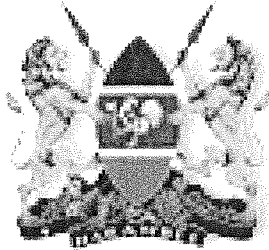


REPUBLIC OF KENYA



**OFFICE OF THE CONTROLLER
OF BUDGET**

CONTRACT NO: 04/2018-2019

**DESIGN, PRINT AND SUPPLY ANNUAL
BUDGET IMPLEMENTATION REVIEW
REPORTS FIRST QUARTER FOR FINANCIAL
YEAR 2018-2019 FOR NATIONAL AND
COUNTY GOVERNMENTS**

December, 2018

THIS AGREEMENT is made this ^{17th} day of December Two Thousand and Eighteen (2018)

BETWEEN

THE OFFICE OF THE CONTROLLER OF BUDGET whose principal place of business is **12th Floor Bima House, Harambee Avenue** and of Post Office Box Number **35616- 00100 Nairobi**, in the Republic of Kenya (hereinafter referred to as "**OCOB**" which expression shall where the context so admit include its successors and assigns) on the one part.

AND

HAPOLS ENTERPRISES whose principal place of business is Visions Plaza, Mombasa Road and of Post Office Box Number **29891-00202. Nairobi**, in the Republic of Kenya (hereinafter referred to as "**the printer**" which expression shall where the context so admit include its successors and assigns) on the other part.

WHEREAS THE

1. The Tender No.**02/2018-2019** was awarded by OCOB to the printer **on 27th Novemeber, 2018.**
2. OCOB is desirous that the printers design, print and supply Budget implementation review reports-National and County (hereinafter referred to as "the printing")
3. The Printer has accepted to supply at a Contract price of **Kenya Shillings Fifteen Million Four Hundred and Thirty Three Thousands, Two Hundred and Fifty (Ksh. 15, 433,250)** (hereinafter referred to as "**the Contract Price**").

NOW THIS AGREEMENT WITNESSETH 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 i.e.

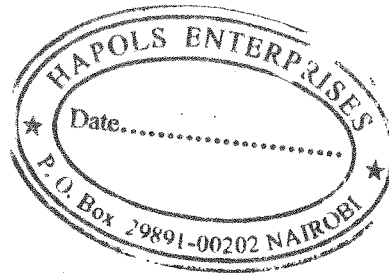
- (i) Form of Tender
- (ii) General Conditions of Contract
- (iii) Special Conditions of Contract
- (iv) Specifications
- (v) Schedule of price(s)

3. In consideration of the payments to be made by the OCOB to the Printer as hereinafter mentioned, the Printer hereby covenants to execute and complete the delivery in conformity in all respects with the provisions of the Contract and as per the directions of OCOB and within such time as OCOB directs.
4. OCOB hereby covenants to pay the Printer in consideration of the execution and completion of the printing 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.

SEALED with the common seal]
Of]

Hapols Enterprises]
]



In the presence of]

] Pauline M Mutua
] *[Signature]*

Witnessed By

] Hamilton Kimani
] 23543393
] *[Signature]*

SEALED with the common seal of]
Office of Controller of Budget]

SIGNED By]
Controller of Budget]

[Handwritten Signature]

OFFICE OF THE CONTROLLER OF BUDGET
P. O. Box 35616 - 00100 NAIROBI
[Handwritten Signature]
LEGAL OFFICER

Witnessed By

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 tenderer under the Contract for the full and proper performance of its contractual obligations
- (c) "The Goods" means all of the equipment, machinery, and/or other materials, which the tenderer is required to supply to the Procuring entity under the Contract.
- (d) "The Procuring entity" means the organization purchasing the Goods under this Contract.
- (e) "The Tenderer" means the individual or firm supplying the Goods under this Contract.

3.2 Application

3.2.1 These General Conditions shall apply in all Contracts made by the Procuring entity for the procurement installation and commissioning of equipment to the extent that they are not superseded by provisions of other part of contract.

3.3 Country of Origin

3.3.1 For purposes of this clause, "Origin" means the place where the Goods were mined, grown or produced.

3.3.2 The origin of Goods and Services is distinct from the nationality of the tenderer and will be treated thus in the evaluation of the tender.

3.4 Standards

3.4.1 The Goods supplied under this Contract shall conform to the standards mentioned in the Technical Specifications.

3.5 Use of Contract Documents and Information

3.5.1 The Candidate 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.

3.5.2 The tenderer shall not, without the Procuring entity's prior written consent, make use of any document or information enumerated in paragraph 3.5.1 above

3.5.3 Any document, other than the Contract itself, enumerated in paragraph 3.5.1 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

3.6 Patent Rights

3.6.1 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 Goods or any part thereof in the Procuring entity's country

3.7 Performance Security

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

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

3.7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the procuring entity and shall be in the form of

- a) Cash
- b) Bank guarantee
- c) Such insurance guarantee approved by the Authority

d) Letter of credit

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

3.8 Inspection and Tests

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

3.8.2 The inspections and tests may be conducted in the premises of the tenderer. All reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring entity.

