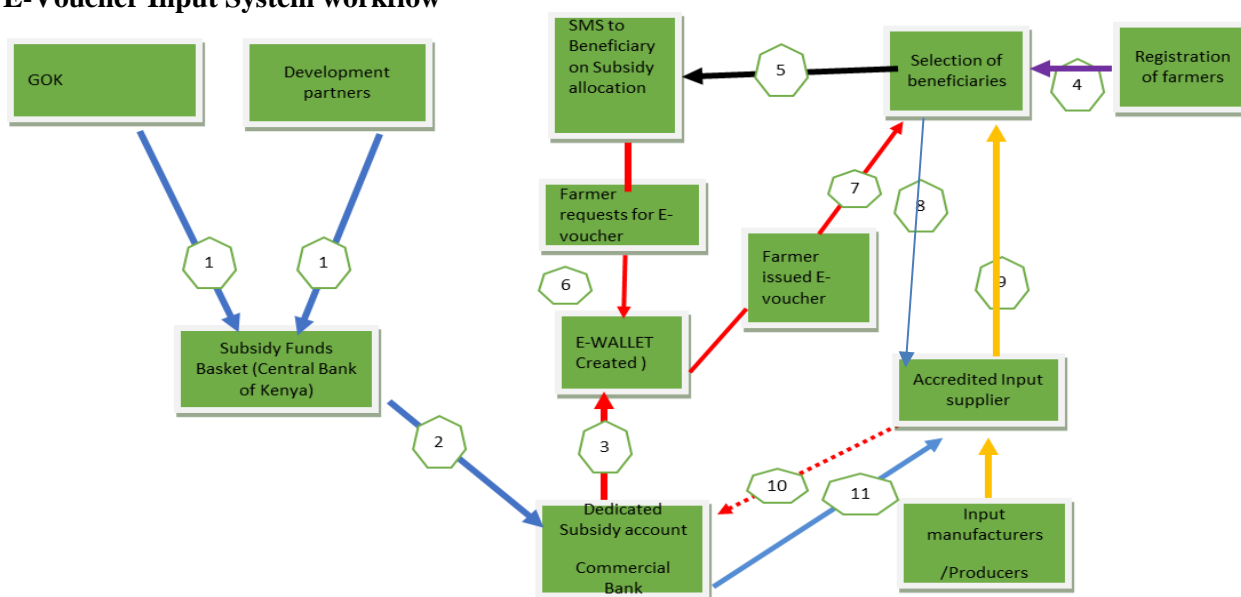
Agricultural productivity is however hampered by several constraints among them are low use of farm inputs especially fertilizer and certified seeds due to their high prices occasioned by international market forces. The current government policy in effort to lower the cost of living is to subsidize production rather than consumption. Consequently, the government is committed to avail to farmers affordable and quality fertilizers as an intervention to impact on agricultural productivity. To ensure availability of the affordable inputs especially fertilizers to all farmers, the government is implementing a robust Input Subsidy Programme whose broad objective is to increase crop productivity to enhance food and nutrition security, lower the cost of food, and increase income from sale of surplus production and enhancement of livelihoods. This will also ensure increased products for exports and lower quantities of imported products.

To improve accountability and transparency, the Input Subsidy Programme is managed electronically where only digitally registered farmers can access the subsidized inputs. The Programme is funded by the Government of Kenya (GoK) and is being rolled out in 47 counties

The Programme is seeking Agro-dealers to stock the necessary inputs and support electronic voucher (e-voucher) redeeming process for beneficiary farmers.

The farmer will pay part of the input cost while the Government of Kenya (GOK) will pay the remaining part as determined by the Government. .

E-Voucher Input System workflow



E- VOUCHER PROCESS FLOW

1. Funds from GOK and other partners	7. Beneficiaries are issued with E-vouchers
2. Funds consolidated in an operational Bank Account	8. Beneficiaries visit their nearest agro dealer shop and pay part of the cost of input requested. (This RFP is central to the selection of these agro-dealership)
3. Creation of master e-vouchers for various inputs in various counties.	9. Govt. funds in a commercial bank, tops up the beneficiary payment with government subsidy part and electronically pays the agro-dealer 100 % of cost in real time.
4. Registration of farmers by Government	10. Agro-dealers issue inputs to the beneficiaries
5. Beneficiaries receive information on activation of voucher for the season and subsidy allocation	
6. Verification of beneficiaries to receive vouchers	

STAKEHOLDERS IN THE E-VOUCHER SUBSIDY SYSTEM

Ministry of Agriculture and Livestock Development	<ul style="list-style-type: none"> • Set up a subsidy Implementation Unit- National Value Chain Support Program • Review and develop policy guidelines • Develop and circulate detailed implementation guidelines for targeting, delivery mechanism, exit strategy, • Budgetary provisions for subsidy phases • Pilot and rollout the e-subsidy platform • Capacity building of implementers • Convene joint planning meetings with key stakeholders • Receive and consolidate county Programme support requirements for each intervention • Collaborate and partner with key stakeholders Monitoring, evaluation and reporting • Continuously review and improve the subsidy systems
County governments	<ul style="list-style-type: none"> • Set up a County Subsidy Steering Committee • Implement policy guidelines • Budgetary provisions for subsidy phases of their choice • Registration of farmers • Verification and vetting of beneficiary farmers • Capacity building of farmers and implementers • Collaborate and partner with key stakeholders • Monitoring, evaluation and reporting.
Agro-dealers	<ul style="list-style-type: none"> • Stock adequate farm inputs quantities and types • Execute implementation guidelines for sale of subsidized inputs • Keep records of subsidized inputs sold • Redeem vouchers for payment • Provide reports. • Participate in capacity building activities
Farmers	<ul style="list-style-type: none"> • Register with government e-voucher system • Apply for subsidy voucher • Keep records of their operations • Redeem vouchers for issuance of subsidized inputs • Pay their part of the co-financing agreement

