

INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION



SUPPLY AND DELIVERY OF BVR SYSTEM HARD DISKS.

TENDER NO: IEBC/REST/05/2018-2019

**CLOSING DATE: WEDNESDAY 24TH APRIL, 2019 AT
10.00AM EAST AFRICAN TIME.**

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1.0 SECTION I - INVITATION TO TENDER

DATE: 12THAPRIL, 2019

TENDER REF NO. IEBC/REST/ 05/2018-2019

TENDER NAME: **SUPPLY AND DELIVERY OF BVR SYSTEM HARD DISKS.**

- 1.1 The Independent Electoral and Boundaries Commission (**IEBC**) invites bids from eligible authorized bidders for the Supply and Delivery of BVR System Hard Disks.
- 1.2 Interested eligible tenderers may obtain further information from and inspect the tender documents at IEBC Anniversary Towers, fifth floor, room 503, during normal working hours, **Monday to Friday, 8.00a.m. - 1p.m. and 2.00p.m. - 4.30p.m.**
- 1.3 A complete set of tender document will be issued free of charge
- 1.4 Prices quoted should be net inclusive of all taxes and delivery costs, in Kenya Shillings and shall remain valid for 120 days from the closing date of the tender
- 1.5 Completed tender documents should be enclosed in plain sealed envelopes, marked with tender reference number and Tender description shall be addressed to:

**The Chief Executive Officer/Commission Secretary
Independent Electoral and Boundaries Commission (IEBC),
Anniversary Towers, University Way, Fifth Floor
P O Box 45371-00100,
Nairobi**

Or be deposited in the Tender Box at the 5th Floor reception, Anniversary Towers, so as to be received on or before **Wednesday 24th April, 2019, at 10.00a.m. East African** The tender will be opened immediately thereafter in the presence of the tenderer representatives who chose to attend the opening, at the 15th floor boardroom, Anniversary Towers, University Way, Nairobi.

HUSSEIN MARJAN
Ag. COMMISSION SECRETARY/CEO

2.0 SECTION II - INSTRUCTIONS TO TENDERERS

2.1. Eligible Tenderers

- 2.1.1 This Invitation for Tenders is open to all tenderers eligible as described in the Appendix to Instructions to Tenderers. 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 IEBC'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 subservice providers) 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 IEBC 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 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 Tenderer shall bear all costs associated with the preparation and submission of its tender, and IEBC, 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 price to be charged for the tender document shall not exceed Kshs.5,000/=
- 2.2.3 IEBC shall allow the tenderer 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 tenderers.
- (i) Instructions to Tenderers
 - (ii) General Conditions of Contract
 - (iii) Special Conditions of Contract
 - (iv) Schedule of Requirements

- (v) Details of Insurance Cover
- (vi) Form of Tender
- (vii) Price Schedules
- (viii) Contract Form
- (ix) Confidential Business Questionnaire Form
- (x) Tender security Form
- (xi) Performance security Form
- (xii) Insurance Company's Authorization Form
- (xiii) Declaration Form
- (xiv) Request for Review Form

2.3.2 The Tenderer 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 tenderers 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 IEBC by post or by email at IEBC's address indicated in the Invitation for tenders. IEBC 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 IEBC. 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 candidates who have received the tender documents.

2.4.2 IEBC 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.

2.4.3 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, IEBC, 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, IEBC, 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 tenderer, as well as all correspondence and documents relating to the tender exchanged by the tenderer and IEBC, 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

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

- (a) A Tender Form and a Price Schedule completed in accordance with paragraph 2.8, 2.9 and 2.10 below
- (b) Documentary evidence established in accordance with paragraph 2.1.2 that the tenderer 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 (if applicable)
- (d) Declaration Form.

2.8. Form of Tender

2.8.1 The tenderer 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 tenderer 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 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 2.20.5

2.10. Tender Currencies

2.10.1 Prices shall be quoted in Kenya Shillings

2.11. Tenderers Eligibility and Qualifications

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

2.11.2 The documentary evidence of the tenderer's qualifications to perform the contract if its tender is accepted shall establish to IEBC'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 Appendix to Instructions to Tenderers.

2.12.2 The tender security shall not exceed 2 per cent of the tender price.

2.12.3 The tender security is required to protect IEBC against the risk of Tenderer'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

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

2.12.4.1 Any tender not secured in accordance with paragraph 2.12.1. and 2.12.3 shall be rejected by IEBC as non-responsive, pursuant to paragraph 2.20.5

2.12.4.2 Unsuccessful Tenderer's tender security will be discharged or returned as promptly as possible but not later than thirty (30) days after the expiration of the period of tender validity

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

2.12.5 The tender security may be forfeited:

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

2.13. Validity of Tenders

2.13.1.1 Tenders shall remain valid for 150 days after date of tender opening pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by IEBC as non-responsive.

