



**NATIONAL MUSEUMS OF KENYA**

**WHERE HERITAGE LIVES ON**

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**NATIONAL MUSEUMS OF KENYA**

**TENDER NO. NMK/R/02/2019**

**TENDER FOR LEASING OF RESTAURANT AT THE NATIONAL MUSEUMS HEADQUARTERS LOCATED AT THE NAIROBI NATIONAL MUSEUM ON MUSEUM HILL.**

**DATE OF NOTICE : TUESDAY 19th FEBRUARY 2019**

**CLOSING DATE : TUESDAY 5<sup>th</sup> MARCH AT 12.00PM**

# TABLE OF CONTENTS

	Page
INTRODUCTION.....	3
SECTION I - INVITATION TO TENDER.....	4
SECTION II - INSTRUCTIONS TO TENDERERS.....	5
APPENDIX TO INTRODUCTION TO TENDERERS.....	19
SECTION III - GENERAL CONDITIONS OF CONTRACT.....	21
SECTION IV - SPECIAL CONDITIONS OF CONTRACT.....	28
SECTION V - SCHEDULE OF PARTICULARS OF TENDER.....	30
SECTION VI - STANDARD FORMS.....	32
1. FORM OF TENDER.....	33
2. PRICE SCHEDULED.....	34
3. CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM.....	36
4. AUTHORIZATION FORM.....	39
5. SITE VISIT FORM.....	40

## INTRODUCTION

1.1 This standard tender document for letting, leasing, licensing, tenancy, franchise or management contracting has been prepared for use by The National Museums of Kenya (Herein referred to as NMK).

1.2 The standard tender document has been prepared for general application in leasing of a restaurant where The National Museums of Kenya wish to offer their restaurant to the public at a fee.

SECTION I: INVITATION TO TENDER

**DATE: TUESDAY 19th February 2019**

**TENDER REF. No. NMK/R/02/2019**

1.1 The National Museums of Kenya (NMK) invites sealed bids from competent restaurant service providers for the **Leasing of Restaurant located at National Museums of Kenya (NMK) headquarters.**

1.2 Invited candidates may obtain further information from and inspect the tender documents at the NMK **headquarters Procurement Office**, during normal office working hours (8.00am-1.00pm, 2.00pm –4.00pm). Bidders may also view and download the bidding document from NMK website: [www.museums.or.ke](http://www.museums.or.ke) and immediately forward their particulars for records and for the purposes of receiving any further tender clarifications and/or addendums.

1.3 A complete set of tender documents may be obtained by invited candidates upon payment of a non-refundable fee of Kenya Shillings One Thousand (**Ksh 1,000.00**) only in cash or bankers cheque payable to Director General, National Museums of Kenya. Bidders who download the tender document from the website will not be required to pay.

1.4 Prices quoted should be net inclusive of all taxes and delivery costs, must be expressed in Kenya shillings or easily convertible foreign currency and shall remain valid for a period of 90 days from the Closing date of the tender.

1.5 Completed tender documents are to be enclosed in plain sealed envelopes marked with tender reference number and be deposited in the Tender Box located at the entrance of Earth Sciences Building (next to Louis Leakey Auditorium) on or before 5th March, 2019 at 12.00 p.m. and be addressed to:

**The Director General  
National Museums of Kenya  
P.O. Box 40658-00100  
Nairobi**

So as to be received on or before **TUESDAY 5th march 2019 at 12.00pm**

1.6 Tenders will be opened immediately thereafter in the presence of the Candidates or their representatives who choose to attend at **NMK Old Boardroom**