Financial Service provider (Currently KCB, NCBA)	<ul style="list-style-type: none"> • Host the dedicated government subsidy account • Capacity building on financial literacy to targeted beneficiaries • Execute implementation guidelines for redemption of vouchers • Keep records of financial transaction related to government subsidy • Redeem vouchers for payment • Provide reports to the Programme Coordinator
Training service provider	<ul style="list-style-type: none"> • Provide appropriate agronomic training • Provide appropriate post-harvest management • Establish market linkages and/or offer storage solution • Building function capacity of relevant staff, farmers, agro-dealers
Platform service provider (Currently done by Safaricom)	<ul style="list-style-type: none"> • Develop or undertake customization, maintenance and upgrade • Integrate payment system • Provide co-hosting of the system and database • Set up call center for technical support • Undertake TOT on the usage of the platform

Objective(s) of the Assignment

The strategic objective of this assignment is:

1. Enhance agricultural productivity among small scale farmers through increased access, affordability and availability of quality agricultural inputs. Consequently, agro-dealer are expected to:
 - a) Stock adequate farm inputs – qualities, quantities and types
 - b) Execute implementation guidelines as guided by the Programme.
 - c) Keep records of inputs sold
 - d) Redeem vouchers for payment
 - e) Provide reports to County Executive Committee Member in charge of Agriculture and Programme Coordinator.
 - f) Participate in capacity building activities
2. Reduce the distance farmers have to travel to access inputs to three kilometers.

Scope of Services, Tasks (Components) and Expected Deliverables

This assignment will be rolled out in **47** counties to support crop value chains as prioritized by the State Department for Agriculture

Brief outline

1. The Agro dealer will familiarize themselves with this RFP, including the understanding and interpretation of the TORs, financial implications, farmer numbers and catchment area and attach all mandatory supporting documents before signing this contract.
2. Will attend trainings from NVSP and other stakeholders on the operations of the e-voucher system, and the uploading of the redemption application.
3. In collaboration with NVSP, the agro-dealer will stock appropriate input packages for the targeted value chains.

Obligation of the Firm

Agro-dealers shall carry out this assignment as specified in the TOR in a professional manner in keeping with accepted standards using qualified and appropriate staff.

In the course of the assignment the Agro-dealer may open additional branches he/she may deem necessary to successfully undertake the assignment, but at no extra cost to the client.

Agro-dealers shall undertake the contract in a consultative manner and involve relevant stakeholders.

The following are the specific tasks Agro-dealer services:

1. Supply all inputs at the prices, quantities as loaded in the e-voucher system. These must meet quality standards as prescribed by law and be available at all times when needed.
2. Have a legal business registered under the Laws of Kenya (Certificate of Incorporation of Business

- Name) with a valid County Business Permit /License in operation for at least 2 years.
3. Willing to provide their own contribution to promote field activities such as trainings, demonstrations, field-days and exhibitions.
 4. Willingness to operate a Safaricom Mpesa Till No is a prerequisite since payments will be electronically done through the e-voucher redemption process.
 5. Must have a business name and bank account in the same name.
 6. Provide an undertaking to supply farmers with recommended inputs and not to exchange inputs with cash or other inputs, sworn by a commissioner of oaths.
 7. Provide an undertaking to submit quarterly reports on voucher redemption to the Coordinator NVSP
 8. Is duly registered with the regulatory bodies – KEPHIS, PCPB
 9. Membership of an agro-dealer association is an added advantage.
 10. Business Association to a legal fertilizer supplier is an added advantage

Supervisory arrangements

The Agro dealer shall report to the Client’s Implementation Team headed by the National Coordinator, National Value Chain Support Programme, State Department for Agriculture.

The Agro dealer should have relevant shop attendants who are able to operate mobile based voucher redemption system.

1. *Reporting Requirements and Time Schedule for Deliverables*

Inception Report – *The agro-dealer shall submit a signed contract with necessary attachments as an acceptance of this RFP,*

Regular Reports – *Quarterly reports on redemptions, system operation and challenges if any will be provided on regular basis,*

Completion Report- *As may be demanded by client.*

[At a minimum, list the following:

format, frequency, and contents of reports; number of copies, and requirements to electronic submission. Final reports shall be delivered in soft copy in addition to the specified number of hardcopies; dates of submission; persons (indicate names, titles, submission address) to receive them; etc.

2. *Procuring Entity's Input and Counterpart Personnel*

a) *Services, facilities and property to be made available to the Consultant by the Procuring Entity:*

_____ *[List / specify]*

b) *Professional and support counterpart personnel to be assigned by the Procuring Entity to the Agro*