2.13.1.2 In exceptional circumstances, IEBC 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 granting the request will not be required nor permitted to modify its tender.

2.14. Format and Signing of Tenders

2.14.1 The tenderer shall prepare **one (1)** original and **one (1)** 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 tenderer or a person or persons duly authorized to bind the tenderer 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 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 submit one original tender duly marking the envelopes as "ORIGINAL TENDER" shall then be sealed in an outer envelope.

2.15.2 The inner and outer envelopes shall:

- (a) Be addressed to IEBC at the address given in the Invitation to Tender.
Bear tender number and name in the invitation to tender and the words,

2.15.3 The inner envelopes shall also indicate the name and address of the tenderer to enable the tender to be returned unopened in case it is declared “late”.

2.15.4 If the outer envelope is not sealed and marked as required by paragraph 2.15.2, IEBC will assume no responsibility for the tender’s misplacement or premature opening.

2.16. Deadline for Submission of Tenders

Tenders must be received by IEBC at the address specified under paragraph 2.15.2 not later than **Wednesday 24th April, 2019, at 10.00a.m. East African**

2.16.1 IEBC 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 IEBC and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

2.16.2 Bulky tenders which will not fit the tender box shall be received by IEBC as provided for in the appendix.

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 tenders, is received by IEBC prior to the deadline prescribed for 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 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 Tenderer’s forfeiture of its tender security, pursuant to paragraph 2.12.7.

2.18. Opening of Tenders

IEBC will open all tenders in the presence of tenderers' representatives who choose to attend, **on Wednesday 24th April, 2019, at 10.00a.m. East African** and in the location specified in the invitation for tenders. The tenderers' representatives who are present shall sign a register evidencing their attendance

- 2.18.1 The tenderers' names, tender modifications or withdrawals, tender prices, discounts, and the presence or absence of requisite tender security and such other details as IEBC, at its discretion, may consider appropriate, will be announced at the opening.
- 2.18.2 IEBC will prepare minutes of the tender opening, which will be submitted to 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 IEBC may, at its discretion, ask the tenderer for a clarification of its tender. The request for clarification and the response shall be in writing, and no change in the prices or substance of the tender shall be sought, offered, or permitted.
- 2.19.2 Any effort by the tenderer to influence IEBC in IEBC's tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderers' tender.

2.20 Preliminary Examination and Responsiveness

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

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

2.20.4 Prior to the detailed evaluation, pursuant to paragraph 2.20, IEBC 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. IEBC'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 IEBC and may not subsequently be made responsive by the tenderer by correction of the nonconformity.

2.21. Conversion to single currency

2.21.1 Where other currencies are used, IEBC 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 IEBC will evaluate and compare the tenders which have been determined to be substantially responsive, pursuant to paragraph 2.20

2.22.2 IEBC'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) IEBC requires that the services under the Invitation for Tenders shall be performed at the time specified in the Schedule of Requirements. Tenderers offering to perform longer than IEBC have required delivery time will be treated as non-responsive and rejected.

(b) Deviation in payment schedule

- (i) Tenderers 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.
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. IEBC may consider the alternative payment schedule offered by the selected tenderer.

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

2.23. Contacting IEBC

2.23.1 Subject to paragraph 2.19 no tenderer shall contact IEBC 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 IEBC in its decisions on tender evaluation, tender comparison, or contract award may result in the rejection of the Tenderers' tender.

2.24 Post-qualification

2.24.1 The Procuring entity will verify and 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 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 2.11.2, as well as such other information as IEBC 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 IEBC will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

2.25 Award Criteria

2.25.1 Subject to paragraph 2.29 IEBC 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.

2.25.2 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.

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

2.26.1 IEBC 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 IEBC's action. If IEBC determines that none of the tenders is responsive, IEBC shall notify each tenderer who submitted a tender.

2.26.2 IEBC 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.

2.26.3 A tenderer who gives false information in the tender document about is 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, IEBC will notify the successful tenderer 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 tenderer and IEBC pursuant to clause 2.9. Simultaneously the other tenderers shall be notified that their tenders were not successful.

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

2.28 Signing of Contract

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

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

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 tenderer shall furnish the performance security in accordance with the Conditions of Contract, in a form acceptable to IEBC.

2.29.2 Failure by the successful tenderer 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 IEBC may make the award to the next lowest evaluated tender or call for new tenders.

2.30 Corrupt or Fraudulent Practices

2.30.1 IEBC 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.

2.30.2 IEBC 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

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

Appendix to instructions to Tenderers

The following information for the procurement of insurance services shall complement, supplement, or amend, the provisions on 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.

