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TENDER NOTICE:

TENDER NO. KNL/HQ/T012/2014-2015

TENDER
FOR SUPPLY, INSTALLATION, TESTING AND COMMISSIONING OF KNLS SMS/USSD AND
APPLICATION PLATFORM

(CLOSING DATE: Tuesday 27th January, 2015 at 11 a.m.)

Introduction

Kenya National Library Service (Knls) Board is a state corporation under the Ministry of State for National Heritage and Culture, The Board was established by an Act of Parliament Cap 25 of the Laws of Kenya (1965). The current Act mandates Board to: promote, establish, equip, manage, maintain and develop libraries in Kenya. To date, a network of 60 branch libraries have been established, with others coming up in different parts of the country.

The Act gives the Board responsibility to manage both the National Library of Kenya and the Public Library System. Under the National Library of Kenya, the Board's key function is to preserve the national Documentary heritage and to produce the Kenya national bibliography. Under the Public Library System, the principal objective of the Board is to provide library and information services to the Kenyan publics with a view to promoting a positive and sustained reading culture. The Board recognizes that information is a basic commodity in everyone's life, as it directly responds to their needs, through individual and community

Knls strategic direction is guided by her **Vision**, "A hub of information and knowledge for empowerment"

The Mission is to enable access to information for knowledge and transformation of livelihoods

SECTION A – INVITATION TO TENDER

Tender Ref. KNL/HQ/T012/2014-2015

Tender name: TENDER FOR SUPPLY, INSTALLATION, TESTING AND COMMISSIONING OF knls SMS/USSD AND APPLICATION PLATFORM

The Kenya National Library Services Board (knls) invites sealed bids from eligible service providers for SMS/USSD providers or any other licensed providers for the provision of SMS/USSD and APPLICATION PLATFORM services solution as detailed in the tender document

The document can be viewed and downloaded from the knls website www.knls.ac.ke at no fee. Bidders must forward their particulars immediately for records and communication of any further tender clarifications or addenda. Enquiries can be made via email address: hodsupplychain@knls.ac.ke

Bidders are advised to regularly visit the knls website to obtain any additional information/addendum on the tender.

Interested eligible Bidders may obtain further information from **Kenya National Library Service Board** and inspect the bidding documents at the address given below from Monday to Friday between **8.00am a.m. 5.00 p.m.** The document is available online on: www.knls.ac.ke

A complete set of bidding documents in English may be obtained from the Kenya National Library Service Board Supply Chain Office at 3rd Floor Mumias Road/Oldonyo Sabuk Road Junction, Buruburu, between 8.00 a.m.– 5.00 p.m. Upon payment of a nonrefundable fee of Kenya Shillings (**KES 1000/=** in cash or banker's cheque payable to the, Kenya National Library Services. The document may be downloaded free of charge from our website.

Bulky Tender Documents shall be submitted at the office of the Head of Supply Chain Management located on 3rd floor library section at Kenya National Library Service Head office-Buru Buru, Nairobi before 11.00 am East Africa time on **Tuesday 27th January 2015**

Tenders must be accompanied by a Bid Bond/Tender Security of at least two percent (2%) of the tender sum in the format specified in the tender documents. Failure to attach the bid bond will lead to automatic rejection of the tender

Tenders will be opened immediately thereafter in the presence of the tenderers representatives who may choose to attend the opening at the Kenya National Library Service Multi-media room on **3rd floor.**

Late or incomplete tenders shall not be accepted.

Canvassing or lobbying for the tender shall lead to automatic disqualification

Bids should be submitted in a plain sealed envelope clearly marked:

The Director

Kenya National Library Service

Mumias Road/Oldonyo Sabuk Road Junction

P.O. Box 30573- 00100

Nairobi, Kenya

TEL NO.254-20-2725550/1

FAX NO. 254-20-2721749.; NAIROBI, KENYA.

Email: knls.ac.ke

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SECTION B: PRELIMINARIES AND GENERAL INFORMATION

Due to high demands of improved and innovative service delivery, Kenya National Library Services (knls) wishes to establish fully integrated Short Code SMS service that will deliver various service to its clients. In general users will access such services by sending or receiving sms through the short code. Users will be charged Premium rates on all sms sent or received from the short code. The shortcode will provide a platform for running services such as but not limited to:

- **Reference Chat** - patrons can be offered reference service in which they send inquires to their library from their cell phones. Librarians on duty get these inquiries through regular email client and use the same interface to reply back to the patron's phone.
- **Circulation** - Automated Book Renewal, Reservation, Overdue Reminders, Hold request, Book Recall etc
- **SMS Library** which is an offline collection of:
 - Sms for any occasion eg birthday, Christmas, Get wells, Diwali, Easter, Eid, Halloween, and other holidays.
 - Educative joke or wish a good day ahead and text Good Morning and Good Night. Christian, Islamic sayings and prayers.
 - Inspirational and motivational quotes to inspire you and Other personalized Local Content Packages as SMS
 - Government projects updates, parliament proceeding updates (new Legislations).
 - Personalized Surprises to your dear ones on important days like children, women and even teachers or Valentine's Day.
 - New knowledge nuggets on different professional fields
 - Notifications on new stock items available

In this regard, knls invites tenders from interested and eligible candidates.

Tenderers are required to carefully read the following specifications and conditions that will apply when the contract is awarded to the successful bidder and seek any clarification required before submission of their tender.

Any act of collusion that may distort normal competitive conditions may cause the rejection of the tenders concerned. By participating in this tender, Tenderers certify not to be involved in such acts of collusion.

Tenders must be returned complete and will be opened in the presence of Tenderers or their assigned representatives at the time and venue stated in the tender notice. Incomplete tenders or tenders received after the stated time will be returned unopened.