## SECTION II - INSTRUCTIONS TO TENDERERS

### TABLE OF CLAUSE

	Page
2.1 Eligible Tenderers .....	6
2.2 Cost of Tendering.....	6
2.3 Contents of Tender documents.....	6
2.4 Clarification of Tender document.....	7
2.5 Amendments of tender Document.....	7
2.6 Language of Tenderers.....	8
2.7 Documents comprising to tender.....	8
2.8 Form of Tender.....	8
2.9 Tender prices.....	8
2.10 Tender currencies.....	9
2.11 Tenderers eligibility and qualifications.....	9
2.12 Validity of tenders.....	10
2.13 Format and signing of tenders.....	10
2.14 Sealing and marking of tenders.....	11
2.15 Deadline for submission of tenders.....	12
2.16 Modification and withdrawal of tender.....	12
2.17 Opening of tenders.....	13
2.18 Clarification of tenders.....	13
2.19 Preliminary examination.....	13
2.20 Conversion and comparison of tenders.....	14
2.21 Evaluation and comparison of tenders.....	14
2.22 Contacting the procuring entity.....	15
2.23 Post qualification.....	16
2.24 Award criteria.....	16
2.25 Procuring entity's right to vary quantities.....	16
2.26 Procuring entity's Right to accept or reject any or all tenders.....	16
2.27 Notification of award.....	17
2.28 Signing of Contract.....	17
2.29 Corrupt or Fraudulent practices.....	18
Appendix to instructions to tenderers.....	19

## **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 be contracted for the stipulated duration from the date of commencement (hereinafter referred to as the term) specified in the schedule of requirements.

2.1.2 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender unless where specially allowed under section 131 of the Act.

2.1.3 Tenderers shall provide the qualification statement that the tenderer (including all members of a joint venture and subtenderers), is not associated, or have been associated in the past, directly or indirectly, with the firm or any of its officials which have been engaged by the procuring entity to provide consulting services for the preparation of the design specifications and other documents to be used for the purpose of this invitation to tender.

2.1.4 Tenderers involved in corrupt or fraudulent practices or debarred from participating in public procurement shall not be eligible.

### **2.2 Cost of Tendering**

2.2.1 The Tenderer shall bear all costs associated with the preparation and submission of its tender, and the procuring entity, will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process

2.2.2 The price to be charged for the tender document shall not exceed Kshs.1,000/=

2.2.3 The procuring entity shall allow the tenderer to review the tender document free of charge before purchase.

## **2.3 Contents of Tender Documents**

2.3.1 The tender documents comprise the documents listed below and addenda issued in accordance with clause 2.7 of these instructions to tenderers.

- i. Instructions to tenderers
- ii. General Conditions of Contract
- iii. Special Conditions of Contract
- iv. Schedule of particulars of tender
- v. Form of Tender
- vi. Price Schedules
- vii. Contract Form
- viii. Confidential Business Questionnaire Form
- ix. Authorization Form
- x. Declaration form
- xi. Request for Review Form

2.3.2 The Tenderer is expected to examine all instructions, forms, terms and particulars 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 prospective tenderer making inquiry on the tender documents may notify the Procuring entity by post, fax or by email at the procuring entity's address indicated in the Invitation to Tender. The Procuring entity will respond in writing to any request for clarification of the tender documents, which it receives no later than seven (7) days prior to the deadline for the submission of tenders, prescribed by the procuring entity. Written copies of the Procuring entities response (including an explanation of the query but without identifying the source of inquiry) will be sent to all candidates who have received the tender documents.

2.4.2 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.

## **2.5 Amendment of tender Documents**

2.5.1 At any time prior to the deadline for submission of tenders, the Procuring entity, for any reason, whether at its own initiative or in response to a clarification requested by a prospective tenderer, may modify the tender documents by issuing an **addendum** amendment.

2.5.2 All prospective tenderers who have obtained the tender documents will be notified of the amendment by post, fax or email and such amendment will be binding on them.

2.5.3 In order to allow prospective tenderers reasonable time in which to take the amendment into account in preparing their tenders, the Procuring entity, at its discretion, may extend the deadline for the submission of tenders.

## **2.6 Language of 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 the Procuring entity, shall be written in English language. Any printed literature furnished by the tenderer may be written in another language provided they are accompanied by an accurate English translation of the relevant passages in which case, for purposes of interpretation of the tender, the English translation shall govern.

## **2.7. Documents Comprising the Tender**

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 2.12 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

## **2.8. Form of Tender**

2.8.1 The tenderer shall complete the Form of Tender and the Price Schedules furnished in the tender documents, indicating the particulars of the tender.



