



**TENDER FOR THE SUPPLY AND DELIVERY OF FENCING POSTS
FOR ARABUKO SOKOKE, TSAVO WEST (MAKTAU&TAVETA)
SHIMBA HILLS AND RUMA NATIONAL PARKS**

TENDER NO KWS/OT/BDF/36/2010-11

**CLOSING DATE AND TIME:
14th JANUARY 2011 AT 12.00NOON**

TABLE OF CONTENTS:

1) Tender Notice	
2) General information	
3) General conditions of contract	
4) Special conditions of contract	
5) Business confidential questionnaire [form 1 KWS]	
6) Schedule of requirements.	
7) Technical specifications	
(i) Fencing Posts	
8) Tender form and Schedule of Materials	
(i) Form of Tender ...	
(ii) Price Schedules.....	
9) Tender security form	
10)Contract form	
11)Performance security form	

Section A. Tender Notice

Date: 10th JANUARY 2010

Reference: **KWS/BDF/36/2010-11**

Tender name: **Supply and Delivery of Fencing Posts**

The Kenya Wildlife Service now invites sealed tenders from eligible candidates for the supply of Fencing Posts for the supply and delivery of fencing posts for Arabuko Sokoke, Tsavo West (Maktau and Taveta) and Ruma fence projects.

Interested eligible candidates may obtain further information from and inspect the tender documents at the office of the Head of Supply Chain Management, Kenya Wildlife Service Headquarters, Langata Road, Nairobi during normal working hours.

A complete set of tender documents may be obtained by interested candidates upon payment of a non-refundable fee of **Kshs.3,000.00** in cash or bankers cheque between 9.00am and 4.00pm at the cash office, KWS Headquarters.

Tenders must be accompanied by a bid security of **Kshs.100,000.00**, issued in Kenya shillings or a freely convertible currency in bankers guarantee or insurance guarantee from a company approved by the IRA.

Bids must remain valid for a period of ninety (90) days from the date of tender opening.

There will be a pre-bid conference to be held at 10.00am in KWS VET board room on Friday 7th JANUARY 2011

The completed tenders in plain sealed envelopes clearly marked “**Tender No. KWS/BDF/36/2010-11 for the supply and delivery of fencing posts.**” shall be addressed to:

The Director,
Kenya Wildlife Service,
P.O. Box 40241-00100,
NAIROBI.

and deposited in the **Tender Box** located at the main entrance of **Simba Court**, KWS Headquarters, Langata Road so as to reach the above named address not later than **14th**

January 2011 at 12.00 noon.

Opening of the tenders will take place immediately thereafter in the presence of bidders' representatives who wish to attend.

**HEAD OF SUPPLY CHAIN MANAGEMENT
FOR DIRECTOR**

Section B. General Information

Introduction

1. Eligible Tenderers

- 1.1 This Invitation for Tenders is open to all tenderers eligible as described in the tender documents. Successful tenderers shall complete the supply of materials and goods by the intended completion date specified in the tender documents.
- 1.2 Tenderers shall provide the qualification information statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by KWS to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods under this Invitation for tenders.
- 1.3 Tenderers shall not be under a declaration of ineligibility for corrupt and fraudulent practices.

1.4. Mandatory requirement

Candidates must prove that they qualify to participate in public procurement by providing the following **mandatory** documents or evidence.

- a. Certificate of business registration (company registration) or certificate of incorporation.
- b. Tax compliance certificate- Valid for the period of tender.
- c. An abstract of the candidate's accounts accompanied by a certificate by a certified Auditors firm that the candidates are not insolvent, in receivership, bankrupt, or being wound up, or their business activities have not been suspended, and they are not the subject of legal proceedings for any of the foregoing.
- d. A declaration that the candidates or their servants or agents have not offered any inducement to any procuring entity.

2. Cost of Tendering

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

The Tender Document

3. Contents

3.1 The tender document comprises the documents listed below and addenda issued in accordance with clause 6 of these instructions to tenders.

- (i) Invitation for Tenders
- (ii) General information
- (iii) General Conditions of Contract
- (iv) Special Conditions of Contract
- (v) Schedule of Requirements
- (vi) Technical Specifications
- (vii) Tender Form and Price Schedules
- (viii) Tender Security Form
- (ix) Contract Form
- (x) Performance Security Form

3.2 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the tender documents. Failure to furnish all information required by the tender documents or to submit a tender not substantially responsive to the tender documents in every respect will be at the tenderers risk and may result in the rejection of its tender.

4. Clarification of Documents

4.1 A prospective tenderer requiring any clarification of the tender document may notify KWS in writing or by cable (hereinafter, the term *cable* is deemed to include telex and facsimile) at the address indicated in the Invitation for tenders. KWS will respond in writing to any request for clarification of the tender documents, which it receives no later than ten (10) days prior to the deadline for the submission of tenders, prescribed by KWS. Written copies of KWS response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers that have purchased the tender document.

5. Amendment of Documents

5.1 At any time prior to the deadline for submission of tenders, KWS, 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 amendment / addendum.