Tenders are invited in accordance with the documents issued. Counter-offers submitted with tenders will not be considered; letters of qualification with tenders may be ignored if they have the effect of modifying either the terms of a tender or the comparability of a tender with other tenders. Should a Tenderer, in good faith, wish to propose modifications to the terms, conditions and contents for the purpose of reducing the tender amount, then he shall contact the Procuring Entity (Kenya National Library Service) in writing well before the date of tender opening. Should the proposed modification be approved by the procuring entity Tenderers will be advised in good time for the modification of their tenders. No proposed modification will be considered unless this procedure has been adopted.

All deletions, additions and corrections to figures inserted in the tender documents are to be countersigned by the Tenderer.

2. The details of the Procuring Entity (Employer) are:

Kenya National Library Service
P.O. Box 30573 -00100
NAIROBI
Tel: +252 20 2725550/1

Email: knls@knls.ac.ke

SECTION C: INSTRUCTIONS TO TENDERERS

2.1 Eligible tenderers

- 2.1.1. This Invitation to tender is made to all tenderers who consider themselves eligible and meet the requirements set out in this tender document. Successful tenderers shall provide the services for the stipulated duration from the date of commencement (hereinafter referred to as the term) specified in the tender documents.
- 2.1.2. The procuring entity's employees, committee members, board members and their relatives (spouse and children) are not eligible to participate in the tender unless where specially allowed under section 131 of the Act.
- 2.1.3. Tenderers shall provide the qualification information statement that the tenderer (including all members, of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Procuring entity to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the services under this Invitation for tenders.
- 2.1.4. Tenderers involved in corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

2.2 Cost of tendering

- 2.2.1. The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the procuring entity, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 2.2.2. The tender document is offered to interested bidders at Kshs 1,000.00 only or at no cost to those who download from the knls Website.

2.3 Contents of tender documents

- 2.3.1. The tender document comprises of the documents listed below and addenda issued in accordance with clause 6 of these instructions to tenders
 - i) Instructions to tenderers
 - ii) General Conditions of Contract
 - iii) Special Conditions of Contract
 - iv) Schedule of Requirements
 - v) Details of service
 - vi) Form of tender
 - vii) Price schedules
 - viii) Contract form
 - ix) Confidential business questionnaire form

- x) Tender security form
 - xi) Performance security form
- 2.3.2. The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tender documents. Failure to furnish all information required by the tender documents or to submit a tender not substantially responsive to the tender documents in every respect will be at the tenderers risk and may result in the rejection of its tender.
- 2.4 Clarification of Documents**
- 2.4.1. A prospective candidate making inquiries of the tender document may notify the Procuring entity in writing or by post, fax or email at the entity's address indicated in the Invitation for tenders. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives no later than seven (7) days prior to the deadline for the submission of tenders, prescribed by the procuring entity. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers who have received the tender documents"
- 2.4.2. The procuring entity shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender
- 2.5 Amendment of documents**
- 2.5.1. At any time prior to the deadline for submission of tenders, the Procuring entity, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by issuing an addendum.
- 2.5.2. All prospective tenderers who have obtained the tender documents will be notified of the amendment by post, fax or email and such amendment will be binding on them.
- 2.5.3. In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, the Procuring entity, at its discretion, may extend the deadline for the submission of tenders.
- 2.6 Language of tender**
- 2.6.1. The tender prepared by the tenderer, as well as all correspondence and documents relating to the tender exchanged by the tenderer and the Procuring entity, shall be written in English language. Any printed literature furnished by the tenderer may be written in another language provided they are accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the tender, the English translation shall govern.
- 2.7 Documents Comprising the Tender**

The tender prepared by the tenderer shall comprise the following components:

- (a) A Tender Form and a Price Schedule completed in accordance with clause 2.8, 2.9 and 2.10 below.
- (b) Documentary evidence established in accordance with Clause 2.11 that the Tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
- (c) Tender security furnished is in accordance with Clause 2.12
- (d) Confidential business questionnaire

2.8 Form of Tender

- 2.8.1. The tenderers shall complete the Form of Tender and the appropriate Price Schedule furnished in the tender documents, indicating the services to be performed.

2.9 Tender Prices

- 2.9.1. The tenderer shall indicate on the Price schedule the unit prices where applicable and total tender prices of the services it proposes to provide under the contract.
- 2.9.2. Prices indicated on the Price Schedule shall be the cost of the services quoted including all customs duties and VAT and other taxes payable:
- 2.9.3. Prices quoted by the tenderer shall remain fixed during the term of the contract unless otherwise agreed by the parties. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 2.22.
- 2.9.4. Contract price variations shall not be allowed for contracts not exceeding one year (12 months)
- 2.9.5. Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price.
- 2.9.6. Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.

2.10 Tender Currencies

- 2.10.1. Prices shall be quoted in Kenya Shillings unless otherwise specified in the appendix to Instructions to Tenderers

2.11 Tenderers Eligibility and Qualifications.

- 2.11.1. Pursuant to Clause 2.1 the tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.

2.11.2. The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall establish to the Procuring entity's satisfaction that the tenderer has the financial and technical capability necessary to perform the contract.

2.12 Tender Security

2.12.1. The tenderer shall furnish, as part of its tender, a tender security for the amount and form specified in the Invitation to tender.

2.12.2. The tender security shall be at least two percent (2%) of the tender sum.

2.12.2 The tender security is required to protect the Procuring entity against the risk of Tenderer's conduct which would warrant the security's forfeiture, pursuant to paragraph 2.12.7

2.12.3 The tender security shall be denominated in a Kenya Shillings or in another freely convertible currency and shall be in the form of:

- a) A bank guarantee.
- b) Cash.
- c) Such insurance guarantee approved by the Public Procurement Oversight Authority (PPOA).
- d) Letter of credit

2.12.4 Any tender not secured in accordance with paragraph 2.12.1 and 2.12.3 will be rejected by the Procuring entity as non-responsive, pursuant to paragraph 2.20

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

2.12.6 The successful tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to clause 2.26, and furnishing the performance security, pursuant to clause 2.27.

2.12.7 The tender security may be forfeited:

- (a) If a tenderer withdraws its tender during the period of tender validity specified by the procuring entity on the Tender Form; or
- (b) In the case of a successful tenderer, if the tenderer fails: (i) to sign the contract in accordance with paragraph 2.26 or
(ii) to furnish performance security in accordance with paragraph 2.27.
- (c) If the tenderer rejects, correction of an error in the tender.

