



OFFICE OF THE AUDITOR-GENERAL
Promoting Accountability in the Public Sector

**SETUP AND ADMINISTRATION OF A SEGREGATED PENSION
SCHEME FOR THE OFFICE OF THE AUDITOR-GENERAL**

TENDER NO: OAG/OT/06/2016-2017

JANUARY, 2017

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SECTION I: INVITATION TO TENDER

TENDER REF NO: OAG/OT/06/2016-2017

TENDER NAME: SETUP AND ADMINISTRATION OF A SEGREGATED PENSION SCHEME FOR THE OFFICE OF THE AUDITOR-GENERAL

- 1.1 The Office of The Auditor-General (OAG) invites sealed tenders from eligible candidates for **Pension Scheme Set Up and Administration Services** for its staff.
- 1.2 Eligible Tenderers may obtain further information and inspect the Tender Document from **Head of Supply Chain Management at Office of the Auditor General, P.O Box 30084-0100, Nairobi**, during normal working hours.
- 1.3 Completed tender documents are to be enclosed in plain sealed envelopes marked with the specific tender name and reference number and deposited in the Tender Box located at **Office of The Auditor-General, Offices, Anniversary Towers, 30th floor** or to be addressed to **The Auditor-General, P.O. Box 30084-00100, NAIROBI** so as to be received on or before **11.00 AM, local time on 13th January , 2017** . Late bids will be rejected.
- 1.4 All bids must be accompanied by a **bid security of Ksh.100,000/=** in the form of Cash, Bank Guarantee from a reputable Commercial Bank. or a Guarantee from an Insurance company approved by the public procurement Oversight Authority (PPOA)
- 1.5 Prices quoted should be net inclusive of all taxes and must be in Kenya Shillings and shall remain valid for **120 days** from the closing date of the tender.
- 1.6 Tenders will be opened immediately thereafter, in the presence of candidates or their representatives who choose to attend the opening meeting, at the **Board Room on the 4th Floor, Anniversary Towers Building**.

For: Auditor-General

SECTION II - INSTRUCTION TO BIDDERS

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SECTION II - INSTRUCTIONS TO BIDDERS

2.1. Eligible Bidders

- 2.1.1 This Invitation for Tenders is open to all Bidders. Successful Bidders 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 OAG's employees, committee members, board members and their relatives (spouse and children) are not eligible to participate in the tender unless where specially allowed.
- 2.1.3 Bidders shall provide the qualification information statement that the Bidder (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 OAG 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 Bidders involved in the corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

2.2 Cost of Tendering

- 2.2.1 The Bidder shall bear all costs associated with the preparation and submission of its tender, and OAG, will in no case be responsible or liable for those costs. Regardless of the conduct or outcome of the tendering process
- 2.2.2 OAG shall allow the Bidder to review the tender document free of charge before purchase.

2.3 Contents of Tender Document

- 2.3.1 The tender documents comprise the documents listed below and addenda issued in accordance with clause 2.5 of these instructions to Bidders.
- (i) Instructions to Bidders
 - (ii) General Conditions of Contract
 - (iii) Special Conditions of Contract
 - (iv) Schedule of Requirements
 - (v) Terms of reference for the Assignment
 - (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 Bidder is expected to examine all instructions, forms, terms and specification 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 Bidders risk and may result in the rejection of its tender.

2.4 Clarification of Tender Documents

- 2.4.1 A Candidate making inquiries of the tender documents may notify OAG by post, fax or by email at OAG's address indicated in the Invitation for tenders. OAG will respond in writing to any request for clarification of the tender documents, which it receives not later than seven (7) days prior to the deadline for the submission of the tenders, prescribed by OAG. Written copies of the OAG's response (including an explanation of the query but without identifying the source of inquiry) will be sent to all candidates who have received the tender documents.
- 2.4.2 OAG shall reply to any clarifications sought by the Bidder within 3 days of receiving the request to enable the Bidder to make timely submission of its tender.
- 2.4.3 Preference where allowed in the evaluation of tenders shall not exceed 15%

2.5 Amendment of Tender Documents

- 2.5.1 At any time prior to the deadline for submission of tenders, OAG, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Bidder, may modify the tender documents by issuing an addendum.
- 2.5.2 All prospective Bidders 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 Bidders reasonable time in which to take the amendment into account in preparing their tenders, OAG, at its discretion, may extend the deadline for the submission of tenders.