SECTION 7: GENERAL CONDITIONS OF CONTRACT

A. General Provisions

1. Definitions

1.1 Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- a) “Applicable Law” means the laws and any other instruments having the force of law in Kenya.
- b) “Consultant/Agro dealer” means a legally-established professional consulting firm or entity selected by the Procuring Entity to provide the Services under the signed Contract.
- c) “Contract” means the legally binding written agreement signed between the Procuring Entity and the Consultant and which includes all the attached documents listed in its paragraph 1 of the Form of Contract (the General Conditions (GCC), the Special Conditions (SCC), and the Appendices).
- d) “Procuring Entity” means the Procuring Entity that signs the Contract for the Services with the selected Consultant.
- e) “Day” means a working day unless indicated otherwise.
- f) “Effective Date” means the date on which this Contract comes into force and effect pursuant to Clause GCC 11.
- g) “Foreign Currency” means any currency other than the currency of Kenya.
- h) “GCC” mean these General Conditions of Contract.
- i) “Government” means the government of Kenya.
- j) “Joint Venture (JV)” means an association with or without a legal personality distinct from that of its members, of more than one entity where one member has the authority to conduct all businesses for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Procuring Entity for the performance of the Contract.
- k) “Local Currency” means the Kenya Shillings, the currency of Kenya.
- l) “Party” means the Procuring Entity or the Consultant, as the case may be, and “Parties” means both of them.
- m) “SCC” means the Special Conditions of Contract by which the GCC may be amended or supplemented but not over-written.
- n) “Services” means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A hereto.
- o) “Sub-consultants” means an entity to whom/which the Consultant subcontracts any part of the Services while remaining solely liable for the execution of the Contract.

- (t) “Third Party “means any person or entity other than the Government, the Procuring Entity, the Consultant or a Sub-consultant.

2. Relationship between the Parties

3. Law Governing Contract

- 1.1 This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Laws of Kenya.

4. Language

- 4.1 This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

5. Headings

- 5.1 The headings shall not limit, alter or affect the meaning of this Contract.

6. Communications

- 6.1 Any communication required or permitted to be given or made pursuant to this Contract shall be in writing in the English Language. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the SCC.

- 6.2 A Party may change its address for notice here under by giving the other Party any communication of such change to the address specified in the SCC.

7. Location

- 7.1 The Services shall be performed at such locations as are specified in Appendix A hereto and, where the location of a particular task is not so specified, at such locations, whether in Kenya or elsewhere, as the Procuring Entity may approve.

8. Authority of Member in Charge

- 8.1 In case the Consultant is a Joint Venture, the members hereby authorize them ember specified in the SCC to act on their behalf in exercising all the Consultant's rights and obligations towards the Procuring Entity under this Contract, including without limitation the receiving of instructions and payments from the Procuring Entity.

9. Authorized Representatives

- 9.1 Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Procuring Entity or the Consultant may be taken or executed by the officials specified in the SCC.

10. Corrupt and Fraudulent Practices

- 10.1 The government requires compliance with its policy regarding corrupt and fraudulent/prohibited practices as set forth in its laws and policies.

- 10.2 Commissions and Fees-**The Procuring Entity requires the Consultant to disclose any commissions, gratuities or fees that may have been paid or are to be paid to a gents or any other party with respect to the selection process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee. Failure to disclose such commissions, gratuities or fees may result in termination of the Contract by the Procuring Entity and/or sanctions by the PPRA.

B. Commencement, Completion, Modification and Termination of Contract

11 Effectiveness of Contract

- 11.1 This Contract shall come into force and effect on the date (the “Effective Date”) of the Procuring Entity's notice to the Consultant instructing the Consultant to begin carrying out the Services. This notice shall confirm that the effectiveness conditions, if any, listed in the SCC have been met.

12 Termination of Contract for Failure to Become Effective

- 12.1 If this Contract has not become effective within such time period after the date of Contract signature as specified in the SCC, either Party may, by not less than twenty-two (22) days written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect there to.

13 Commencement of Services

- 13.1 The Consultant shall confirm availability of Key Experts and begins carrying out the Services not later than the number of days after the Effective Date specified in the SCC.

14 Expiration of Contract

- 14.1 Unless terminated earlier pursuant to Clause GCC19hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the SCC.

15 Entire Agreement

- 15.1 This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

16 Modifications or Variations

- 16.1 Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party.

17 Force Majeure

a. Definition

- 17.1 For the purposes of this Contract, “ Force Majeure” means event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible under the circumstances, and subject to those requirements, includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action confiscation or any other action by Government agencies.
- 17.2 Force Majeure shall not include (i) any event which his caused by the negligence or intentional action of a Party or such Party's Experts, Sub-consultants or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both take into account at the time of the conclusion of this Contract and avoid or over come in the carrying out of its obligations here under.
- 17.3 Force Majeure shall not include insufficiency of funds or failure to make any payment required here under.

b. No Breach of Contract

17.4 The failure of a Party to fulfill any of its obligations here under shall not be considered to be a breach of, or default under, this Contract in so far as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

c. Measures to be taken

17.5 A party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

17.6 A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) calendar days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.

- a) Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.
- b) During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the Procuring Entity, shall either:
- c) demobilize, in which case the Consultant shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the Procuring Entity, in reactivating the Services; or
- d) Continue with the Services to the extent reasonably possible, in which case the Consultant shall continue to be paid under the terms of this Contract and be reimbursed or additional costs reasonably and necessarily incurred.

17.7 In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clauses GCC 44 & 45.

18 Suspension

18.1 The Procuring Entity may, by written notice of suspension to the Consultant, suspend all payments to the Consultant here under if the Consultant fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Consultant to remedy such failure within a period not exceeding thirty (30) calendar days after receipt by the Consultant of such notice of suspension.