2.13 Validity of Tenders

- 2.13.1. Tenders shall remain valid for 90 days or as specified in the invitation to tender after date of tender opening prescribed by the Procuring entity, pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the Procuring entity as nonresponsive.
- 2.13.2. In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 2.12 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

2.14 Format and Signing of Tender

- 2.14.1. The tenderer shall prepare two copies of the tender, clearly / marking each **"ORIGINAL TENDER"** and **"COPY OF TENDER,"** as appropriate. In the event of any discrepancy between them, the original shall govern.
- 2.14.2. The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by the tenderer or a person or persons duly authorized to bind the tenderer to the contract. All pages of the tender, except for unamended printed literature, shall be initialed by the person or persons signing the tender.
- 2.14.3. The tender shall have no interlineations, erasures, or overwriting except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

2.15 Sealing and Marking of Tenders

- 2.15.1. The tenderer shall seal the original and each copy of the tender in separate envelopes, duly marking the envelopes as **"ORIGINAL"** and **"COPY."** The envelopes shall then be sealed in an outer envelope. The inner and outer envelopes shall:
- (a) be addressed to the Procuring entity at the address given in the invitation to tender
 - (b) bear, tender number and name in the invitation to tender and the words:
"DO NOT OPEN BEFORE Tuesday 27th January, 2015 at 11 a.m. local time."
- 2.15.2. The inner envelopes shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared "late". —
- 2.15.3. If the outer envelope is not sealed and marked as required by paragraph 2.15.2, the Procuring entity will assume no responsibility for the tender's misplacement or premature opening.

2.16 Deadline for Submission of Tenders

- 2.16.1. Tenders must be received by the Procuring entity at the address specified under paragraph 2.15.2 no later than **Tuesday 27th January , 2015 at 11 a.m local time**
- 2.16.2. The procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 6, in which case all rights and obligations of the procuring entity and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.
- 2.16.3. Bulky tenders which will not fit in the tender box shall be received and registered at the Principal Supply Chain Officer office.

2.17 Modification and withdrawal of tenders

- 2.17.1. The tenderer may modify or withdraw its tender after the tender's submission, provided that written notice of the modification , including substitution or withdrawal of the tender's is received by the procuring entity prior to the deadline prescribed for the submission of tenders.
- 2.17.2. The Tenderer's modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 2.15. A withdrawal notice may also be sent by cable, but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.
- 2.17.3. No tender may be modified after the deadline for submission of tenders.
- 2.17.4. No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the Tenderer's forfeiture of its tender security, pursuant to paragraph 2.12.7.
- 2.17.5. The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 2.17.6. The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

2.18 Opening of Tenders

- 2.18.1. The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, on **Tuesday 27th January, 2015 at 11 a.m local time** and in the location specified in the invitation to tender. The tenderers' representatives who are present shall sign a register evidencing their attendance.
- 2.18.3 The tenderers' names, tender modifications or withdrawals, tender prices, discounts, and the presence or absence of requisite tender security and such other details as the Procuring Entity, at its discretion, may consider appropriate, will be announced at the opening.

2.18.4 The procuring entity will prepare minutes of the tender opening which will be submitted to the tenderers that signed the tender opening register and will have made the request.

2.19 Clarification of tenders

2.19.1. To assist in the examination, evaluation and comparison of tenders the procuring entity may at its discretion, ask the tenderer for a clarification of its tender. The request for clarification and the response shall be in writing, and no change in the prices or substance shall be sought, offered, or permitted.

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

Comparison or contract award decisions may result in the rejection of the tenderers' tender.

2.20 Preliminary Examination and Responsiveness

2.20.1. The Procuring entity will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required securities have been furnished whether the documents have been properly signed, and whether the tenders are generally in order.

2.20.2. Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security may be forfeited. If there is a discrepancy between words and figures, the amount in words will prevail.

2.20.3. The Procuring entity may waive any minor informality or nonconformity or irregularity in a tender which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any tenderer.

2.20.4. Prior to the detailed evaluation, pursuant to paragraph 2.22, the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one which conforms to all the terms and conditions of the tender documents without material deviations. The Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

2.20.5. If a tender is not substantially responsive, it will be rejected by the Procuring entity and may not subsequently be made responsive by the tenderer by correction of the nonconformity.

2.21 Conversion to a single currency

2.21.1. Where other currencies are used, the procuring entity will convert those currencies to Kenya shillings using the selling exchange rate on the date of tender closing provided by the Kenya national library service.

2.22 Evaluation and comparison of tenders.

2.22.1. The procuring entity will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.20

2.22.2. The comparison shall be of the price including all costs as well as duties and taxes payable on all the materials to be used in the provision of the services.

2.22.3. The Procuring entity's evaluation of a tender will take into account, in addition to the tender price, the following factors, in the manner and to the extent indicated in paragraph 2.22.4 and in the technical specifications:

(a) Operational plan proposed in the tender;

(b) Deviations in payment schedule from that specified in the Special Conditions of Contract;

2.22.4. Pursuant to paragraph 22.3 the following evaluation methods will be applied:

(a) Operational Plan.

The Procuring entity requires that the services under the Invitation for Tenders shall be performed at the time specified in the Schedule of Requirements. Tenders offering to perform longer than the procuring entity have required delivery time will be treated as non-responsive and rejected.

(b) Deviation in payment schedule.

Tenderers shall state their tender price for the payment on a schedule outlined in the special conditions of contract. Tenders will be evaluated on the basis of this base price. Tenderers are, however, permitted to state an alternative payment schedule and indicate the reduction in tender price they wish to offer for such alternative payment schedule. The Procuring entity may consider the alternative payment schedule offered by the selected tenderer.

2.22.5 The tender evaluation committee shall evaluate the tender within 30 days from the date of opening the tender.

2.22.6 To qualify for contract awards, the tenderer shall have the following:-

(a) Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.