2.6 Language of Tenders

- 2.6.1 The tender prepared by the Bidder, as well as all correspondence and documents relating to the tender exchanged by the Bidder and OAG, shall be written in English language. Any printed literature furnished by the Bidder 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

- 2.7.1 The tender prepared by the Bidder shall comprise the following components:
- (a) A Tender Form and a Price Schedule completed in accordance with paragraph 2.8, 2.9 and 2.10 below
 - (b) Documentary evidence established in accordance with paragraph 2.1.2 that the Bidder is eligible to tender and is qualified to perform the contract if its tender is accepted;
 - (c) Tender security furnished in accordance with paragraph 2.12
 - (d) Declaration Form

2.8 Form of Tender

- 2.8.1 The Bidder shall complete the Tender Form and the Price Schedule furnished in the tender documents, indicating the services to be provided.

2.9. Tender Prices

- 2.9.1 The Bidder shall indicate on the form of tender and the appropriate Price Schedule the unit prices and total tender price 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 Bidder 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 2.20.5

2.10. Tender Currencies

- 2.10.1 Prices shall be quoted in Kenya Shillings

2.11. Bidders Eligibility and Qualifications

- 2.11.1 Pursuant to paragraph 2.1 the Bidder shall furnish, as part of its tender, documents establishing the Bidders eligibility to tender and its qualifications to perform the contract if it's tender is accepted.
- 2.11.2 The documentary evidence of the Bidder's qualifications to perform the contract if its tender is accepted shall establish to OAG's satisfaction that the Bidder has the financial and technical capability necessary to perform the contract.

2.12. Tender Security

- 2.12.1 The Bidder shall furnish, as part of its tender, a tender security for the amount and form specified in the Appendix to Instructions to Bidders.
- 2.12.2 The tender security shall be in the amount indicated under section for invitation to bidders.
- 2.12.3 The tender security is required to protect OAG against the risk of Bidder's conduct which would warrant the security's forfeiture, pursuant to paragraph 2.12.7
- 2.12.4 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form of:-
Cash, bank guarantee, such Insurance guarantee approved by the Public Procurement Oversight Authority.
- 2.12.5 Any tender not secured in accordance with paragraph 2.12.1. and 2.12.3 **shall be rejected by OAG as non-responsive**, pursuant to paragraph 2.20.5
- 2.12.6 Unsuccessful Bidder's tender security will be discharged or returned as promptly as possible but not later than thirty (30) days after the expiration of the period of tender validity

2.12.7 The successful Bidder's tender security will be discharged upon the Bidder signing the contract, pursuant to paragraph 2.29, and furnishing the performance security, pursuant to paragraph 2.30

2.12.8 The tender security may be forfeited:

- (a) If a Bidder withdraws its tender during the period of tender validity.
- (b) in the case of a successful Bidder, if the Bidder fails:
 - (i) to sign the contract in accordance with paragraph 2.29 or
 - (ii) to furnish performance security in accordance with paragraph 2.30.

2.13. Validity of Tenders

2.13.1 Tenders shall remain valid for **120 days** after date of tender opening pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by OAG as non-responsive.

2.13.2 In exceptional circumstances, OAG may solicit the Bidder'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 Bidder granting the request will not be required nor permitted to modify its tender.

2.14. Format and Signing of Tenders

2.14.1 The Bidder shall prepare an original and a copy 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 Bidder or a person or persons duly authorized to bind the Bidder to the contract. All pages of the tender, except for un-amended 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 Bidder, 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 Bidder shall seal the original and the copy of the tender in separate envelopes, duly marking the envelopes as "ORIGINAL TENDER" and "COPY OF TENDER". The envelopes shall then be sealed in an outer envelope.

2.15.2 The inner and outer envelopes shall:

- (a) Be addressed to OAG 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 BIDCLOSING/ OPENING DATE."
- (c) The inner envelopes shall also indicate the name and address of the Bidder 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, OAG 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 OAG at the address specified under paragraph 2.15.2 not later than **13th January, 2017 at 11.00 AM**. OAG may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 2.5.3 in which case all rights and obligations of OAG and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

2.17. Modification and Withdrawal of Tenders

2.17.1 The Bidder may modify or withdraw its tender after the tender's submission, provided that written notice of the modification, including substitution or withdrawal of the tenders, is received by OAG prior to the deadline prescribed for submission of tenders.

2.17.2 The Bidder'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 fax or email 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. Withdrawal of a tender during this interval may result in the Bidder's forfeiture of its tender security, pursuant to paragraph 2.12.7.