19 Termination

19.1 This Contract may be terminated by either Party as per provisions set up below:

a. By the Procuring Entity

19.1.1 The Procuring Entity may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause. In such an occurrence, the Procuring Entity shall give at least thirty (30) calendar days' written notice of termination to the Consultant in case of the events referred to in (a) through (d); at least sixty (60) calendar days' written notice in case of the event referred to in (e); and at least five (5) calendar days' written notice in case of the event referred to in (f):

- a If the Agro dealer fails to remedy a failure in the performance of its obligations here under, as specified in a notice of suspension pursuant to Clause GCC 18;
- b If the Agro dealer becomes (or, if the Agro dealer consists of more than one entity, if any of its

members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go in to liquidation or receivership whether compulsory or voluntary;

- c If the Agro dealer fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GCC 45.1;
- d If, as the result of Force Majeure, the Agro dealer is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days;
- e If the Procuring Entity, in its sole discretion and for any reason whatsoever, decides to terminate this Contract;

19.1.2 Furthermore, if the Procuring Entity determines that the Agro dealer has engaged in corrupt, fraudulent, collusive, coercive [or obstructive] practices, in competing for or in executing the Contract, then the Procuring Entity may, after giving fourteen (14) calendar days written notice to the Agro dealer, terminate the Contract.

b. By the Agro dealer

- a) The Agro dealer may terminate this Contract, by not less than thirty (30) calendar days' written notice to the Procuring Entity, in case of the occurrence of any of the events specified in paragraphs(a)through(d)of this Clause.
- b) If, as the result of Force Majeure, the Agro dealer is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days.
- c) If the Procuring Entity fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC45.1.
- d) If the Procuring Entity is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Agro dealer may have subsequently approved in writing) following the receipt by the Procuring Entity of the Consultant's notice specifying such breach.

c. Cessation of Rights and Obligations

19.1.4 Upon termination of this Contract pursuant to Clauses GCC 12 or GCC 19 hereof, or upon expiration of this Contract pursuant to Clause GCC14, all rights and obligations of the Parties here under shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause GCC22, (iii) the Consultant's obligation to permit in section, copying and auditing of their accounts and records set forth in Clause GCC25, and (iv) any right which a Party may have under the Applicable Law.

d. Cessation of Services

19.1.5. Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GCC 19a or GCC 19b, the Consultant shall immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the Procuring Entity, the Consultant shall proceed as provided, respectively, by Clauses GCC27or GCC28.

C. Obligations of the Agro Dealer

16. General

a. Standard of Performance

20.1 The Agro dealer shall perform the Services and carry out the Services with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Agro dealer shall always act, in respect of any matter relating to this Contract or to the Services, as a faithful adviser to the

Procuring Entity, and shall at all times support and safeguard the Procuring Entity's legitimate interests in any dealings with the third parties.

b. Law Applicable to Services

- 20.4. The Consultant shall perform the Services in accordance with the Contract and the Applicable Law and shall take all practicable steps to ensure that any of its Experts and Sub-consultants, comply with the Applicable Law.
- 20.5 Throughout the execution of the Contract, the Agro dealer shall comply with the import of goods and services prohibitions in Kenya when
- a As a matter of law or official regulations, Kenya prohibits commercial relations with that country; or
 - b by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods from that country or any payments to any country, person, or entity in that country.
- 20.6. The Procuring Entity shall notify the Agro dealer in writing of relevant local customs, and the Agro dealer shall, after such notification, respect such customs.

21 Conflict of Interests

- 21.1 The Agro dealer shall hold the Procuring Entity's interest paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.
- 21.1.1 The Agro dealer agrees that, during the term of this Contract and after its termination, the Agro dealer and any entity affiliated with the him, as well as any Sub-consultants and any entity affiliated with such Sub-consultants, shall be disqualified from providing goods, works or non-consulting services resulting from or directly related to the Agro dealer Services for the preparation or implementation of the project.

22 Confidentiality

- 22.1 Except with the prior written consent of the Procuring Entity, the Agro dealer shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Agro dealers make public the recommendations formulated in the course of, or because of, the Services.

23 Liability of the Consultant

- 23.1 Subject to additional provisions, if any, set for in the SCC, the Agro dealer's liability under this Contract shall be as determined under the Applicable Law.

24 Accounting, Inspection and Auditing

- 24.1 The Agro dealer shall keep and shall make all reasonable efforts to cause its Sub-consultants to keep, accurate and systematic accounts and records in respect of the Services and in such form and detail as will clearly identify relevant time changes and costs.
- 24.2 The Agro dealer shall permit and shall cause its Sub-consultants to permit, the PPRA and/ or persons appointed by the PPRA to inspect the Site and /or all accounts and records relating to the performance of the Contract and the submission of the Proposal to provide the Services, and to have such accounts and records audited by auditors appointed by the PPRA if requested by the PPRA. The Agro dealer's attention is drawn to Clause GCC10 which provides, interlaid, that acts intended to materially impede the exercise of the PPRA's inspection and audit rights provided for under this ClauseGCC25.2 constitute a prohibited practice subject to contract termination (as well as to a determination of in eligibility under the PPRA's prevailing sanctions procedures.)

25 Proprietary Rights of the Procuring Entity in Reports and Records

- 25.1 Unless otherwise indicated in the SCC, all reports and relevant data and information supporting records or material compiled or prepared by the Agro dealer for the Procuring Entity in the course of the Services shall be confidential and become and remain the absolute property of the Procuring Entity. The Agro dealer shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Procuring Entity, together with a detailed inventory thereof. The Agro dealer may retain a copy of such documents, data and/or software but shall not use the same for purposes unrelated to this Contract without prior written approval of the Procuring Entity.
- 25.2 If license agreements are necessary or appropriate between the Agro dealer and third parties for purposes of development of the plans, the Agro dealer shall obtain the Procuring Entity's prior written approval to such agreements, and the Procuring Entity shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned. Other restrictions about the future use of these documents and software, if any, shall be specified in the SCC.