(b) Legal capacity to enter into a contract for procurement

(c) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing

(d) Shall not be debarred from participating in public procurement.

2.23. Contacting the procuring entity

2.23.1 Subject to paragraph 2.19, no tenderer shall contact the procuring entity on any matter relating to its tender, from the time of the tender opening to the time the contract is awarded.

2.23.2 Any effort by a tenderer to influence the procuring entity in its decisions on tender evaluation tender comparison or contract award may result in the rejection of the tenderers tender.

2.24 Award of Contract

a) Post qualification

2.24.1 In the absence of pre-qualification, the Procuring entity will determine to its satisfaction whether the tenderer that is selected as having submitted the lowest evaluated responsive tender is qualified to perform the contract satisfactorily.

2.24.2 The determination will take into account the tenderer's financial and technical capabilities. It will be based upon an examination of the documentary evidence of the tenderers qualifications submitted by the tenderer, pursuant to paragraph 2.1.2, as well as such other information as the Procuring entity deems necessary and appropriate.

2.24.3 An affirmative determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the Tenderer's tender, in which event the Procuring entity will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

b) Award Criteria

2.24.3 Subject to paragraph 2.28 the Procuring entity will award the contract to the successful tenderer whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the tenderer is determined to be qualified to perform the contract satisfactorily.

2.24.4 The procuring entity reserves the right to accept or reject any tender and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the procuring entity's action. If the procuring entity determines that none of the tenderers is responsive; the procuring entity shall notify each tenderer who submitted a tender.

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

2.25 Notification of award

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

2.25.2 The notification of award will signify the formation of the Contract subject to the signing of the contract between the tenderer and the procuring entity pursuant to clause 2.26. Simultaneously the other tenderers shall be notified that their tenders have not been successful.

2.25.3 Upon the successful Tenderer's furnishing of the performance security pursuant to clause 2.27, the Procuring entity will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 2.12

2.26 Signing of Contract

2.26.1 At the same time as the Procuring entity notifies the successful tenderer that its tender has been accepted, the Procuring entity will simultaneously inform the other tenderers that their tenders have not been successful.

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

2.26.3 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

2.27 Performance Security

2.27.1 Within thirty (30) days of the receipt of notification of award from the Procuring entity, the successful tenderer may furnish the performance security in accordance with the Conditions of Contract, in the Performance Security Form provided in the tender documents, or in another form acceptable to the Procuring entity.

2.27.2 Failure of the successful tenderer to comply with the requirement of paragraph 2.26 or paragraph 2.27.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event the Procuring entity may make the award to the next lowest evaluated or call for new tenders.

2.28 Corrupt or Fraudulent Practices

2.28.1 The Procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts. A tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.

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

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

APPENDIX TO INSTRUCTIONS TO THE TENDERERS

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

SPECIAL NOTES TO ALL TENDERERS

1. The Tenderer is required to check the number of pages in this document and should any be found to be missing or the figures indistinct, he must inform the Employer at once and have the same rectified. Should the Tenderer be in doubt about the precise meaning of any item, words or figures, or for any reason whatsoever observe any apparent omission of words or figures, he must inform the Employer in order that the correct meaning may be decided upon before the date for the submission of the tenders.
2. The Tenderer shall not alter or otherwise qualify the text of these specifications. Any alteration or qualification made without prior notification to the Employer and receipt of his written authority will be ignored and the text of the specification as printed will be adhered to.
3. The Tenderer will be required to submit his tender in accordance with the specifications and all conditions in this tender document.
4. All prices quoted shall be **in Kenya Shillings** inclusive of all Government taxes and no claims for lack of understanding or omission in this regard will be accepted after the award of the tender. Therefore, Tenderers are required to ask for clarifications where and if necessary before submitting their tenders.
5. The Tenderer shall include all preliminaries e.g. insurance, security etc in the priced items. A separate claim for preliminaries will not be honored.
6. The tender shall remain valid for 120 days from the date of tender opening.
7. No claim for advance payment will be entertained.
8. If the supplier has any specific conditions with regard to this tender he should specify them with the tender. Such conditions will not be accepted after the award of the tender.
9. The Tenderer shall provide a Tender Security of at least **two percent (2%)** of the tender sum. The form of Tender Security is described and format provided in this Tender Document.

SECTION D: GENERAL CONDITIONS OF CONTRACT

3.1 Definitions

In this contract the following terms shall be interpreted as indicated:

- a) "The contract" means the agreement entered into between the Procuring entity and the tenderer as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- b) "The Contract Price" means the price payable to the tenderer under the Contract for the full and proper performance of its contractual obligations.
- c) "The services" means services to be provided by the contractor including materials and incidentals which the tenderer is required to provide to the Procuring entity under the Contract.
- d) "The Procuring entity" means the Kenya National Library Service
- e) "The contractor means the individual or firm providing the services under this Contract.
- f) "GCC" means general conditions of contract contained in this section
- g) "SCC" means the special conditions of contract
- h) "Day" means calendar day

3.2 Application

These General Conditions shall apply to the extent that they are not superseded by provisions of other part of contract.

3.3 Standards

- 3.3.1 The services provided under this Contract shall conform to the 7 standards mentioned in the Schedule of requirements

3.5 Patent Right's

The tenderer shall indemnify the Procuring entity against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the services under the contract or any part thereof.

3.6 Performance Security

Within twenty eight (28) days of receipt of the notification of Contract award, the successful tenderer shall furnish to the Procuring entity the performance security where applicable in the amount specified in Special Conditions of Contract.

3.6.2 The proceeds of the performance security shall be payable to the Procuring entity as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.

3.6.3 The performance security shall be denominated in the currency of the Contract or in a freely convertible currency acceptable to the Procuring entity and shall be in the form of:

- a) Cash.
- b) A bank guarantee.
- c) Such insurance guarantee approved by the Authority.
- d) Letter of credit.