SECTION II PROVISIONS OF APPENDIX TO INSTRUCTIONS TO TENDERERS

Instruction to tender reference	Particulars of Appendix to instructions to tenderers
2.1	Invited eligible authorized/or licensed dealers.
2.12	No tender security required
2.14.1	One original and One Copy
2.15.2	Wednesday 24 th April, 2019, at 10.00a.m. East African
2.16.1	<i>As 2.15.2 (b) above</i>
2.16.3	Director, Supply Chain Management, Independent Electoral and Boundaries Commission University Way, Anniversary Towers, 5th Floor, P.O Box 45371 - 00100, Nairobi.
2.18.1	Wednesday 24 th April, 2019, at 10.00a.m. East African
2.22.	Tender shall be evaluated in three stages; Preliminary, Technical and Financial
2.25.1	The tender shall be awarded to the lowest evaluated bidder

A. Preliminary Evaluation		
Responsive	No. Requirements	Responsive or Not Responsive
MR 1	Must Submit a copy of the Certificate of incorporation/or Registration	
MR 2	Must Submit a copy of Valid Tax Compliance certificate	
MR 3	Must submit a dully filled Confidential Business Questionnaire	
MR 4	Proof of the physical location of Business - Must submit Business permit from the County	

MR 5	Must submit a dully filled form of tender	
MR 6	Must serialize on each page of the tender document and all attachments	
MR 7	Must Provide Manufacturer's Authorization Letter	

At this stage, the tenderer's submission will either be responsive or non-responsive. The non-responsive submission in any of the above mandatory requirements will be eliminated and will not be considered further evaluation.

B. Technical Evaluation			
	Evaluation Criteria/	Specifications/Requirements	Maximum Scores
R1	Technical Specification	Full compliance = 100% As per technical specifications indicated in this document (Provide manufacturer's brochures which must be 100% corresponding to the specifications as provided	35
R3	Past Performance	Provide a list of major customers/Clients where the Products has been supplied successfully -1 marks for each	3
		Provide LPO/or award letter/or for the organization where similar products has been supplied successfully 3 marks for each	6
		Recommendation letters for the organization where the Products has been supplied successfully -3 marks for each	6
Total Scores			50
Only bidders who score 40% and above will be subjected to financial evaluation. Those who score below 80% will be eliminated at this stage and will not be considered further evaluation.			

C. Financial Evaluation:

2.27.5	The tender will be awarded to the lowest evaluated Bidder
2.29.1	No security performance is required

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 IEBC 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 tenderer including any documents, which the tenderer is required to provide to IEBC under the Contract.
- (d) “IEBC” means the organization procuring the services under this Contract
- (e) “The Service provider” 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 Service provider shall not, without IEBC’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 IEBC in connection therewith,

to any person other than a person employed by the service provider in the performance of the Contract.

3.4.2 The Service provider shall not, without IEBC'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 IEBC and shall be returned (all copies) to IEBC on completion of the contract's or performance under the Contract if so required by IEBC.

3.5. Patent Rights

3.5.1 The Service provider shall indemnify IEBC 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 tenderer shall furnish to IEBC the performance security where applicable in the amount specified in SCC

3.6.2 The proceeds of the performance security shall be payable to IEBC 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 IEBC and shall be in the form of:

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

3.6.4 The performance security will be discharged by IEBC and returned to the Candidate not later than thirty (30) days following the date of completion of the Service provider'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 Service provider in accordance with the terms specified by IEBC 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 service provider under this Contract shall be specified in SCC

3.82. Payment shall be made promptly by IEBC within thirty (30) days after submission of an invoice or claim by the service provider.

3.9. Prices

3.9.1 Prices charges by the service provider 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 tenderer in its tender or in IEBC's request for tender validity extension the case may be. No variation in or modification to the terms of the contract shall be made except by written amendments signed by the parties.

3.9.2 Contract price variations shall not be allowed for contracts not exceeding one year (12 months)

3.9.3 Where contract price variation is allowed the variation shall not exceed 10% of the original contract price

3.9.4 Price variation requests shall be processed by IEBC within 30 days of receiving the request.

3.10. Assignment

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

3.11. Termination for Default

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

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

3.11.2 In the event IEBC 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 Service provider shall be liable to IEBC for any excess

costs for such similar services. However the service provider shall continue performance of the contract to extent not terminated.

3.12. Termination for Insolvency

3.12.1 IEBC may at any time terminate the contract by giving written notice to the Service provider if the service provider becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the service provider, provided that such termination will not prejudice or affect any right of action or remedy, which has accrued or will accrue thereafter to IEBC.

3.13. Termination for Convenience

3.13.1 IEBC by written notice sent to the service provider, 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 service provider 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 IEBC may elect to cancel the services and pay to the service provider an agreed amount for partially completed services.