## **2.9. Tender Prices**

2.9.1 The tenderer shall indicate on the Price Schedules the unit prices and total tender price of the particular of tender under the contract.

2.9.2 Prices indicated on the Price Schedule shall be the amounts to be paid by the tenderer to the procuring entity for the particulars of the tender under the contract.

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 unless otherwise stated in the appendix.

## **2.11. Tenderers Eligibility and Qualifications**

2.11.1 Pursuant to paragraph 2.1.1 and 2.1.2 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 the Procuring entity's satisfaction that the tenderer has the financial and technical capability necessary to perform the contract.

## **2.13. Validity of Tenders**

2.13.1 Tenders shall remain valid for 60 days after date of tender opening pursuant to paragraph 2.18. A tender valid for a shorter period shall be rejected by the Procuring entity as non-responsive.

2.13.2 In exceptional circumstances, the Procuring entity may solicit the Tenderer's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The tender security provided under paragraph 2.12 shall also be suitably extended. A tenderer 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 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 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 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 the Procuring entity at the address given in the Invitation to Tender
- (b) bear tender number and name in the Invitation to Tender and the words, “DO NOT OPEN BEFORE **TUESDAY 5th march AT 1200 hours.**”

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, the Procuring entity will assume no responsibility for the tender’s misplacement or premature opening.

## **2.16. Deadline for Submission of Tenders**

Tenders must be received by the Procuring entity at the address specified under paragraph 2.15.2 no later than **TUESDAY 5th march AT 1200 hours.**

2.16.1 The Procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 2.5.3 in which case all rights and obligations of the Procuring entity and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

2.16.2 Bulky tenders which will not fit in the tender box shall be received by the procuring entity 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 the Procuring entity 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.

## **2.18. Opening of Tenders**

2.18.1 The Procuring entity will open all tenders in the presence of tenderers' representatives who choose to attend, at **1200 hours** on **TUESDAY 5th March 2019** and in the location specified in the Invitation of tender. The tenderers' representatives who are present shall sign a register evidencing their attendance

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

2.18.3 The Procuring entity 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 the Procuring entity may, at its discretion, ask the tenderer for a clarification of its tender. The request for clarification and the response shall be in writing, and no change in the prices or substance of the tender shall be sought, offered, or permitted.

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

## **2.20 Preliminary Examination and Responsiveness**

2.20.1 The Procuring entity will examine the tenders to determine whether they are complete, whether any computational errors have been made, whether required 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 The Procuring entity may waive any minor informality or non-conformity or irregularity in a tender which does not constitute a material deviation provided such waiver does not prejudice or affect the relative ranking of any tenderer.

2.20.4 Prior to the detailed evaluation, pursuant to paragraph 2.20, the Procuring entity will determine the substantial responsiveness of each tender to the tender documents. For purposes of these paragraphs, a substantially responsive tender is one which conforms to all the terms and conditions of the tender documents without material deviations the Procuring entity's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.

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

## **2.21. Conversion to single currency**

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

## **2.22. Evaluation and Comparison of Tenders**

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

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

- 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) The Procuring entity 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 the procuring entity's 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. The Procuring entity may consider the alternative payment schedule offered by the selected tenderer.

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

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

### **2.23. Contacting the Procuring entity**

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

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

### **2.24 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 highest 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 the Procuring entity deems necessary and appropriate

2.24.3 An affirmative determination will be a prerequisite for award of the contract to the tenderer. A negative determination will result in rejection of the Tenderer's tender, in which event the Procuring entity will proceed to the next highest 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 the Procuring entity will award the contract to the successful tenderer whose tender has been determined to be substantially responsive and has been determined to be the highest 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 The Procuring entity reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders at any time prior to contract award, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the Procuring entity's action. If the Procuring entity determines that none of the tenders is responsive, the Procuring entity shall notify each tenderer who submitted a tender.

2.26.2 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

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

## **2.27 Notification of Award**

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

2.27.2 The notification of award will constitute the formation of the contract subject to the signing of the contract between the tenderer and the procuring entity pursuant to clause 2.29. Simultaneously the unsuccessful tenderers shall be notified that their tenders have been unsuccessful.