3.6.4 The performance security will be discharged by the procuring entity and returned to the candidate not later than thirty (30) days following the date of completion of the tenderer's performance of obligations under the contract, including any warranty obligations under the contract.

3.7 Inspections and Tests

3.7.1 The Procuring entity or its representative shall have the right to inspect and/or to test the services to confirm their conformity to the Contract specifications. The Procuring entity shall notify the tenderer in writing, in a timely manner, of the identity of any representatives retained for these purposes.

3.7.2 The inspections and tests may be conducted on the premises of the tenderer or its subcontractor(s). If conducted on the premises of the tenderer or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring entity.

3.7.3 Should any inspected or tested services fail to conform to the Specifications, the Procuring entity may reject the services, and the tenderer shall either replace the rejected services or make alterations necessary to meet specification requirements free of cost to the Procuring entity.

3.7.4 Nothing in paragraph 3.7 shall in any way release the tenderer from any warranty or other obligations under this Contract.

3.8 Payment

3.8.1 The method and conditions of payment to be made to the tenderer under this Contract shall be specified in SCC

3.9 Prices

Prices charged by the contractor for services performed under the Contract shall not, with the exception of any Price adjustments authorized in SCC, vary from the prices by the tenderer in its tender or in the procuring entity's request for tender validity extension as the case may be. No variation in or modification to the terms of the contract shall be made except by written amendment signed by the parties.

3.10 Assignment

The tenderer shall not assign, in whole or in part, its obligations to perform under this contract, except with the procuring entity's prior written consent.

3.10 Termination for Default

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

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

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

3.12 Termination of insolvency

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

3.13 Termination for convenience

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

3.13.2 For the remaining part of the contract after termination the procuring entity may elect to cancel the services and pay to the contractor on agreed amount for partially completed services.

3.14 Resolution of disputes

The procuring entity's and the contractor shall make every effort to resolve amicably by direct informal negotiations any disagreement or dispute arising between them under or in connection with the contract.

If after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute either party may require that the dispute be referred for resolution to the formal mechanisms specified in the SCC.

3.15 Governing Language

The contract shall be written in the English language. All correspondence and other documents pertaining to the contract, which are exchanged by the parties, shall be written in the same language.

3.16 Force Majeure

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

3.17 Applicable Law.

The contract shall be interpreted in accordance with the laws of Kenya unless otherwise specified in the SCC

3.18 Notices

Any notices given by one party to the other pursuant to this contract shall be sent to the other party by post or by fax or E-mail and confirmed in writing to the other party's address specified in the SCC

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

SECTION E: TECHNICAL REQUIREMENTS

DESCRIPTION OF SERVICES

The solution should support all requirements given in the scopes of works below.

1. SCOPE OF WORK

- Pre cursor Site meeting and demo by the potential service provider (SP) to assess the existing infrastructure prior to Quotation
- Proposal detailing the details of the solution to be provided to accompany the quotes
- Mobile application integrated with sms/usssd platform
- Mobile app should be compatible with ios/android and windows
- Integration of the Databases to the sms/usssd/monile app platform

- Provision and configuration of Short Code
- Provision, installation and configuration of Cloud Base SMS Server space
- Provision of client end access portal and monitoring tool
- Provision of web based portal for sending bulk sms
- Integration with the existing systems (SQL based systems Ms Navison and Amlib (Library management system), Payroll system etc)
- Integration with knls website and web based services such as (ask a librarian etc)
- Support Content development for SMS library
- 5 day training on the system
- Demonstrate capability to integrate ussd /sms billing within a mobile app
- Show case mobile downloads of above 5 million

1.1 Bulk SMS and Short code gateway Requirements.

- i. Use of a unique Sender ID common to all MNO (Mobile Network Operators) for bulk SMS
 - ii. Use of a unique short code number common to all MNOs for short code SMS.
 - iii. The gateway should support the use of keywords for short code SMS.
 - iv. The SMS gateway should be able to deliver up to 100 SMS/sec.
 - v. The SMS gateway must deliver the message in 10 seconds upon receipt.

- vi. The SMS gateway should support delivery of messages longer than 160 characters of length. (I.e. it should support message concatenation).
- vii. The SMS gateway should support common special characters such as (!@#\$%^&*()-_+=/*,<>.:?{} [] `~|\"') etc.
- viii. The gateway should send back the delivery status of each message sent.

SERVICE LEVEL AGREEMENT (SLA) AND SUPPORT

- **Service Availability** – knls expects a guaranteed aggregate Service Availability of ninety-nine point nine five percent (99.95%).
- **Support:** Dedicated account management team with a **designated Account Manager**.
Provide the contact details of the account manager and the support desk.

FINANCIAL REQUIREMENTS

- The Financial quotes should indicate
 - one off cost (installation costs where applicable)
 - All Recurrent Monthly charges.
- Prices quoted will be assumed to be VAT inclusive. **Clearly** Indicate if otherwise
- Prices should be quoted in Kenya Shillings
- Prices not indicated in the original quote (proposal) will not be paid as they will be treated as hidden charges

1.2 SECURITY

- i. The prospective CSP (Content Service Provider) **MUST** provide security services to safeguard data transmitted over its infrastructure. The CSP should be able to support PKI infrastructure as a minimum. Measures the CSP shall take to ensure the security of traffic to and from knls must be clearly specified in the response.

2. Performance Security

The successful bidder shall at its cost, provide a Performance Security in of form of a bond from a commercial bank, in a format acceptable to the Bank and for a sum equivalent to 10% of the amount quoted for the annual service. The Performance Bond shall be required for the contract period as well as any renewal thereof.

3. Penalty for non-performance

In the event of non-performance of the service provider, the Bank will give the service provider a one month notice giving details of the shortcomings that the service provider is expected to rectify. If the service provider fails to show improvement in his/her performance during the one month notice then the Bank will terminate the contract and call up the Bank Guarantee provided by the service provider.

4. Termination of Contract

Termination of the contract shall be done by either party giving the other a one month notice or due to a force majeure.