E. Obligations of the Procuring Entity

26 Assistance and Exemptions

- 26.1 Unless otherwise specified in the SCC, the Procuring Entity shall use its best efforts to:
- a Provide to the Agro dealer any such other assistance as may be specified in the SCC.

27 Access to Project Site

- 28 The Procuring Entity warrants that the Agro dealer shall have, free of charge, unimpeded access to their business site in respect of which access is required for the performance of the Services.

29 Change in the Applicable Law Related to Taxes and Duties

- 29.1 If, after the date of this Contract, there is any change in the applicable law in Kenya with respect to taxes and duties which increases or decreases the cost incurred by the Agro dealer in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the Contract price amount specified in Clause GCC 39.1

30 Services, Facilities and Property of the Procuring Entity

- 30.1 The Procuring Entity shall make available to the Agro dealer, for the purposes of the Services and free of any charge, the services, facilities and property described in the Terms of Reference (Appendix A) at the times and in the manner specified in said Appendix A.

31 Counterpart Personnel

- 31.1 The Procuring Entity shall make available to the Agro dealer free of charge such professional and support counterpart personnel, to be nominated by the Procuring Entity with the Consultant's advice, if specified in Appendix A.
- 31.2 Any change to the Contract price specified in Clause 38.1 can be made only if the Parties have agreed to the revised scope of Services pursuant to Clause GCC 16 and have amended in writing the Terms of Reference in Appendix A.

32 Taxes and Duties

- 32.1 The Agro dealer, Sub-consultants are responsible for meeting any and all tax liabilities arising out of the Contract unless it is stated otherwise in the SCC. Currency of Payment
- 32.2 Any payment under this Contract shall be made in the currency (kes) of the Contract.

33 Mode of Billing and Payment

H. Settlement of Disputes

41 Amicable Settlement

41.1.2 The Parties shall seek to resolve any dispute amicably by mutual consultation.

41.1.3 If either Party objects to any action or inaction of the other Party, the objecting Party may file a written Notice of Dispute to the other Party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within fourteen (14) days after receipt. If that Party fails to respond within fourteen (14) days, or the dispute cannot be amicably settled within fourteen (14) days following the response of that Party, Clause GCC 45.1 shall apply.

42 Dispute Resolution

42.1.2 Any dispute between the Parties arising under or related to this Contract that cannot be settled amicably may be referred to by either Party to the adjudication/arbitration in accordance with the provisions specified in the SCC.

SECTION 8: SPECIAL CONDITIONS OF CONTRACT

[Notes in brackets are for guidance purposes only and should be deleted in the final text of the signed contract]