## **2.29 Signing of Contract**

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

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

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

2.29.4 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.

## **2.30 Corrupt or Fraudulent Practices**

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

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

2.30.3 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 regarding the particulars of the tender shall complement, supplement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provision of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers.

Instructions to tenderers	Particulars of appendix to instructions to tenderers
2.1	This is an open Tender, to competent restaurant service providers. NMK/R/02/2019.
2.2	The tenderers must conduct a site survey upon collection or download of the tender document.
2.3	All communications with the NMK during and after the tendering period will only be in writing.
2.4	The Form of Tender must be duly filled and signed.
2.5	Particulars of other currencies allowed. Price should be in Kenya shillings only or a freely convertible currency.
2.6	Tender shall remain valid for a period of <b>90</b> days from the date of opening
2.7	Bidders shall provide <b>1</b> ORIGINAL of the tender document clearly marked original and <b>1</b> other copy marked COPY all placed in one envelope and tender title and number and closing date clearly written on top of the envelope
2.8	<b>All the pages of the original and copies of the tender submitted by the bidders must be serialized.</b>
	<b>Deadline for Submission of Tenders /Closing date shall TUESDAY 5th march , 2019</b>

## EVALUATION CRITERIA

The National Museums of Kenya will consider the following three categories of criteria to evaluate the tenders and consultants.

- a) Mandatory tender requirements
- b) Technical capability assessment including due diligence where applicable
- c) Financial Evaluation.

### (a) MANDATORY REQUIREMENTS

The submission of the following mandatory items will be required in the determination of the completeness of the bid and responsiveness of bidders. **Bids that do not contain the information required will be declared non responsive and shall not be evaluated further.**

No.	Documents to be submitted
1.	Duly filled and signed Form of Tender
2.	Certificate of Incorporation/Registration
3.	1 Original & 1 copy of the bid document
4.	Valid Tax Compliance certificate
5.	Duly filled confidential business questionnaire
6.	Audited Financial statements for the last two years
7.	Clearance letter from Credit Reference Bureau
8.	Submit a statement in the bidder's letter head indicating that the person or his or her sub-tenderer, if any is not debarred from participating in procurement proceedings.
9.	Submit compliance certificate from NHIF
10.	Submit compliance certificate from NSSF.
11.	Submit a statement in the bidder's letter head indicating that the person participating in procurement proceedings has not been convicted of corrupt or fraudulent practices

**(ii) TECHNICAL EVALUATION CRITERIA**

The bidder must meet all the technical requirements as shown below on Technical specifications for each item as a minimum requirement. Only bidders who meet all the technical specifications outlined below will proceed to Financial Evaluation.

No	Item description	SCORES
1	Detailed response of how the bidder intends to provide the services including submitting a proposed menu	30
2	Bidders <b>MUST</b> submit evidence that they have a current running restaurant which NMK will inspect as part of the evaluation process. The evidence should include <b>all statutory requirements</b> for operation of a Restaurant and which are <b>not limited</b> to the following certificates; - a) License from the county government b) Health License for the Restaurant c) Fire License for the Restaurant d) Catering & Development Levy Registration (Include at least monthly declaration for the last three months) e) Registration with Ministry of Tourism (Provide the manager’s certificate) f) Evidence of Workman’s Compensation and Group Personal Accident Insurance, Third Party of Public Liability Insurance g) Submit insurance indemnity cover. Valid policy cover.	35
3	Two (2) recommendation letters from your current or previous major reputable clients/firms with work of equivalent magnitude and volume for in the last 2 years	20
4	Documentary evidence of ability to raise capital of at least Kshs. 500,000 (Evidence in form of bank statement, letters from bank, etc)	10
5	All bidders to return the mandatory site visit form duly signed and stamped by NMK representative.	5
		<b>TOTAL 100</b>

**PASS MARK 70%**

**(iii) FINANCIAL EVALUATION:** The winning bidder will be the highest evaluated bidder among those who will have passed the mandatory and technical evaluation as outlined in SECTION VI (a, b & c) above except where the bidder has not satisfied all other requirements stated in the bid document. The financial evaluation will include arithmetic corrections where necessary and shall take into account any financial discounts stated in the bid document.