5. Arbitration

Any dispute pertaining to the contract that cannot be resolved amicably between the two parties shall be taken to Arbitration by either party in accordance with the Laws of Kenya.

SECTION F: TENDER QUALIFICATION AND AWARD

The received tenders will be evaluated in four stages as detailed below:

1. Stage 1: Compliance with Mandatory Requirements;
2. Stage 2: The Technical Evaluation (Capacity to Deliver the Service)
3. Stage 3: Compliance with the evaluation criteria
4. Stage 4: The Financial Evaluation (quoted prices)

Stage 1: Mandatory Requirements (MR)

The following mandatory requirements must be met notwithstanding other requirements in the documents:

No	Requirements	Tenderer's Response
MR 1	Provide documentary evidence of the company's Certificate of Incorporation (Legal structure)	
MR 2	Provide copy of the company's current Certificate of Tax Compliance issued by Kenya Revenue Authority (KRA)	
MR 3	Submit a completed company's profile using the Confidential Business Questionnaire provided in this tender document.	
MR 4	Provide a list of at least 5 clients you have provided services of similar nature in the last three (3) years.	
MR 5	Provide copies of audited accounts for the company for the last three accounting years	
MR 6	Submit a bid bond of at least two per cent (2%) of the tender sum. The bid bond should remain valid thirty (30) days beyond the tender validity period.	
MR 7	Attach copy of a valid license to operate as a CSP issued by Communications Authority of Kenya (CAK)	

Stage 2: The Technical Evaluation

Tenderers meeting all the mandatory requirements shall have their bids checked against compliance with technical requirements indicated in Section "E" of this tender document and summarized in Technical Specification matrix below. Full compliance with technical specifications will be awarded a score of 45% while partial compliance will earn no score.

/no.	Evaluation Attribute	Tenderer's Response	Max Score %
	<p>a. Scope of Work</p> <p>a. USSD gateway Requirements.</p> <p>b. The USSD code assigned should be fully dedicated to knls, e.g. *133#</p> <p>c. The USSD gateway should support the creation of sub codes, e.g. *133*20#, *133*30#</p> <p>d. USSD Application Logic to be hosted locally at knls.</p> <p>e. All USSD Transactions will require confirmation before submission.</p> <p>f. PIN will be required on all account operations request for personal information or transactions.</p> <p>g. The USSD gateway should be able to support up to 50 simultaneous users (connections).</p> <p>h. The USSD query response for a menu should be less than 3 seconds</p> <p>i. The USSD gateway session timeout should be configurable, but must not be less than 180 seconds</p> <p>j. Must not be less than 180 seconds</p> <p>k. The code provided to knls for providing USSD Services to its customers should be accessible from all the operational Mobile Network operators. It will be the responsibility of the bidder to ensure that The USSD gateway session timeout should be configurable, but must enable USSD services across all not be less than 180 seconds</p>		45

	<p>l. Must not be less than 180 seconds</p> <p>m. The code provided to knls for providing USSD Services to its customers should be accessible from all the operational Mobile Network operators. It will be the responsibility of the bidder to enable USSD services across all Mobile Network operators</p>		
--	--	--	--

Stage 3: Compliance with evaluation criteria

	Evaluation Attribute	Tenderer's Response	Weighting Score	Max Score %
T1	Compliance with Technical requirements			45
T2	Number of years in the business of Content Service Provider (CSP)		5 Years and above: 5% Others prorated at: $\frac{\text{Number of years} \times 5}{5}$	5
T3	Provide a list of all Major clients where the company has done similar work each valued at Kshs 0.5M and above in the last 3 years.		5 or more clients: 15% Others prorated at: $\frac{\text{Number of clients} \times 15}{5}$	15
T4	Number of qualified Engineers/technicians specialized in CSP Technologies (Provide evidence using CV and certificates)		5 or more qualified staff: 20% Others prorated at: $\frac{\text{Number of staff} \times 20}{5}$	20
T5	Financial Stability : a) Profitability Margin		A margin above 20% will score 10 marks; 10-19 % 5 marks and below 10% 3 marks	10
	b) Liquidity Ratio		Above 1:1 – 5 marks; 1:1 – 3 marks; 0.5:1- 2 marks less than 0.5 no mark	5
	Total			100

Note:

$$\text{Profitability Margin} = \frac{\text{EBIT}}{\text{Gross Revenue/Sales}}$$

$$\begin{aligned} \checkmark \text{ Current Ratio} &= \frac{\text{Current Assets}}{\text{Current Liabilities}} \\ \checkmark \text{ EBIT} &= \text{Earnings Before Interest and Taxes} \end{aligned}$$

The tenderers should score at least 75% on the evaluation criteria in order to proceed to financial evaluation stage.

Stage 4: The Financial Evaluation

Tenderers should note that only tenders that **score 75% and above** on the Technical Evaluation will qualify to have their financial bids evaluated. Those scoring below 75% will not be evaluated further and will be disqualified.

The Lowest Evaluated Tender (LET) that will be recommended for the award of the contract will be the one found to be the most competitive tender under the Technical and Financial (Price) Evaluation Criteria.

	Name of Tenderers listed from the lowest to the highest tender price	Rank
1.		
2.		
3.		
4.		
5.		

SECTION G: FINANCIAL SUBMISSION

PRICE SCHEDULE OF SERVICES

Name of Tenderer _____ Tender Number _____.

Item	Description	Charges in Kshs (one off charges)	Recurrent	Transactional Charges	Annual License Fees
1.	SMS/USSD and Application Platform Services Solution				
Total Price					

Signature _____ of tenderer _____

Note: In case of discrepancy between unit price and total, the unit price shall prevail.