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(a)	The Contract shall be construed in accordance with the law of Kenya
4.1	The language is: English
6.1 and 6.2	<p>The addresses are <i>[fill in at negotiations with the selected firm]</i>:</p> <p>Procuring Entity: State Department for Agriculture Attention: Head Supply Chain Management Services Facsimile: N/A E-mail: <i>nvsp@kilimo.go.ke</i></p> <p>Consultant: _____ Attention: _____ Facsimile: _____ E-mail: _____</p>
8.1	<p><i>[If the Consultant consists only of one entity, state "N/A";</i> <i>OR</i> <i>If the Consultant is a Joint Venture consisting of more than one entity, the name of the JV member whose address is specified in Clause SCC6.1 should be inserted here.]</i> The Lead Member on behalf of the JV is _____ <i>[insert name of the member]</i></p>
9.1	<p>The Authorized Representatives are:</p> <p>For the Procuring Entity: <i>Richard Bii (Mr.)</i></p> <p>For the Consultant: <i>[name, title]</i>_____</p>
11.1	<p>The effectiveness conditions are the following: <i>[Note: If there are no effectiveness conditions, state "N/A"]</i></p> <p><i>OR</i></p> <p><i>List here any conditions of effectiveness of the Contract, e.g., receipt by the Consultant of an advance payment, and by the Procuring Entity of an advance payment guarantee (see Clause SCC45.1(a)), etc.]</i></p>
12.1	<p>Termination of Contract for Failure to Become Effective:</p> <p>The time period shall be _____ <i>[insert time period, e.g.: four months]</i>.</p>
14.1	<p>Expiration of Contract:</p> <p>The time period shall be 2 years</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
21.1.3.	<p>The Procuring Entity reserves the right to determine on a case-by-case basis whether the Agro dealer should be disqualified from providing goods, works or non-consulting services due to a conflict of a nature described in Clause GCC 21.1.3</p> <p>Yes</p>
23.1	<p>No additional provisions.</p> <p><i>[OR</i></p> <p>The following limitation of the Agro dealer’s Liability towards the Procuring Entity can be subject to the Contract’s negotiations:</p> <p>“Limitation of the Agro dealer’s Liability towards the Procuring Entity:</p> <p>(a) Except in the case of gross negligence or willful misconduct on the part of the Consultant or on the part of any person or a firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused by the Consultant to the Procuring Entity’s property, shall not be liable to the Procuring Entity:</p> <p style="padding-left: 40px;">(i) for any indirect or consequential loss or damage; and</p> <p style="padding-left: 40px;">(ii) for any direct loss or damage that exceeds two times the total value of the Contract;</p> <p>(b) This limitation of liability shall not</p> <p style="padding-left: 20px;">(i) affect the Consultant’s liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services;</p> <p style="padding-left: 20px;">(ii) be construed as providing the Consultant with any limitation or exclusion from liability which is prohibited by the Applicable Law.</p> <p><i>[Notes to the Procuring Entity and the Consultant:</i></p> <p><i>Any suggestions made by the Consultant in the Proposal to introduce exclusions/limitations of the Consultant’s liability under the Contract should be carefully scrutinized by the Procuring Entity prior to accepting any changes to what was included in the issued RFP.</i></p> <p><i>To be acceptable to the Procuring Entity, any limitation of the Consultant’s liability should at the very least be reasonably related to (a) the damage the Consultant might potentially cause to the Procuring Entity, and (b) the Consultant’s ability to pay compensation using its own assets and reasonably obtainable insurance coverage. The Consultant’s liability shall not be limited to less than a multiplier of the total payments to the Consultant under the Contract for remuneration and reimbursable expenses. <u>A statement to the effect that the Consultant is liable only for the re-performance of faulty Services is not acceptable to the Procuring Entity.</u> Also, the Consultant’s liability should never be limited for loss or damage caused by the Consultant’s gross negligence or willful misconduct.</i></p> <p><i>The Procuring Entity does not accept a provision to the effect that the Procuring Entity shall indemnify and hold harmless the Consultant against Third Party claims, except, of course, if a claim is based on loss or damage caused by a default or wrongful act of the Procuring Entity to the extent permissible by the law applicable in Kenya.]</i></p>
27.1	<p>The additional rights to the use of the documents are:</p> <p><i>[If applicable, insert any exceptions to proprietary rights provisions]</i></p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
27.2	<p><i>[If there is to be no restriction on the future use of these documents by either Party, this Clause SCC 27.2 should be indicated as Not Applicable.</i></p> <p><i>If the Parties wish to restrict such use, any of the following options, or any other option agreed to by the Parties, could be used:</i></p> <p>[The Consultant shall not use these <i>[insert what applies..... documents and software....]</i> for purposes unrelated to this Contract without the prior written approval of the Procuring Entity.]</p> <p>[OR]</p> <p>[The Procuring Entity shall not use these <i>[insert what applies..... documents and software.....]</i> for purposes unrelated to this Contract without the prior written approval of the Consultant.]</p> <p>[OR]</p> <p>[Neither Party shall use these <i>[insert what applies..... documents and software.....]</i> for purposes unrelated to this Contract without the prior written approval of the other Party.]</p>
32.1 (a) through (f)	<p><i>[List here any changes or additions to Clause GCC 32.1. If there are no such changes or additions, indicate Not Applicable.]</i></p>
32.1(g)	<p><i>[List here any other assistance to be provided by the Procuring Entity. If there is no such other assistance, indicate Not Applicable for this Clause SCC 32.1(g).]</i></p>
38.1	<p>The Contract price is: _____ <i>[insert amount and currency for each currency as applicable] [indicate: inclusive or exclusive]</i> of local taxes.</p> <p>Any local taxes chargeable in respect of this Contract for the Services provided by the Consultant shall <i>[insert as appropriate: “be paid” or “reimbursed”]</i> by the Procuring Entity <i>[insert as appropriate: “for “or “to”]</i> the Consultant.</p> <p>The amount of such taxes is _____ <i>[insert the amount as finalized at the Contract’s negotiations on the basis of the tax amounts provided by the Consultant in Form FIN-2 of the Consultant’s Financial Proposal.</i></p>