## **SECTION III - GENERAL CONDITIONS OF CONTRACT**

### **TABLE OF CLAUSES**

#### **Page**

3.1 Definitions.....	21
3.2 Application.....	21
3.3 Standards.....	21
3.4 Use of Contract documents and information.....	21
3.5 Patent rights.....	22
3.6 Delivery of services and documents.....	23
3.7 Payment.....	23
3.8 Prices.....	23
3.9 Assignment.....	23
3.10 Termination for default.....	23
3.11 Termination for insolvency.....	24
3.12 Termination for convenience.....	25
3.13 Resolution of disputes.....	25
3.14 Governing language.....	25
3.15 Applicable law.....	25
3.16 Force Majeure.....	25
3.17 Notices .....	25

## **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 the Procuring entity and the tenderer, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- (b) “The Contract Price” means the price payable to the procuring entity under the Contract by the tenderer for the full and proper performance of the contractual obligations
- (c) “The Procuring entity” means the organization offering the particulars of the tender under this Contract
- (d) “The Tenderer” means the organization or firm procuring the particulars of tender under this Contract.
- (e) “GCC” means the General Conditions of Contract
- (f) “SCC” means the Special Conditions of Contract
- (g) “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 particulars of the tender.

### **3.4. Use of Contract Documents and Information**

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

3.4.2 The Tenderer shall not, without the Procuring entity’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 the Procuring entity and shall be returned (all copies) to the Procuring entity on completion of the tenderer's performance under the Contract if so required by the Procuring entity.

### **3.5. Patent Rights**

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

### **3.6. Delivery of services and Documents**

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



### **3.7. Payment**

3.7.1. The method and conditions of payment to be made to the procuring entity under this Contract shall be specified in the SCC.

3.7.2. Payment shall be made promptly by the tenderer, but in no case later than sixty (60) days after submission of an invoice or claim by the procuring entity.

### **3.8. Prices**

3.8.1 Prices charged by the procuring entity for particulars provided 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 the procuring entity's request for tender validity extension as the case may be. No variation in or modification to the terms of the contract shall be made except by written amendments signed by the parties.

3.8.2 Contract price variations shall not be allowed for contract not exceeds one year (12 months)

3.8.3 Where contract price variation is allowed, the variation shall not exceed 10% of the original contract price.

3.8.4 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.

### **3.9. Assignment**

3.9.1 The Tenderer shall not assign, in whole or in part, its obligations under this Contract, except with the Procuring entity's prior written consent.

### **3.10. Termination for Default**

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

(a) if the Tenderer fails to provide any or all of the services within the period(s) specified

in the Contract, or within any extension thereof granted by the Procuring entity.

(b) If the Tenderer fails to perform any other obligation(s) under the Contract.

(c) If the Tenderer in the judgment of the Procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

3.11.2 In the even the Procuring entity terminates the contract in whole or in part, it may procure, upon such terms and in such manner as it deems appropriate, services similar to those un-delivered, and the Tenderer shall be liable to the Procuring entity for any excess costs for such similar services. However, the tenderer shall continue performance of the contract to the extent not terminated.

### **3.12. Termination for insolvency**

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

### **3.13. Termination for convenience**

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

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

### **3.14 Resolution of Disputes**

3.14.1 The procuring entity and the tenderer shall make every effort to resolve amicably by direct informal negotiations any 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 specified in the SCC.

### **3.17 Force Majeure**

3.17.1 The Tenderer 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, 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**

### **Notes on Special Conditions of Contract**

1. The clauses in this section are intended to assist the procuring entity in providing contract-specific information in relation to corresponding clauses in the General Conditions of Contract
2. The Provisions of Section IV complement the General Conditions of Contract included in Section III, specifying contractual requirements linked to the special circumstances of the procuring entity and the particulars of the tender. In preparing Section IV, the following aspects should be taken into consideration.
  - (a) Information that complement provisions of Section III must be incorporated; and
  - (b) Amendments and/or supplements to provisions of Section III, as necessitated by the circumstances of the particulars of the tender must also be incorporated.
3. Section III should remain unchanged and can only be amended through the SCC Section IV.
4. Clauses to be included in this part must be consistent with the public procurement law and the regulations.