SECTION H: NOTES ON STANDARD FORMS

Notes on the sample Forms

1. Form of Tender - The form of tender must be completed by the tenderer and submitted with the tender documents. It must also be duly signed by duly authorized representatives of the tenderer.
2. Confidential Business Questionnaire Form - This form must be completed by the tenderer and submitted with the tender documents.
3. Tender Security - This form must be completed and submitted with the tender
4. Contract Form - The Contract Form shall not be completed by the tenderer at the time of submitting the tender. The Contract Form shall be completed after contract award and should incorporate the accepted contract price.
5. Declaration Form - The declaration form must be completed by the tenderer and submitted with the tender documents. It must also be signed by duly authorized representatives of the tenderer.
6. Performance Security form -The performance security form should not be completed by the tenderer at the time of tender preparation. Only the successful tenderer will be required to provide performance security in the sum provided herein or in another form acceptable to the procuring entity.

SECTION I: STANDARD FORMS

1. Form of tender
2. Contract form
3. Confidential Questionnaire form
4. Tender security form
5. Performance security form
6. Declaration Form

SECTION J: PROFILE OF THE COMPANY

(Confidential Business Questionnaire)

(You are advised that it is a serious commission to give false information under this section as it may render your bid being automatically disqualified).

PART I: GENERAL INFORMATION

- a) The questionnaire must be fully and comprehensively completed in all respects.
- b) Information given by the applicant shall be treated in strict confidence.
- c) Any information given and later found to be incorrect shall lead to disqualification of the Tenderer.
- d) Deliberately incorrect information leads to disqualification of the application.
- e) Canvassing will lead to automatic disqualification of the applicant.

PART II:**BIDDER DETAIL**

The purpose of this section is to provide the required background information of the bidder organization.

1)	Provide documentary evidence of the registered name and number of your company and date of Registration.		
	Company Name	Company Registration Number	Registration Date
2)	Give full details of your Bankers.		

PART III:**CONTACT PERSON(S) DETAIL**

3)	Provide the contact person (s) name(s), addresses, phone numbers etc.	
	Contact Person Name	
	Landline Telephone Number	
	Cellular Telephone Number	

	Facsimile Telephone Number	
	E-mail	
	Postal Address	
	Physical Address	
4)	Please provide evidence of the registered street and postal addresses of the bidding organization	
	Registered Street Address	Registered Postal Address of your organization
	LR No.	
5)	Please provide evidence of current registration with relevant regulatory body within your industry, if any.	

PART IV: BIDDER ORGANIZATION PROFILE

6)	Who owns your organization? Provide details of the holding company and the main shareholders indicating percentage of shares held.
----	--

7)	<p>What is your organization's primary business activity? Provide a list with the estimated percentage of revenue earned from each of the primary business activities.</p>
----	--

PART V:**BIDDING ORGANISATION'S CLIENT BASE**

The purpose of this section is to get a view of the number and profile of customers that the bidding organization has.

knls intends to contact these customers when checking references. You shall be expected to state any objections. If not stated, you shall be deemed to have authorized knls to contact these customers.

8)	Please provide references from your major clients where you have successfully carried out similar or comparable assignment.
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PART VI: BIDDER'S STANDARD CONTRACTS

9)	Describe your approach to contracting and negotiation specifically relating to the availability and use of standard contracts and whether you consider any of the standard contracts or specific clause to be not negotiable.
10)	Provide details of the preferred payment plan if not contained in the standard contract supplied.

PART VII: VERIFICATION OF BUSINESS SUSTAINABILITY

11)	Can the Tenderer supply certified audited financial statements for the last three financial years? The supply of these financial statements will be mandatory for your tender to be considered responsive.		
12)	<p>Are you currently involved in any litigation or arbitration (or any other legal process which may result in legal or financial liability)?</p> <p>If yes, what is the financial exposure as a result of the litigation, arbitration or other legal process and on what basis has this financial exposure been calculated?</p> <p>If yes, what other exposure could result from the litigation, arbitration or other legal process and will this financial or other exposure materially prejudice the bidder's financial position or its ability to successfully and timeously implement any contract which may be</p>		
	awarded to it pursuant to this Tender?		
13)	Have you ever:		
	Question	Response	
		Yes	No
	Forfeited any payment on a contract?		
	Been declared in default of a contract?		
	Negotiated the premature termination of a contract?		
	Had an uncompleted contract assigned to another solution provider?		

PART VIII: TECHNICAL SUPPORT & CAPACITY BUILDING

14)	State your policy on technological (maintenance) and operational support including capacity building (training) you offer to your clients.
-----	--

PART IX: CERTIFICATION

	<p>I/We do hereby certify that the above information is correct in all respects.</p> <p>FULL NAME:</p> <p>DESIGNATION/POSITION:</p> <p>SIGNATURE:</p> <p>DATE:</p> <p>COMPANY SEAL AND/OR STAMP:</p>
--	--

SECTION K: FORM OF TENDER SECURITY (Sample)

WHEREAS..... (Hereinafter called "the Tenderer") has submitted his tender dated.....for **PROVISION, INSTALLATION, TESTING AND COMMISSIONING OF KNLS SMS/USSD AND APPLICATION PLATFORM**

KNOW ALL PEOPLE by these presents that WE,

Having our registered office at (Hereinafter called "the Bank"), are bound unto Kenya National Library Service (hereinafter called "the employer") in the sum of for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors and assigns by these presents, sealed with the Common Seal of the said Bank this.....day of2014

THE CONDITIONS of this obligation are:

1. If after tender opening the Tenderer withdraws his tender during the period of tender validity specified in the instructions to Tenderers
OR
2. If the Tenderer, having been notified of the acceptance of his tender by the Employer during the period of tender validity:
 - a) fails or refuses to execute the form of Agreement in accordance with the Instructions to Tenderers, if required; or
 - b) fails or refuses to furnish the Performance Security, in accordance with the Instructions to Tenderers;

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

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

_____ (Date)	_____ Signature of the Bank)	
_____ (Witness)	_____ (Seal)	

SECTION L: TENDER FORM

The Director,
Kenya National Library Services

P.O. Box 3057 – 00100

NAIROBI

Dear Sir,

PROVISION, INSTALLATION, TESTING AND COMMISSIONING OF KNLS SMS/USSD AND APPLICATION PLATFORM

In accordance with the Instructions to Tenderers and Specifications for the execution of the above services, we, the undersigned offer to undertake the above services to the entire satisfaction of the knls for the annual fee of:

Amount of Tender (Annual Fee): Kshs

In words, Kenya Shillings:

.....