39.1 and 39.2	<p><i>[The Procuring Entity, depending on the source of funds and tax exemptions already granted by the Government, shall decide whether the Consultant (i) should be exempted from local tax, or (ii) should be reimbursed by the Procuring Entity for any such tax they might have to pay (or that the Procuring Entity would pay such tax on behalf of the Consultant)]</i></p> <p>The Procuring Entity warrants that <i>[choose one applicable option consistent with the ITC 16.3 and the outcome of the Contract’s negotiations (Form FIN-2)]</i></p> <p><i>If ITC16.3 indicates a tax exemption status, include the following: “the Consultant, the Sub-consultants and the Experts shall be exempt from”</i></p> <p>OR</p> <p><i>If ITC16.3 does not indicate the exemption and, depending on whether the Procuring Entity shall pay the withholding tax or the Consultant has to pay, include the following:</i></p> <p><i>“the Procuring Entity shall pay on behalf of the Consultant, the Sub-consultants and the Experts,”</i></p> <p><i>OR “the Procuring Entity shall reimburse the Consultant, the Sub-consultants and the Experts”]</i></p> <p>any taxes, duties, fees, levies and other impositions imposed, under the applicable law in the Procuring Entity’s country, on the Consultant, the Sub-consultants and the Experts in respect of:</p> <p>(a) any payments whatsoever made to the Consultant, Sub-consultants and the Experts (other than nationals or permanent residents of Kenya), in connection with the carrying out of the Services;</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>(b) any equipment, materials and supplies brought into Kenya by the Consultant or Sub-consultants for the purpose of carrying out the Services and which, after having been brought into such territories, will be subsequently withdrawn by them;</p> <p>(c) any equipment imported for the purpose of carrying out the Services and paid for out of funds provided by the Procuring Entity and which is treated as property of the Procuring Entity;</p> <p>(d) any property brought into Kenya by the Consultant, any Sub-consultants or the Experts (other than nationals or permanent residents of Kenya), or the eligible dependents of such experts for their personal use and which will subsequently be withdrawn by them upon their respective departure from the Procuring Entity’s country, provided that:</p> <p>(i) the Consultant, Sub-consultants and experts shall follow the usual customs procedures of Kenya in importing property into Kenya; and</p> <p>(ii) if the Consultant, Sub-consultants or Experts do not withdraw but dispose of any property in the Procuring Entity’s country upon which customs duties and taxes have been exempted, the Consultant, Sub-consultants or Experts, as the case may be, (a) shall bear such customs duties and taxes in conformity with the regulations of Kenya, or (b) shall reimburse them to the Procuring Entity if they were paid by the Procuring Entity at the time the property in question was brought into the Procuring Entity’s country.</p>
40.2	<p>The payment schedule:</p> <p><i>[Payment of installments shall be linked to the deliverables specified in the Terms of Reference in Appendix A]</i></p> <p>1st payment: <i>[insert the amount of the installment, percentage of the total Contract price, and the currency. If the first payment is an advance payment, it shall be made against the bank guarantee for the same amount as per GCC 41.2.1]. E.g. “Twenty (20) percent of the lumpsum contract price shall be paid upon submission and approval of the Inception Report</i></p> <p>2nd payment: Example: Sixty (60) percent of the lumpsum Contract Price shall be paid upon submission of an acceptable Draft Report.</p> <p>3rd and Final Payment: Example: Twenty (20) percent of the lumpsum Contract Price shall be paid upon submission and approval of the Final Report.</p> <p><i>[Total sum of all installments shall not exceed the Contract price set up in SCC38.1. Every Payment shall be subject to (i) submission to the Procuring Entity of the prerequisite Report and/or payment request documents, and, (ii) approval and acceptance of the said reports and documents by the Procuring Entity]</i></p>
40.2.1	<p><i>[The advance payment could be in either the foreign currency, or the local currency, or both; select the correct wording in the Clause here below. The advance bank payment guarantee should be in the same currency(ies)]</i></p> <p>The following provisions shall apply to the advance payment and the advance bank payment guarantee:</p> <p>(1) An advance payment [of <i>[insert amount]</i> in foreign currency] [and of <i>[insert amount]</i> in Kenya Shillings] shall be made within <i>[insert number]</i> days after the receipt of an advance bank payment guarantee by the Procuring Entity. The advance payment will be set off by the Procuring Entity in equal portions against [list the payments against which the advance is offset].</p> <p>(2) The advance bank payment guarantee shall be in the amount and in the currency of the currency (ies) of the advance payment.</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	(3) The bank guarantee will be released when the advance payment has been fully set off.
40.2.4	The accounts are: for foreign currency: <i>[insert account]</i> . for local currency: <i>[insert account]</i> .
41.1	The interest rate is: <i>[insert rate]</i> .
44.1	<p>Disputes shall be settled by arbitration in accordance with the following provisions:</p> <p>1. <u>Selection of Arbitrators</u>. Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three (3) arbitrators, in accordance with the following provisions:</p> <p>(a) Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to <i>[name an appropriate international professional body, e.g., the Federation Internationale des Ingenieurs-Conseil (FIDIC) of Lausanne, Switzerland]</i> for a list of not fewer than five (5) nominees and, on receipt of such list, the Parties shall alternately strike names therefrom, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the date of the list, <i>[insert the name of the same professional body as above]</i> shall appoint, upon the request of either Party and from such list or otherwise, a sole arbitrator for the matter in dispute.</p> <p>(b) Where the Parties do not agree that the dispute concerns a technical matter, the Procuring Entity and the Consultant shall each appoint one (1) arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two (2) arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by <i>[name an appropriate international appointing authority, e.g., the Secretary General of the Permanent Court of Arbitration, The Hague; the Secretary General of the International Centre for Settlement of Investment Disputes, Washington, D.C.; the International Chamber of Commerce, Paris; etc.]</i>.</p> <p>(c) If, in a dispute subject to paragraph (b) above, one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the <i>[name the same appointing authority as in said paragraph (b)]</i> to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.</p>
	<p>2. <u>Rules of Procedure</u>. Except as otherwise stated herein, arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in force on the date of this Contract.</p> <p>3. <u>Substitute Arbitrators</u>. If for any reason an arbitrator is unable to perform his/her function, a substitute shall be appointed in the same manner as the original arbitrator.</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>4. <u>Nationality and Qualifications of Arbitrators.</u> The sole arbitrator or the third arbitrator appointed pursuant to paragraphs 1(a) through 1(c) above shall be an internationally recognized legal or technical expert with extensive experience in relation to the matter in dispute and shall not be a national of the Consultant’s home country <i>[If the Consultant consists of more than one entity, add: or of the home country of any of their members or Parties]</i> or of the Government’s country. For the purposes of this Clause, “home country” means any of:</p> <p>(a) the country of incorporation of the Consultant <i>[If the Consultant consists of more than one entity, add: or of any of their members or Parties];</i> or</p> <p>(b) the country in which the Consultant’s [or any of their members’ or Parties’] principal place of business is located; or</p> <p>(c) the country of nationality of a majority of the Consultant’s [or of any members’ or Parties’] shareholders; or</p> <p>(d) the country of nationality of the Sub-consultants concerned, where the dispute involves a subcontract.</p>
	<p>5. <u>Miscellaneous.</u> In any arbitration proceeding hereunder:</p> <p>(a) proceedings shall, unless otherwise agreed by the Parties, be held in <i>[select a country which is neither the Procuring Entity’s country nor the Consultant’s country];</i></p> <p>(b) the <i>[type of language]</i> language shall be the official language for all purposes; and</p> <p>(c) the decision of the sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.</p>