5.2 All prospective candidates that have received the tender documents will be notified of the amendment in writing or by cable, and will be binding on them.

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

Preparation of Tenders

6. Language of Tender

6.1 The tender prepared by the tenderer, as well as all correspondence and documents relating to the tender exchanged by the tenderer and KWS, shall be written in English language, provided that 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.

7. Documents Comprising the Tender

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 9,10 and 11 below.
- (b) Documentary evidence established in accordance with paragraph 12 that the tenderer is eligible to tender and is qualified to perform the contract if its tender is accepted;
- (c) Documentary evidence established in accordance with paragraph 13 that the goods and ancillary services to be supplied by the tenderer are eligible goods and services and conform to the tender documents; and
- (d) Tender security furnished in accordance with paragraph 14

8. Tender Form

8.1 The tenderer shall complete the Tender Form and the appropriate Price Schedule furnished in the tender documents, indicating the goods to be supplied, a brief description of the goods, their country of origin, quantity, and prices.

9. Tender Prices

9.1 The tenderer shall indicate on the appropriate Price Schedule the unit prices and total tender price of the goods it proposes to supply under the contract.

9.2 Prices indicated on the Price Schedule shall include all duties and taxes payable in the country and charges for inland transportation, insurance, and other local costs incidental to delivery of the goods to their final destination; and

9.3 Prices quoted by the tenderer shall be fixed during the Tender's performance of the contract and not subject to variation on any account. A tender submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to paragraph 22.

10. Tender Currency

10.1 Prices shall be quoted in Kenya Shillings irrespective of their source.

11. Tenderer's Eligibility and Qualifications.

11.1 Pursuant to paragraph 1 of section III, the tenderer shall furnish, as part of its tender, documents establishing the tenderers eligibility to tender and its qualifications to perform the contract if its tender is accepted.

11.2 The documentary evidence of the tenderers eligibility to tender shall establish to KWS's satisfaction that the tenderer, at the time of submission of its tender, is from an eligible source country as defined under paragraph I of section III.

11.3 The documentary evidence of the tenderers qualifications to perform the contract if its tender is accepted shall establish to KWS's satisfaction:

- (a) that, in the case of a tenderer offering to supply goods under the contract which the tenderer did not manufacture or otherwise produce, the tenderer has been duly authorized by the goods' Manufacturer or producer to supply the goods;
- (b) that the tenderer has the financial, technical, and production capability necessary to perform the contract;
- (c) that, in the case of a tenderer not doing business within Kenya, the tenderer is or will be (if awarded the contract) represented by an Agent in Kenya equipped, and able to carry out the Tenderers' maintenance, repair, and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.

12. Goods' Eligibility and Conformity to Tender Document.

13.1 Pursuant paragraph 2 of this section, the tenderer shall furnish, as part of its tender, documents establishing the eligibility and conformity to the tender documents of all goods, which the tenderer proposes to supply under the contract.

13.2 The documentary evidence of the eligibility of the goods shall consist of a statement in the Price Schedule of the country of origin of the goods and services offered which shall be confirmed by a certificate of origin issued at the time of shipment.

13.3 The documentary evidence of conformity of the goods to the tender documents may be in the form of literature, drawings, and data, and shall consist of:

- (a) a detailed description of the essential technical and performance characteristics of the goods;
- (b) a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the

goods for a period of two (2) years, following commencement of the use of the goods by KWS; and

- (c) a clause-by-clause commentary on KWS's Technical Specifications demonstrating substantial responsiveness of the goods and services to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.

13.4 For purposes of the commentary to be furnished pursuant to paragraph 13.3(c) above, the tenderer shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by KWS in its Technical Specifications, are intended to be descriptive only and not restrictive. The tenderer may substitute alternative standards, brand names, and/or catalogue numbers in its tender, provided that it demonstrates to KWS's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

14. Tender Security

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

14.2 The tender security is required to protect KWS against the risk of Tenderer's conduct, which would warrant the security's forfeiture, pursuant to paragraph 14.7

14.3 The tender security shall be denominated in Kenya Shillings or in another freely convertible currency, and shall be in the form of a bank or insurance guarantee, in the form provided in the tender documents or another form acceptable to KWS and valid for thirty (30) days beyond the validity of the tender.

14.4 Any tender not secured in accordance with paragraph 14.1 and 14.3 will be rejected by KWS as non-responsive, pursuant to paragraph 22.

14.5 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 prescribed by KWS.

14.6 The successful Tenderer's tender security will be discharged upon the tenderer signing the contract, pursuant to paragraph 30, and furnishing the performance security, pursuant to paragraph 31.

14.7 The tender security may be forfeited:

- (a) if a tenderer withdraws its tender during the period of tender validity specified by KWS on the Tender Form; or
- (b) in the case of a successful tenderer, if the tenderer fails:
 - (i) to sign the contract in accordance with paragraph 30

or

(ii) to furnish performance security in accordance with paragraph 31.