2.18. Opening of Tenders

2.18.1 OAG will open all tenders in the presence of Bidders' representatives who choose to attend at **Anniversary Towers 4th floor Boardroom, 13th January, 2017 at 11.00AM** and in the location specified in the invitation for tenders. The Bidders' representatives who are present shall sign a register evidencing their attendance

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

2.18.3 OAG will prepare minutes of the tender opening, which will be submitted to Bidders 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 OAG may, at its discretion, ask the Bidder for a clarification of its tender. The request for

clarification and the response shall be in writing, and no change in the prices or substance of the tender shall be sought, offered, or permitted.

2.19.2 Any effort by the Bidder to influence OAG in its tender evaluation, tender comparison or contract award decisions may result in the rejection of the Bidders' tender.

2.20 Preliminary Examination and Responsiveness

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

2.20.2 OAG may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation provided such waiver does not prejudice or affect the relative ranking of any Bidder.

2.20.3 Prior to the detailed evaluation, pursuant to paragraph 2.20, OAG 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. OAG's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

2.20.4 If a tender is not substantially responsive, it will be rejected by OAG and may not subsequently be made responsive by the Bidder by correction of the nonconformity.

2.21. Conversion to single currency

2.21.1 Where other currencies are used, OAG will convert those currencies to Kenya Shillings using the selling exchange rate on the date of tender closing provided by the Central Bank of Kenya.

2.22. Evaluation and Comparison of Tenders

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

2.22.2 OAG'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 2.22.3.

((a) operational plan proposed in the tender;

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

2.22.3 Pursuant to paragraph 2.22.2 the following evaluation methods will be applied.

(a) Operational Plan

- (i) OAG 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 OAG's required delivery time will be treated as non-responsive and rejected.
- (b) Deviation in payment schedule
 - (i) Bidders shall state their tender price for the payment on schedule outlined in the special conditions of contract. Tenders will be evaluated on the basis of this base price. Bidders 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. OAG may consider the alternative payment schedule offered by the selected Bidder.

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

2.23. Contacting OAG

2.23.1 Subject to paragraph 2.19 no Bidder shall contact OAG 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 Bidder to influence OAG in its decisions on tender evaluation, tender comparison, or contract award may result in the rejection of the Bidders' tender.

2.24 Post-qualification

2.24.1 OAG will verify and determine to its satisfaction whether the Bidder 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 Bidder financial and technical capabilities. It will be based upon an examination of the documentary evidence of the Bidders qualifications submitted by the Bidder, pursuant to paragraph 2.11.2, as well as such other information as OAG deems necessary and appropriate

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

2.25 Award Criteria

2.25.1 Subject to paragraph 2.29 OAG will award the contract to the successful Bidder whose tender has been determined to be substantially responsive and has been determined to be the lowest evaluated tender, provided further that the Bidder is determined to be qualified to perform the contract satisfactorily.

2.25.2 To qualify for contract awards, the Bidder 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.

2.26. OAG's Right to accept or Reject any or all Tenders

2.26.1 OAG 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 Bidder or Bidders or any obligation to inform the affected Bidder or Bidders of the grounds for OAG's action. If OAG determines that none of the tenders is responsive, OAG shall notify each Bidder who submitted a tender.

2.26.2 OAG shall give prompt notice of the termination to the Bidders and on request give its reasons for termination within 14 days of receiving the request from any Bidder.

2.26.3 A Bidder 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.

2.27 Notification of Award

2.27.1 Prior to the expiration of the period of tender validity, OAG will notify the successful Bidder in writing that its tender has been accepted.

2.27.2 The notification of award will signify the formation of the contract subject to the signing of the contract between the Bidder and OAG pursuant to clause 2.9. Simultaneously the other Bidders shall be notified that their tenders were not successful.

2.27.3 Upon the successful Bidder's furnishing of the performance security pursuant to paragraph 2.29 OAG will promptly notify each unsuccessful Bidder and will discharge its tender security, pursuant to paragraph 2.12

2.28 Signing of Contract

2.28.1 At the same time as OAG notifies the successful Bidder that its tender has been accepted, OAG will simultaneously inform the other Bidders that their tenders have not been successful.

2.28.2 Within fourteen (14) days of receipt of the Contract Form, the successful Bidder shall sign and date the contract and return it to OAG.

2.28.3 The contract will be definitive upon its signature by the two parties.

2.28.4 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.

2.29 Performance Security

2.29.1 The successful Bidder shall furnish the performance security in accordance with the Conditions of Contract, in a form acceptable to OAG.

2.29.2 Failure by the successful Bidder to comply with the requirement of paragraph 2.29 or paragraph 2.30.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event OAG may make the award to the next lowest evaluated tender or call for new tenders.