SECTION 9: APPENDICES

Appendix A – Terms of Reference – Refer to Section Five above

[indicate if training is a specific component of the assignment] Etc.

[Note: This Appendix shall include the final Terms of Reference (TORs) worked out by the Procuring Entity and the Consultant during the negotiations; dates for completion of various tasks; location of performance for different tasks; detailed reporting requirements and list of deliverables against which the payments to the Consultant will be made; Procuring Entity's input, including counterpart personnel assigned by the Procuring Entity to work on the Consultant's team; specific tasks or actions that require prior approval by the Procuring Entity.

Insert the text based on the Section 5 (Terms of Reference) of the ITC in the RFP and modified based on the Forms TECH-1 through TECH-5 of the Consultant's Proposal. Highlight the changes to Section 5 of the RFP]

.....
.....

SECTION 10. NOTIFICATION FORMS

1. NOTIFICATION OF INTENTION TO AWARD

Procuring Entity: _____ *[insert the name of the Entity]* Contract
title: _____ *[insert the name of the contract]* RFP
No: _____ *[insert RF Preference number]*

This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period. During the Standstill Period you may:

- a) Request a debriefing in relation to the evaluation of your Proposal, and/or
- b) Submit a Procurement-related Complaint in relation to the decision to award the contract.

The successful Consultant

Name:	<i>[insert name of successful Consultant]</i>
Address:	<i>[insert address of the successful Consultant]</i>
Contract price:	<i>[insert contract price of the successful Consultant]</i>

- (ii) **Reason/s why your Proposal was unsuccessful** [*Delete if the combined score already reveals the reason*].

[INSTRUCTIONS; State the reason/s why this Agro dealer's Proposal was unsuccessful. Do NOT include: (a) a point by point comparison with another Agro dealer's Proposal or (b) information that is marked confidential by the Consultant in its Proposal.]

- iii) **How to request a debriefing** [*This applies only if your proposal was unsuccessful as stated under point (3) above*].

DEADLINE: The deadline to request a debriefing expires at midnight on [*insert date*] (local time). You may request a debriefing in relation to the results of the evaluation of your Proposal. If you decide to request a debriefing your written request must be made within five (5) Business Days of receipt of this Notification of Intention to Award.

Provide the contract name, reference number, name of the Consultant, contact details; and address the request for debriefing as follows:

Attention: [*insert full name of person, if applicable*]

Title/position: [*insert title/position*]

Agency: [*insert name of Procuring Entity*]

Email address: [*insert email address*]

Fax number: [*insert fax number*] *delete if not used*

If your request for a debriefing is received within the 5 Business Days deadline, we will provide the debriefing within five (5) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (5) Business Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.

The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.

If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fourteen (14) Business Days from the date of publication of the Contract Award Notice.

(iv) How to Make a Complaint

DEADLINE: The deadline for submitting a Procurement-related Complaint challenging the decision to award the contract expires on midnight, [*insert date*] (local time).

Provide the contract name, reference number, name of the Consultant, contact details; and address the Procurement-related Complaint as follows:

Attention: [*insert full name of person, if applicable*]

Title/position: [*insert title/position*]

Agency: [*insert name of Procuring Entity*]

Email address: [*insert email address*]

Fax number: [*insert fax number*] *delete if not used*

[At this point in the procurement process] [Upon receipt of this notification] you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.

In summary, there are four essential requirements:

You must be an 'interested party'. In this case, that means a Consultant who has submitted a Proposal in this selection process and is the recipient of a Notification of Intention to Award.

The complaint can only challenge the decision to award the contract.

You must submit the complaint within the deadline stated above.

You must include, in your complaint, all of the information required by the Procuring Entity.

(v) Standstill Period

DEADLINE: The Standstill Period is due to end at midnight on *[insert date]* (local time).
The Standstill Period lasts ---- (specify the number of business days as per Data Sheet 30.1) Business Days as specified in the Data Sheet after the date of transmission of this Notification of Intention to Award.
The Standstill Period may be extended. This may happen where we are unable to provide a debriefing within the five (5) Business Day deadline. If this happens, we will notify you of the extension.

If you have any questions regarding this Notification, please do not hesitate to contact us.

On behalf of _____ *[insert the name of the*

Procuring Entity]: Signature: _____

Name: _____

Title/position: _____

Telephone: _____

Email: _____

2 REQUEST FOR REVIEW

FORM FOR REVIEW (r.203(1))

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 ofdated the...day of20.....in the matter of Tender No.....of20..... for(Tender description).

REQUEST FOR REVIEW

I/We.....,the above named Applicant(s), of address: Physical address.....P. O. Box 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.

SIGNED(Applicant) Dated on.....day of/...20.....

FOR OFFICIAL USE ONLY Lodged with the Secretary Public Procurement Administrative Review Board on.....day of20.....

SIGNED

Board Secretary

3. LETTER OF AWARD

[use letterhead paper of the Procuring Entity] [date]_____To: _____ [name and address of the winning Consultant] Subject: Notification of Award Contract No.....

This is to notify you that your Proposal dated_____ *[insert date]* for consulting services for *[name of the assignment]* as negotiated with you on_____ for the contract amount of _____ *[Insert amount in numbers and words and name of currency]* is here by accepted by our agency.

You are requested to:(i) sign and return the draft negotiated Contract attached here with within eight (8) Business Days from the date of receipt of this notification; and (ii) furnish the additional information on beneficial ownership in accordance with the Data Sheet of ITC 32.1 within eight (8) days using the Beneficial Ownership Disclosure Form, included in Section 7 of the Request of Proposals.

Authorized Signature:_____ Name and Title of Signatory:___ Name
of Agency:_____