## **SECTION IV – SPECIAL CONDITIONS OF CONTRACT**

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

<b>GCC REFERENCE</b>	<b>SPECIAL CONDITIONS OF CONTRACT</b>	<b>4.2 Special</b>
3.8.1	Payment shall be made quarterly in advance	
3.14.2	In case of a dispute, the dispute shall be referred for arbitration in accordance with the laws of Kenya.	
3.16.1	The applicable law shall be Kenyan Law	
3.18.1	National Museums of Kenya P.O. Box 40658-00100 Nairobi.	

Conditions of Contract as relates to the GCC.

## **SECTION V - SCHEDULE OF REQUIREMENTS**

### **TERMS FOR OUTSOURCING OF THE SERVICES**

1. Bidder shall lease their restaurant for a term of Five (5) years, three (3) months.
2. The service provider shall cook with electricity and cooking gas within the premises based on the available facilities as use of charcoal in the premises will not be allowed.
3. The service provider will meet the cost of electricity and water consumed by the canteen. A separate meter for electricity will be considered for the canteen to ease handling of the bills
4. The facility has a serving counter and service provider will be required to avail furniture as appropriate for the type of business. The furniture will remain the property of the service provider and will be expected to move out with the items at the expiry/termination of the contract period.
5. The service provider shall start the business with the cutlery and maintain the same in good condition throughout the contractual period.
6. The service provider will be expected to maintain high standard of cleanliness and protect NMK's property at his /her disposal under the contract.
7. The premises of the restaurant should be kept clean and tidy at all times and service provider shall be fully responsible for the maintenance of the required hygiene within the restaurant area.
8. The service providers shall deposit an amount equivalent to three (3) months 'rent towards security deposit which will be retained by the NMK during the lease period and the same will be returned on expiry of the term of the lease provided that there is no noted damages which might require repair at the cost of the lessee.

9. The bidder who has offered the highest amount towards lease of the restaurant shall be declared as successful service provider for a period of five (5) years with effect from the date of award of lease contract.

10. Any light repair such as electricity /civil works etc at the restaurant during the contract period are to be attended by the lessee and subject to relevant approval by the NMK for such repair/works.

11. The restaurant premises (inside and outside) shall not be used for any other purposes except for running of the restaurant and that the walls and surrounding of the restaurant should not be used for painting advertisements.

12. The service provider shall not transfer or sublet the restaurant premises or its management to any other individual or agency/third party.

13. The service provider at the restaurant shall be required at all times to promptly attend to the complaints (if any) either from staff or customers.

14. The NMK through an appointed officer and in the course of duty shall have the right to inspect the restaurant without notice and ensure full compliance with the contract terms & conditions for running the facility.

15. The restaurant shall operate full time as per the agreed operating hours and any instance of possible closure shall be through formal notification to the NMK.

16. The service provider shall be expected to adhere to all legal provisions and required licenses for operating such a business.

17. The service provider will be required to take appropriate insurance for the business.

18. All employees engaged by the service provider will be required to have medical certificates to handle food and also work in a food handling environment.

19. All employees must have identification badges and always in uniform for ease of identification within the premises.



## **SECTION VI - 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. Price Schedule Form** - The price schedule form must similarly be completed and submitted with the tender.
- 3. Confidential Business Questionnaire Form** - This form must be completed by the tenderer and submitted with the tender documents.

**FORM OF TENDER**

**Date** \_\_\_\_\_

**Tender No. NMK/R/02/2019**

**To: National Museums of Kenya P.O. Box 40658-00100, Nairobi**

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda Nos..... [insert numbers) of which is hereby duly acknowledged, we the undersigned, offer **to Lease of Staff Restaurant at the National Museums of Kenya Headquarters for a period of Five years and Three months** in conformity with the said tender documents for the sum of..... [total tender amount in words and figures] or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Tender. We undertake, if our Tender is accepted, to provide the services in accordance with the services schedule specified in the Schedule of Requirements.