2.30 Corrupt or Fraudulent Practices

2.30.1 OAG requires that Bidders observe the highest standard of ethics during the procurement process and execution of contracts. A Bidder shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.

2.30.2 OAG will reject a proposal for award if it determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question

2.30.3 Further a Bidder 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 Bidders

The following information for the procurement of Pension Scheme Set Up and Administration services shall complement, supplement, or amend, the provisions on the instructions to Bidders. Wherever there is a conflict between the provisions of the instructions to Bidders and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to Bidders.

Instruction to Tenderers	Particulars of Appendix to instructions to Bidders
2.1	Segregated Pension Scheme Setup and Administration Services
2.12.1	Tender security required- Kshs. 100,000/= in the form of Unconditional Bank Guarantee from a reputable bank in Kenya or a Guarantee from an Pension Scheme Setup and Administration company approved by the Public Procurement Oversight Authority (PPOA)/PPRA valid for 30days beyond the tender validity period
2.14.1	<i>Bidders shall provide 1 ORIGINAL tender document clearly marked original and 1 other copy marked COPY all placed in one envelope.</i>
2.15.2 (b)& 2.18.1	The closing/Opening date of the tender is 13th January , 2017 at 11.00AM
2.22	<p>The evaluation and comparison of tenders shall be as follows:-</p> <p>Confirmation of compliance with Mandatory requirements.</p> <ul style="list-style-type: none">• Bidders who fail to comply with any of the mandatory requirements shall be treated as non-responsive and rejected at this stage. <p>Technical Evaluation.</p> <ul style="list-style-type: none">• Bidders who meet all the mandatory evaluation requirements shall be evaluated as per the Technical Evaluation Criteria set out in the table below. Bidders are required to score 80% and above to qualify for further evaluation under the Commercial Evaluation Criteria. <p>Financial Evaluation.</p> <ul style="list-style-type: none">• The tenders received from the responsive bidders shall be evaluated and ranked from the lowest to the highest provided that the tenders were obtained from the eligible firms as specified in Section 4.1. The commercial evaluation shall also take into consideration any conditions attached to the bid and the Price Schedule Form.
2.29	Performance Security required is 10% of the contract sum

(II) CRITERIA OF EVALUATION

The method of evaluation on mandatory requirement will be on a pass fail basis while the rest will be Merit Point System. The evaluation criteria will be applied as indicated here below: -

STAGE I- MANDATORY REQUIREMENT

S/No	CRITERION	YES/NO
1.	Copy of Registration Certificate/Letter of Incorporation	
2.	Copy of Valid Tax Compliance Certificate	
3.	Duly completed, signed and stamped form of tender.	
4.	Tender Security (In amount, Form, validity period as required)	
5.	Duly completed , signed and stamped confidential Business Questionnaire	
6.	Copy of valid certificate from Retirement Benefits Authority.	
7.	Tender validity period of at least 120 days.	
8.	Declaration that that the firm has not been debarred by PPOA from participating in Public Procurement (Provide sworn Affidavit)	
9.	Declaration that that the firm has not been convicted of corrupt or fraudulent practices (Provide sworn Affidavit)	

STAGE II- TECHNICAL EVALUATION

S/N o	Criteria	Method of Evaluation	Max. Points	Percentage Score
I	Firm's experience in handling similar assignment (Evidence i.e LSO, contract, etc required)	5 points for every client	25	
ii	Recommendation letters from at least 5 clients running segregated pension scheme	3 points for each reference	15	
iii	Professional qualifications and experience of at least three (3) technical personnel (Attach CVs)	One Actuarist in the team (Maximum 5 points)	15	
		One staff with Pensions administration experience (Maximum of 5 points)		
		One staff with benefit design experience (Maximum of 5 points)		
iv	Period taken for disbursement of pension after discharge Provide evidence	Upto one month (5 points) Upto two months (2 points) Beyond two months (Nil point)	5	
V	Evidence of interest declared on pension for the last three years	2 points each year	6	
vi	Proposed Methodology	Give a brief proposal	15	
vii	Quality of the Workplan	From the proposal	5	
viii	Sensitization of OAG staff.	Proposal from firm detailing the same	3	
ix	Firm's Financial Standing	Audited accounts for the last three years	3	
X	Evidence credit worthiness	Letter from the firm's bankers	3	
xi	Enhanced benefits in addition to the OAG's TOR	(Attach documents in support of this)	5	
	Total		100	100%