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

3.8.4 The Procuring entity's right to inspect test and where necessary, reject the equipment after the equipment arrival and installation shall in no way be limited or waived by reason of the equipment having previously been inspected, tested and passed by the Procuring entity or its representative prior to the equipment delivery.

3.8.5 Nothing in paragraph 3.8 shall in any way release the tenderer from any warranty or other obligations under this Contract.

3.9 Packing

3.9.1 The tenderer shall provide such packing and packaging of the equipment as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract.

3.9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract

3.10 Delivery and Documents

3.10.1 Delivery of the equipment, documents and installation of the same shall be made by the tenderer in accordance with the terms specified by Procuring entity in its Schedule of Requirements and the Special Conditions of Contract

3.11 Insurance

3.11.1 The equipment supplied under the Contract shall be fully insured against loss or damage incidental to manufacturer or acquisition, transportation, storage, and delivery in the manner specified in the Special conditions of contract.

3.12 Payment

3.12.1 The method and conditions of payment to be made to the tenderer under this Contract shall be specified in Special Conditions of Contract

3.12.2 Payments shall be made promptly by the Procuring entity as specified in the contract

3.13 Prices

3.13.1 Prices charged by the tenderer for equipment delivered and installation performed under the Contract shall not, with the exception of any price adjustments authorized in Special Conditions of Contract, vary from the prices by the tenderer in its tender.

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

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

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

3.14. Assignment

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

3.15. Subcontracts

3.15.1 The tenderer shall notify the Procuring entity in writing of all subcontracts awarded under this Contract if not already specified in the tender. Such notification, in the original tender or later, shall not relieve the tenderer from any liability or obligation under the Contract

3.16. Termination for Default

3.16.1 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 deliver any or all of the equipment 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

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

3.17. Termination for convenience

3.18. Liquidated Damages

3.18.1 If the tenderer fails to deliver and/or install any or all of the items within the period(s) specified in the contract, the procuring entity shall, without prejudice to its other remedies under the contract, deduct from the contract prices liquidated damages sum equivalent to 0.5% of the delivered price of the delayed items up to a maximum deduction of 10%

of the delayed goods. After this the tenderer may consider termination of the contract.

3.19. Resolution of Disputes

3.19.1 The procuring entity and the tenderer shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the contract

3.19.2 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.

3.20. Language and Law

3.20.1 The language of the contract and the law governing the contract shall be English language and the Laws of Kenya respectively unless otherwise specified in the SCC

3.21. Force Majeure

3.21.1 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.

3.22 Notices

3.22.1 Any notice given by one party to the other pursuant to this contract shall be sent to other party by post or by fax or Email and confirmed in writing to the other party's address specified.

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

SPECIAL CONDITIONS OF CONTRACT

Notes on Special Conditions of Contract

- 4.1 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.
- 4.2 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 goods being procured. 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 goods being procured must also be incorporated.

SECTION IV - SPECIAL CONDITIONS OF CONTRACT

- 4.1 Special Conditions 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 these in the GCC.
- 4.2 Special conditions of contract as relates to the GCC

REFERENCE OF GCC	SPECIAL CONDITIONS OF CONTRACT
3.7.1	<i>N/A</i>
3.12.1	<i>Full Payment on Successful Supply and Delivery</i>
3.18.1	<i>Arbitrator agreed upon by both parties under the Kenyan law as well as the arbitration act</i>

5.1 PARTICULARS: SPECIFICATIONS

DESIGN, PRINT AND SUPPLY OF BUDGET IMPLEMENTATION REVIEW REPORTS-

Background

The Office of the Controller of Budget (OCOB) is an independent office established under Article 228 of the Constitution of Kenya 2010 with the core mandate being to oversee implementation of the budgets of the National and County Governments by authorizing withdrawals from public funds.

The OCOB is in the process of setting up a data center to cater for its growing capacity, needs and also to comply with industry best practices of enterprise systems and data security.

OCOB therefore requires selecting a firm capable to print reports to be distributed both to National and County Governments

NATIONAL GOVERNMENT.

1, Paper: a) Inside: (Full Colour) 135gms Art Paper (Glossy)
b) Cover: Art Board 250 gms Art Paper V.V Vanished.

2. Cover: Full Colour

3. Finishing: Perfect Binding

4. Size: 20.5 cm by 29.9cm.(A4)

5. Design and Print

6. UV Vanish Finish

7. Approximately Pages 120

8. Design of Report Tables, Bar Graphs and Pie Charts

9. Printing Back to Back spacing 1.5

COUNTY GOVERNMENT.

**1, Paper: a) Inside: (Full Colour) 135gms Art Paper (Glossy)
b) Cover: Art Board 250 gms Art Paper V.V Vanished.**

2. Cover: Full Colour

3. Finishing: Perfect Binding

4. Size: 20.5 cm by 29.9cm.(A4)

5. Design and Print

6. UV Vanish Finish

7. Approximately Pages 420

8. Design of Report Tables, Bar Graphs and Pie Charts

9. Printing Back to Back spacing 1.5