1. We acknowledge that the Appendix to the Tender Form forms part of our tender.
2. We undertake, if our tender is accepted, to commence the works as soon as is reasonably possible after the receipt of the Letter of Acceptance.
3. We agree to abide by this tender for a period of 120 days from the date of tender opening and it shall remain binding upon us and may be accepted at any time before the expiry of this period.
4. Unless and until a formal agreement is prepared and executed, this tender together with your written acceptance thereof shall constitute a binding Contract between us.
5. We understand that you are not bound to accept the lowest tender or any Tender you may receive

Name of Contractor:

Signature of the first Director

Address.....

.....

Date.....

Signature of the second Director

Address.....

.....

Date.....

Company Seal

.....

.....

PART M: SAMPLE FORM OF AGREEMENT

THIS AGREEMENT, is made this day of 2014 between Kenya National Library Service whose Registered Office is situated at Buruburu, Mumias Road/Oldonyo Sabuk Road Junction, Nairobi (hereinafter called the 'Employer') of the part and..... Whose Registered office is situated at (Hereinafter called "the Contractor") of the other part.

WHEREAS the Employer is desirous that the Contractor executes the **PROVISION, INSTALLATION, TESTING AND COMMISSIONING OF KNLS SMS/USSD AND APPLICATION PLATFORM** (hereinafter called "the Works") and Employer has appointed the Principal ICT Officer as the Engineer for the purposes thereof and has accepted the tender submitted by the Contractor for the execution and completion of the said Works and the remedying of any defects therein in the sum of KShs..... (Kenya Shillings:

.....

....) hereafter called the contract price.

NOW THIS CONTRACT WITNESSETH as follows:

1. The terms **Contractor, Supplier and Service Provider** where used in this contract shall have the same meaning and shall be used interchangeably.
2. The gender **he** and **she** shall be used interchangeably and shall have the same meaning.
3. The following documents shall be deemed to form and shall be read and construed as part of this Contract i.e.
 - (i) Letter of Acceptance
 - (ii) Signed contract
 - (iii) Form of Tender and Appendix to Form of Tender
 - (iv) Specifications
 - (v) Priced Bills of Quantities
4. In consideration of the payments to be made by the Employer to the Contractor as herein before mentioned, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects herein in conformity in all respects with the provisions of the Tender Specifications.
5. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract price or such other sum as may become payable under the provisions of the Tender Specifications at the times and in the manner prescribed by the Tender Specifications.

6. Any dispute arising out of this Contract, which cannot be amicably settled between the parties, shall be referred by either party to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an arbitrator, the arbitrator shall be appointed by the Chairman of the Chartered Institute of Arbitrators, Kenya Branch, on the request of the applying party.

IN WITNESS whereof the Parties thereto have caused this Contract to be executed the day and year first before written.

The _____ common _____ seal _____ of _____ (Contractor)

Was hereunto affixed in the presence of:

Signed and Delivered by the said Employer:

Binding _____ Signature _____ of _____ Employer

Name _____ Date _____

In the presence of:

Name _____

Address: _____

Signature _____ Date _____

SECTION N: FORM OF PERFORMANCE SECURITY BANK GUARANTEE

(Unconditional)

Date: _____

Contract: **PROVISION, INSTALLATION, TESTING AND COMMISSIONING OF KNLS SMS/USSD AND APPLICATION PLATFORM**

To: The Director,
Kenya National Library Services
P.O. Box 30573-00100
Nairobi

Dear Sir,

We refer to the Contract Agreement ('the Contract') dated _____ between you and **(the name of the contractor) PROVISION, INSTALLATION, TESTING AND COMMISSIONING OF KNLS SMS/USSD AND APPLICATION PLATFORM**

By this letter we, the undersigned, _____, a bank and limited liability company incorporated under the Companies Act Cap 486 of the Laws of Kenya and having its principal office at _____ (hereinafter referred to as 'the Bank') do hereby jointly and severally with the Contractor irrevocably guarantee payment owed to you by the Contractor, pursuant to the Contract, up to the sum of **Kshs (figure equivalent to 10% of contract sum) Kenya shillings (in words)**. This guarantee shall expire upon due performance by the Contractor of his obligations under the Contract.

We undertake to make payment under this Letter of Guarantee upon receipt by us of your first written demand signed by your duly authorized officer declaring the Contractor to be in default under the Contract and without cavil or argument any sum or sums within the above-named limits, without your need to prove or show grounds or reasons for your demand and without the right of the Contractor to dispute or question such demand. Our liability under this Letter of Guarantee shall be to pay to you whichever is the lesser of the sum so requested or the amount then guaranteed under this Letter in respect of any demand duly made under this Letter prior to expiry of this Letter of Guarantee.

This Letter of Guarantee shall be valid from the date of issue until the date the Contractor has duly performed all its obligations as provided in the Contract. Our liability under this Letter of Guarantee shall become null and void immediately upon its expiry, whether it is returned or not, and no claim may be made under this Letter after such expiry or after the aggregate of the sums paid by us to you shall equal the sums guaranteed under this Letter, whichever is the earlier. All notices to be given under this Letter shall be given by registered mail to the addressee at the address herein set out or as otherwise advised by and between the parties hereto.

PROVIDED always and it is hereby agreed and declared that no alteration in the terms of the said contract or in the extent or nature of the works to be carried out and no extension of time by the Engineer under the contract shall in any way release the Surety from any liability under the above written Bond.

For and on behalf of the Bank

Signed_____

(In the capacity of: 'insert title or other appropriate designation')

Witness_____

Date_____

Common Seal of the Bank _____

SECTION O: DECLARATION FORM

To _____ Date _____

The tenderer i.e. (name and address) _____
_____ Declare the following:

- a) Has not been debarred from participating in public procurement.
- b) Has not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement.

Title Signature Date

(To be signed by authorized representative and officially stamped)