SECTION III - GENERAL CONDITIONS OF CONTRACT

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SECTION III GENERAL CONDITIONS OF CONTRACT

3.1. Definitions

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

- (a) “The Contract” means the agreement entered into between OAG and the Bidder, 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 Bidder under the Contract for the full and proper performance of its contractual obligations
- (c) “The Services” means services to be provided by the Bidder including any documents, which the Bidder is required to provide to OAG under the Contract.
- (d) “OAG” means the organization procuring the services under this Contract
- (e) “The Contractor” means the organization or firm providing the services under this Contract.
- (f) “GCC” means the General Conditions of Contract contained in this section.
- (g) “SCC” means the Special Conditions of Contract
- (h) “Day” means calendar day

3.2. Application

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

3.3. Standards

3.3.1 The services provided under this Contract shall conform to the standards mentioned in the schedule of requirements.

3.4. Use of Contract Documents and Information

3.4.1 The Contractor shall not, without OAG’s prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of OAG in connection therewith, to any person other than a person employed by the contractor in the performance of the Contract.

3.4.2 The Contractor shall not, without OAG’s prior written consent, make use of any document or information enumerated in paragraph 2.4.1 above.

3.4.3 Any document, other than the Contract itself, enumerated in paragraph 2.4.1 shall remain the property of OAG and shall be returned (all copies) to OAG on

completion of the contract's or performance under the Contract if so required by OAG.

3.5. Patent Rights

3.5.1 The Contractor shall indemnify OAG 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

3.6.1 Within twenty eight (28) days of receipt of the notification of Contract award, the successful Bidder shall furnish to OAG the performance security where applicable in the amount specified in SCC

3.6.2 The proceeds of the performance security shall be payable to OAG as compensation for any loss resulting from the Bidder'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 OAG and shall be in the form of:

- a) Cash.
- b) A bank guarantee.
- c) Such Pension Scheme Set Up and Administration guarantee approved by the Authority.
- d) Letter of credit.

3.6.4 The performance security will be discharged by OAG and returned to the Candidate not later than thirty (30) days following the date of completion of the Contractor's performance of obligations under the Contract, including any warranty obligations, under the Contract.

3.7. Delivery of services and Documents

3.7.1 Delivery of the services shall be made by the Bidder in accordance with the terms specified by OAG in the schedule of requirements and the special conditions of contract

3.8. Payment

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

3.8.2. Payment shall be made promptly by OAG as specified in the contract.

3.9. Prices

3.9.1 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 quoted by the Bidder in its tender.

3.10. Assignment

3.10.1 The Contractor shall not assign, in whole or in part, its obligations to perform under this Contract, except with OAG's prior written consent.

3.11. Termination for Default

3.11.1 OAG may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Contractor terminate this Contract in whole or in part:

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

3.11.2 In the event OAG 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 un-delivered and the Contractor shall be liable to OAG for any excess costs for such similar services. However the contractor shall continue performance of the contract to extent not terminated.

3.12. Termination for Insolvency

3.12.1 OAG may at any time 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 prejudice or affect any right of action or remedy, which has accrued or will accrue thereafter to OAG.

3.13. Termination for Convenience

3.13.1 OAG 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 entities 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 OAG may elect to cancel the services and pay to the contractor an agreed amount for partially completed services.

3.14 Resolution of Disputes

3.14.1 OAG and the contractor shall make every effort to resolve amicably by direct informal negotiations and disagreement or disputes arising between them under or in connection with the contract

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

3.15. Governing Language

3.15.1. 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. Applicable Law

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

3.17 Force Majeure

3.17.1 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.

3.18 Notices

3.18.1 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 Email and confirmed in writing to the other party's address specified in the SCC.

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

SECTION IV – SPECIAL CONDITIONS OF CONTRACT

4.3 Special Conditions of Contract as relates to the General Conditions of Contract are tabulated below:-

Reference of General Conditions of Contract	Special Condition of Contract
3.6 Performance security	The successful bidder will furnish the procuring entity with a performance security equivalent to 10 % of the bid price in the form of Unconditional Bank Guarantee from a reputable bank in Kenya within 21 days from the date of notification of award. The security will be valid for the entire contract period.
3.7.1 Delivery of Services	The firm shall be expected to deliver the assignment in line with the Terms of Reference and stipulated work plan.
3.7.2 Duration of Contract	Three years (3No) renewal subject to satisfactory performance.
3.8 Payment	Within 30 Days after submission of all the required supporting documents on successful completion of the set up process.
3.16 Applicable law	The Laws of Kenya
3.18 Notices	The Office of the Auditor General P. O Box 30084– 00100, Nairobi Tel: +25420342330 Email : info@oagkenya.go.ke Website: www.kenao.go.ke

SECTION V - SCHEDULE OF REQUIREMENTS

1. Bidders are required to provide their quotations based on the format of the appended **Schedule of Requirements** and should enumerate all the exclusions, extensive and special clauses where applicable.
2. Bidders will be required to provide a summary of their quotations based on the format of the appended **Price Schedule Form**.
3. Terms of Reference of must be considered and addressed in the bids.