2. If our Tender is accepted, we will obtain the 3 months rent deposit as tender guarantee in a sum of \_\_\_\_\_ for the due performance of the Contract, in the form prescribed by (Procuring entity).

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 bidders, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

4. Until a formal Contract is prepared and executed, this Tender, together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2019 [signature]

[In the capacity of]

Duly authorized to sign tender for and on behalf of

**PRICE SCHEDULE FORM**

**NAME OF TENDER: LEASING OF RESTAURANT AT THE NATIONAL MUSEUMS OF KENYA  
TENDER NUMBER: NMK/R/02/2019**

**Name of Tenderer: .....**

<u>ITEM NO.</u>	<u>PARTICULARS OF TENDER BEING OFFERED</u>	<u>MONTH</u>	<u>PERIOD (MONTHS)</u>	<u>QUOTED MONTHLY PRICE (KSHS.)</u>	<u>TOTAL PRICE PER ANNUM</u>
1.	Lease of Restaurant at the National Museums of Kenya Headquarter for a period of Five Years, Three months.	No	63	-	

**Indicate period to start providing the services if awarded contract.....**

**PLEASE NOTE AND COMPLY WITH THE FOLLOWING:**

- i. All Prices to be inclusive of all applicable taxes.
- ii. In case of discrepancy between unit price and total, the unit price shall prevail.

**Authorized Official:**

Name \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Official Stamp \_\_\_\_\_

# CONFIDENTIAL BUSINESS QUESTIONNAIRE FORM

You are requested to give the particulars indicated in Part 1 and either Part 2(a), 2(b) or 2 (c ) whichever applied to your type of business

You are advised that it is a serious offence to give false information on this form

*Part 1 – General:*

Business Name

.....

Location of business premises.

.....

Plot No..... Street/Road

.....

Postal Address ..... Tel No.

..... Fax ..... E mail .....

Nature of Business

,.....

Registration Certificate No.

.....

Maximum value of business which you can handle at any one time – Kshs.

.....

Name of your bankers ..... Branch

.....(Attach letter from the bank).....

**Part 2 (a) – Sole Proprietor**

Your name in full

.....

..... Age .....

Nationality .....

Country of origin

.....

Citizenship details

.....

.....

**Part 2 (b) Partnership**

Given details of partners as follows:

Name		
Nationality		Citizenship
Details	Shares	

1. ....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

...  
3.  
.....  
.....  
4.  
.....  
.....

Part 2 (c ) – Registered Company  
Private or Public

.....  
.....

....  
State the nominal and issued capital of  
company-

Nominal Kshs.  
.....  
Issued Kshs.

.....  
Given details of all directors as follows

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

( Attach certificate of incorporation)

Date .....Seal/Signature of Candidate  
.....

# AUTHORIZATION FORM

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

WHEREAS .....

*[Name of the principal]*

who are established and reputation dealers in ..... *[Type of business]*  
having registered offices at ..... *[Address of principal]* do hereby authorizing ..... *[Name and address of tenderer]* to submit a tender, *[reference of the tender]* for the stated *(particulars of tender)*.

We hereby extend our full guarantee and warranty as per the General Conditions of Contract for the services to be provided against this Invitation for Tenders.

*[Signature for and on behalf of the principal]*

Note: This letter of authority should be on the letterhead of the principal and should be signed by a competent person.



NATIONAL MUSEUMS OF KENYA

WHERE HERITAGE LIVES ON

**TENDER NMK /R/02/2019 SITE VISIT FORM**

**(TO BE RETURNED DULY SIGNED AND STAMPED WITH TENDER DOCUMENT)**

**LEASING OF RESTAURANT AT THE NATIONAL MUSEUMS OF KENYA HEADQUARTERS**

THIS IS TO CONFIRM THAT ----- (COMPANY NAME) HAS MADE A SITE

VISIT TO THE NMK ON ..... AT .....

**COMPANY REPRESENTATIVE**

NAME \_\_\_\_\_

DESIGNATION -----

SIGNED ----- DATE -----

OFFICIAL STAMP

**NMK REPRESENTATIVE**

NAME -----

DESIGNATION -----

SIGNED ----- DATE -----

OFFICIAL STAMP