3.14 Resolution of Disputes

3.14.1 IEBC and the service provider 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 Service provider 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

3.1.1 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.

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

SECTION IV – SPECIAL CONDITIONS OF CONTRACT

4.1 Special conditions of contract shall supplement the general conditions of contract, Wherever there is a conflict between the GCC and the SCC, the provision of the SCC herein shall prevail over those in the GCC.

4.2 Special Conditions of Contract with reference to the general conditions of contract.

Reference of General Conditions of contract (GCC)	Special Condition of Contract (SCC)
3.6	No Performance security shall be required.
3.7	Immediately after issuing the Purchase Order
3.8	Payment shall be made upon satisfaction completion of delivery and after receipt of original Invoice
3.9	There shall be No price adjustment
3.16	In case of a dispute between the service provider and the employer, the same shall be resolved amicably between the parties in the first instance failure to which the dispute shall be referred to arbitration as per provision of the Arbitration Act of 1995 of Kenya branch and any award given shall be final.
3.16	The Laws of Kenya
3.18	Independent Electoral and Boundaries Commission University Way, Anniversary Towers, 6th Floor, P.O Box 45371 - 00100, Nairobi. and Service Providers

SECTION V - TECHNICAL SPECIFICATIONS

5.1 General

PARTICULARS

The Independent Electoral and Boundaries Commission requirements and test methods for the BVR System Hard Disks is as specified.

SECTION VI - SCHEDULE OF REQUIREMENTS BVR SYSTEM HARD DISKS.

No.	DESCRIPTION	SERVER / STORAGE	QTY
1	IBM Hard disk Part No. 9SW066-039, 300GB, 15K, 6GB SAS	IBM DCS3700 STORAGE	20
2	IBM Hard disk Part No. 9FU066-039, 146.8 GB, 15K, 6GB SAS	IBM Power 720 Server	6
3	IBM Hard disk Part No. 90E066-039, 300GB, 10K, 6GB SAS	IBM 3250M4 Server	10

SECTION VII – PRICE SCHEDULE OF BVR SYSTEM HARD DISKS.

Name of tenderer _____ Tender Number _____ Page ____ of _____

No.	Description	Server / Storage	Qty	Unit Price	Total Amount	Delivery
1	IBM Hard disk Part No. 9SW066-039, 300GB, 15K, 6GB SAS	IBM DCS3700 STORAGE	20			Delivery shall be made immediately after issuing purchase Order
2	IBM Hard disk Part No. 9FU066-039, 146.8 GB, 15K, 6GB SAS	IBM Power 720 Server	6			
3	IBM Hard disk Part No. 90E066-039, 300GB, 10K, 6GB SAS	IBM 3250M4 Server	10			

Signature of tendererDate.....

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

NB: Bidders are advised that the items quoted must be original, genuine from authorized manufacturers

SECTION VIII- 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 Form - When required by the tender documents the tender shall provide the tender security either in the form included herein or in another format acceptable to the procuring entity.
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. Performance Security Form - The performance security form should not be completed by the tenderers at the time of tender preparation. Only the successful tenderer will be required to provide performance security in the form provided herein or in another form acceptable to the procuring entity.
6. Bank Guarantee for Advance Payment Form - When Advance payment is requested for by the successful bidder and agreed by the procuring entity, this form must be completed fully and duly signed by the authorized officials of the bank.
7. Manufacturers Authorization Form - When required by the tender documents this form must be completed and submitted with the tender documents. This form will be completed by the manufacturer of the goods where the tenderer is an agent.

FORM OF TENDER

To:
Name and address of procuring entity _____
Tender No.
Tender Name

Date

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 supply and Supply and Delivery of BVR system Hard Disks 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 legal 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

B. SUMMARY OF REQUIREMENTS.

NO.	Description	Total Amount

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)

Whichever 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 Kshs.

.....

Name of your bankers Branch

Part 2(a) – Sole Proprietor:

Your name in full Age

Nationality Country of origin

Citizenship details.....

Part 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

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

Date..... Signature of Tenderer
.....

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

CONTRACT FORM

THIS AGREEMENT made the _____ day of _____ 20____ between Independent Electoral & Boundaries Commission of _____ [country of Procurement entity] (hereinafter called IEBC) of the one part and _____ [name of tenderer] of _____ [city and country of tenderer] (hereinafter called “the tenderer”) of the other part:

WHEREAS IEBC invited tenders for the BVR system Hard Disks and has accepted a tender by the tenderer for the supply of the services in the sum of _____ [contract price in words in figures] (hereinafter called “the Contract Price”).

NOW THIS AGREEMENT WITNESSTH AS FOLLOWS:-

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

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

Signed, sealed, delivered by _____ the _____ (for IEBC)

Signed, sealed, delivered by _____ the _____ (for the tenderer) in the presence of _____