SCHEDULE OF REQUIREMENTS

Item	Description	Unit Fee in (Kshs)	Total Price
1.	Set up of OAG Pension Scheme		
2.	Administration Services		

TERMS OF REFERENCE FOR SETUP AND ADMINISTRATION OF A SEGREGATED PENSION SCHEME FOR OFFICE OF THE AUDITOR - GENERAL

1.0 BACKGROUND INFORMATION

The Office of the Auditor – General (OAG) is an independent office established under Article 229 of the Constitution of Kenya. The office is charged with the primary oversight role of ensuring accountability within the three arms of the Government (Legislature, Judiciary and the Executive) as well as the Constitutional Commissions, Independent Offices and any other entity funded from the public funds.

The Office now intends to set up a Retirement Benefits Scheme for their entire staff compliment currently of 1231.

In order to successfully implement and operationalize the new Retirement Benefits Scheme the Office of the Auditor-General is seeking the services of a firm to Set up and administer the proposed Pension Scheme.

2.0 The Scope of the Assignment

The Office will need a service provider to undertake the setup and subsequent administration of a pension scheme. The **Terms of Reference** of the service shall include but not limited to the following:

A. Set up of the Pension Scheme

- 1) Guide the Office of the Auditor- General on the different types of retirement plans;
- 2) On the basis of the Staff compliment, advise on the most appropriate Scheme design and likely cost structure of the new Scheme that are in compliance with the various requirements of Treasury and within the Office of the Auditor-General's cost constraints;
- 3) On approval of the Scheme design and structure, assist the Office:
 - i. Draft the relevant resolutions for the establishment of the new Scheme;
 - ii. Prepare draft Trust Deed and Rules for the new Scheme that reflects the agreed and approved Scheme design;
 - iii. Assist the Office in obtaining the relevant approvals from Treasury on the design and structure of the new Scheme;
 - iv. Assist the Office in appointment of Trustees for the new Scheme;
- 4) Assist the appointed Trustees in the selection and appointment of a Fund Manager including review of the Fund Manager's Service Level Agreement;
- 5) Assist the appointed Trustees in the selection and appointment of a Custodian including review of the Custodian's Service Level Agreement;
- 6) Assist the appointed Trustees in the selection and appointment of an Auditor including review of the Auditor's Service Level Agreement;
- 7) Prepare relevant communication materials (including a member hand book and presentation slides) to advise and educate members on the benefits of a retirement

scheme and on the specific terms of the new Scheme being established. Design appropriate training methodology for OAG staff.

- 8) To prepare an Investment Policy Statement for the Scheme and discuss this with the appointed Trustees;
- 9) To register with the RBA the new Scheme and obtain the Registration Certificate;
- 10) To register with the KRA the new Scheme and obtain the relevant tax exemption;
- 11) To conduct a three (3) day training session for the Trustees to induct them into their new role. The training session should cover the following areas: Duties and Responsibilities, Risk Management, Role of Service Providers, establishment of an Investment Policy Statement;
- 12) Provide a schedule of activities (Work plan) with specific timelines that will lead to the setup of the pension scheme for the Office.

Note: The Office will bear the cost associated with training of the trustees (if any) and staff sensitization.

B. Administration of Pension Scheme

1. To carry out the day to day administration of the new Scheme in accordance with the provisions of the Retirement Benefit Act, 1997 and the Regulations under the Act, the Income Tax Act, the Trust Deed and Rules, all other applicable legislation in force including all documents related to the new Scheme.
2. To ensure that at all times the Scheme is administered in the best interests of the stakeholders.
3. To collect, collate and maintain accurate up to date records in respect of :
 - i. The scheme members including their beneficiaries;
 - ii. All the assets of the scheme;
 - iii. The service providers of the scheme; and
 - iv. All other information deemed necessary for the day to day administration of the scheme.
4. To keep proper books and records of account in respect to income, expenditure, liabilities and assets of the scheme including preparing Scheme budgets, cash flow and liquidity requirements as may from time to time be required.
5. Compute and prepare statements of payments of benefits to the members and their beneficiaries.
6. Liaise with all stakeholders in the day to day management of the Scheme including Trustees, the relevant authorities (RBA and KRA), the Sponsor, members, other service providers engaged by the Trustees to render services to the Scheme, etc.
7. Compute and pay benefits to members and or their beneficiaries as provided for under the Scheme Trust Deed and Rules and in law.
8. Prepare quarterly reports to update the Sponsor on all matters regarding the

Scheme.

9. Report to the Office as soon as reasonably practicable, any unusual occurrence which could jeopardize the rights of the members and Sponsor of the Scheme and report to the relevant Authority as soon as reasonably practicable, if any contributions remain due for a period of more than thirty days.
10. Ensure that contributions payable have been remitted to the Custodian as the case may be within the periods provided for in the law.
11. Communicate regularly with the members with respect to the affairs of the scheme and furnishing them with annual membership benefits statements in accordance with the provisions of the law.
12. Ensure that all documents intended to bind the Trustees are always professionally prepared and executed.
13. Attend meetings of the Trustees as and when convened by the Board of Trustee's and present a report on the affairs of the Scheme including any other matters as may be required by the Trustees.
14. Ensure that annual audits of the Scheme are conducted as required under the law and Trust Deed and Rules.
15. Correspond with the Authority and the Income Tax Department including making the required returns as specified under law and the Trust Deed and Rules.
16. Remit to the Authority the requisite levy from the Scheme as provided for in the Act.
17. Avail the required data of the Scheme at agreed times to the other service providers appointed by the Trustees to enable the preparation of the statutory returns to the Authority and submit or cause to be submitted all the required statutory returns to the Authority.
18. Advise the Trustees to ensure that the manager is investing the Scheme Funds in compliance with the provisions of the Act, Regulations, Trust Deed and Rules and other relevant legislation in force.
19. Provide secretarial services to the Board of Trustees, organize and call for meetings of the Board as may be required by the Trustees and take minutes and keep record of such meetings.
20. Organize and call for annual general meetings or special meetings of the Scheme, take minutes and keep record of such meetings.
21. Carry out all lawful tasks as may be instructed by the Trustees from time to time.
22. Provide guidance to members on retirement or earlier exit including the available annuity providers to purchase annuities.

3.0 Expected Output

- 1) Scheme Design Report;
- 2) Report on accrued benefits transfer from other public service institutions;
- 3) Report on comparative structures for other Commissions and Independent Offices

where applicable;

- 4) Draft of letter to request for Treasury Approval;
- 5) Treasury Approval letter of new Scheme design;
- 6) Draft Trust Deed and Rules;
- 7) Draft Tender documents for the selection and appointment of a Fund Manager;
- 8) Draft Tender documents for the selection and appointment of a Custodian;
- 9) Draft Tender documents for the selection and appointment of an Auditor;
- 10) An Investment Policy Statement for the Scheme;
- 11) Registration Certificates confirming registration with RBA and KRA;
- 12) Trustee training and staff sensitization report;
- 13) Quarterly administration reports;
- 14) Preparation of Trustee meetings;

4.0 Timeframe for this Assignment.

It is expected that the pension scheme shall be set up by 30th April, 2017. However, administration services will run for a period of three (3) years with effect from the date of contract signature.

4.1 Requirements.

The successful Service Provider must demonstrate knowledge and experience in the operations of the Pensions Act and the attendant regulations and; successful and relevant previous experience in similar assignments.

4.2 The formula for determining the financial score shall be as follows:-

Financial Score = $100 * FL/F$; where FL is the lowest priced Financial Proposal and F is the price of the Proposal under consideration. Proposals will be ranked according to their combined Technical and Financial scores using weights. Technical scores will carry a weighting of 80% whilst financial scores will carry a weighting of 20%. The firms achieving the highest combined technical and financial score will be invited for negotiations.

SECTION VI - STANDARD FORMS

Notes on the standard Forms

1. **Form of Tender** - The form of Tender must be completed by the Bidder and submitted with the tender documents. It must also be duly signed by duly authorized representatives of the Bidder.
2. **Price Schedule Form**- The price schedule form must similarly be completed and submitted with the tender.
3. **Contract Form** - The contract form shall not be completed by the Bidder at the time of submitting the tender. The contract form shall be completed after contract award and should incorporate the accepted contract price.
4. **Confidential Business Questionnaire Form** - This form must be completed by the Bidder and submitted with the tender documents.
5. **Tender Security Form** - When required by the tender document the Bidder shall provide the tender security either in the form included hereinafter or in another format acceptable to OAG.

FORM OF TENDER

To:

Date:

Name and address of procuring entity_____

Tender No.

Tender Name

Gentlemen and/or Ladies:-

1. Having examined the Tender documents including Addenda No. (Insert numbers) the receipt of which is hereby duly acknowledged, we the undersigned, offer to provide Pension Scheme Set Up and Administration Services under this tender in conformity with the said Tender document for the sum of [Total Tender amount in words and figures] or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender.

2. We undertake, if our Tender is accepted, to provide the Pension Scheme Set Up and Administration Cover Services in accordance with the conditions of the tender.

3. We agree to abide by this Tender for a period of[number] days from the date fixed for Tender opening of the Instructions to Tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

4. This Tender, together with your written acceptance thereof and your notification of award, shall constitute a Contract between us subject to the signing of the contract by both parties.

5. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this _____ day of _____ 2017

[Signature]

[In the capacity of]

Duly authorized to sign tender for and on behalf of the bidder

Price Schedule Form

No.	Description	Total Fees in (Kshs)	Remarks
1.	Set up of OAG Pension Scheme		
2.	Administration Services per year		

We undertake, if our tender is accepted, provide the above services in accordance with the schedule rates and delivery dates specified herein above.

Name

Name of signatory:

In the capacity of:

Authorized Signature:

Company Rubber Stamp/Seal.....

CONFIDENTIAL BUSINESS QUESTIONNAIRE

You are requested to give the particular indicated in Part 1 and either Part 2(a), 2(b), or 2(c) which ever applies to your type of business.

You are advised that it is a serious offence to give false information on this Form.
Part _____ General:

Business Name
Location of business premises
Plot No. Street/Road
Postal Address Tel. No.Fax
Email
Nature of business
Registration Certificate No.
Maximum value of business which you can handle at any one time in Kshs.
Name of your bankers Branch

Part 2(a) – Sole Proprietor:

Your name in full Age
Nationality Country of origin
Citizenship details.....

Party 2(b) – Partnership

Give details of partners as follows

	Name	Nationality	Citizenship Details	Shares
1.
2.
3.
4.
5.

Part 2(c) – Registered Company:

Private or public

State the nominal and issued capital of the company –

Nominal Kshs.

Issued Kshs.

Give details of all directors as follows:-

	<u>Name</u>	<u>Nationality</u>	<u>Citizenship</u>	<u>Details</u>	<u>Shares</u>
1.
2.
3.
4.
5.

Date..... Signature of Bidder

If a citizen, indicate under “Citizenship Details” whether by Birth, Naturalization or Registration

TENDER SECURITY FORM

Whereas [*name of Bidder*] (hereinafter called <the tenderer> has submitted its bid dated [*date of submission of bid*] for the provision of Pension Scheme Set Up and Administration services (hereinafter called <the tender>

KNOW ALL PEOPLE by these presents that WE [*name of bank*] of [*name of country*], having our registered office at Kenya National Highways Authority (hereinafter called <OAG> in the sum of [*state the amount*] for which payment well and truly to be made to the said procuring entity, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this _____ day of _____
_____ 20 _____

THE CONDITIONS of this obligation are:-

1. If the tenderer withdraws its tender during the period of tender validity specified by OAG on the Form; or
2. If the tender, having been notified of the acceptance of its tender by OAG during the period of tender validity
 - (a) fails or refuses to execute the Contract Form, if required; or
 - (b) fails or refuses to furnish the performance security, in accordance with the Instructions to tenders.
 - (c) Rejects a correction of an arithmetic error in the tender.

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

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

(Authorized Signatories and official stamp of the Bank or Pension Scheme Set Up and Administration Company)

PERFORMANCE SECURITY FORM

To:
[Name of Kenya Forest Service]

WHEREAS [Name of tenderer]
(Hereinafter called “the tenderer”) has undertaken, in pursuance of Contract No.
[Reference number of the contract] dated 20
to supply [Description of Pension
Scheme Set Up and Administration services] (Hereinafter called “the Contract”)

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

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

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

20 This guarantee is valid until the day of

Signature and seal of the Guarantors

[Name of bank of financial institution]

[Address]

[Date]

OAG 1- CLIENT REFERENCE FORM

Name and address of the Client.....
.....

Tel. No.

Name of Firm.....

Pension Scheme Set Up and Administration Policies handled

Client	Period

Declaration

We confirm that the above firm has handled our Pension Scheme

Name of authorized signatory.....

Title.....

Signature

Date.....

Official stamp of the firm

Telephone contacts:-.....