15. Validity of Tenders

15.1 Tenders shall remain valid for 90 days or as specified in the tender documents after date of tender opening prescribed by KWS, pursuant to paragraph 18. A tender valid for a shorter period shall be rejected by KWS as non-responsive.

15.2 In exceptional circumstances, KWS 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 14 shall also be suitably extended. A tenderer may refuse the request without forfeiting its tender security. A tenderer granting the request will not be required nor permitted to modify its tender.

16.Format and Signing of Tender

16.1 The tenderer shall prepare two copies of the tender, clearly marking each "ORIGINAL TENDER" and "COPY OF TENDER," as appropriate. In the event of any discrepancy between them, the original shall govern.

16.2 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. The latter authorization shall be indicated by written power-of-attorney accompanying the tender. All pages of the tender, except for un-amended printed literature, shall be initialed by the person or persons signing the tender.

16.3 The tender shall have no interlineation, 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.

Submission of Tenders

17. Sealing and Marking of Tenders

17.1 The tenderer shall seal the original and each copy of the tender in separate envelopes, duly marking the envelopes as "ORIGINAL" and "COPY." The envelopes shall then be sealed in an outer envelope.

17.2 The inner and outer envelopes shall:

- (a) Be addressed to KWS at the following address:
**The Director,
Kenya Wildlife Service,
P.O BOX 40241,
Nairobi.**

- (b) Bear, the **Tender name** and Tender No, the Invitation for tenders (IFT), and the words: “DO NOT OPEN BEFORE,” **14TH JANUARY 2011 at 12.00 noon.**

17.3 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”.

17.4 If the outer envelope is not sealed and marked as required by paragraph 17.2, KWS will assume no responsibility for the tender’s misplacement or premature opening.

18. Deadline for Submission of Tenders

18.1 Tenders must be received by KWS at the address specified under paragraph 17.2 not later than **14th January 2011 at 12.00 noon.**

18.2 KWS may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in accordance with paragraph 6, in which case all rights and obligations of KWS and candidates previously subject to the deadline will thereafter be subject to the deadline as extended.

19. Modification and Withdrawal of Tenders

19.1 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 KWS prior to the deadline prescribed for submission of tenders.

19.2 The Tenderer’s modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of paragraph 17. A withdrawal notice may also be sent by cable, but followed by a signed confirmation copy, postmarked not later than the deadline for submission of tenders.

19.3 No tender may be modified after the deadline for submission of tenders.

19.4 No tender may be withdrawn in the interval between the deadline for submission of tenders and the expiration of the period of tender validity specified by the tenderer on the Tender Form. Withdrawal of a tender during this interval may result in the Tenderer’s forfeiture of its tender security, pursuant to paragraph 14.7.

Opening and Evaluation of Tenders

20. Opening of Tenders

20.1 KWS will open all tenders in the presence of tenderers’ representatives who choose to attend, at Kenya Wildlife Service, Boardroom.

- 20.2 The tenderers' names, tender modifications or withdrawals, tender prices, discounts, and the presence or absence of requisite tender security and such other details as KWS, at its discretion, may consider appropriate, will be announced at the opening. The tenderers' representatives who are present shall sign a register evidencing their attendance.
- 20.3 KWS will prepare minutes of the tender opening.

21. Clarification of Tenders

- 21.1 To assist in the examination, evaluation and comparison of tenders KWS 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.
- 21.2 Any effort by the tenderer to influence KWS in its tender evaluation, tender comparison or contract award decisions may result in the rejection of the tenderers' tender.

22. Preliminary Examination

- 22.1 KWS 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.
- 22.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected. If the candidate does not accept the correction of the errors, its tender will be rejected, and its tender security may be forfeited. If there is a discrepancy between words and figures, the amount in words will prevail.
- 22.3 KWS 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.
- 22.4 Prior to the detailed evaluation, pursuant to paragraph 23, KWS 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. KWS's determination of a tender's responsiveness is to be based on the contents of the tender itself without recourse to extrinsic evidence.
- 22.5 If a tender is not substantially responsive, it will be rejected by KWS and may not subsequently be made responsive by the tenderer by correction of the nonconformity.

23. Evaluation and Comparison of Tenders

23.1 KWS will evaluate and compare the tenders, which have been determined to be substantially responsive, pursuant to paragraph 22.

23.2 The evaluation of a tender will exclude and not take into account:

- (a) in the case of goods manufactured in Kenya or goods of foreign origin already located in Kenya, sales and other similar taxes, which will be payable on the goods if a contract is awarded to the tenderer; and
- (c) any allowance for price adjustment during the period of execution of the contract, if provided in the tender.

23.3 The comparison shall be of the ex-factory/ex-warehouse/off-the-shelf price of the goods offered from within Kenya, such price to include all costs, as well as duties and taxes paid or payable on components and raw material incorporated or to be incorporated in the goods.

23.4 The evaluation of a tender will take into account, in addition to the tender price and the price of incidental services, the following factors, in the manner and to the extent indicated in paragraph 23.5 and in the technical specifications:

- (a) delivery schedule offered in the tender;
- (b) deviations in payment schedule from that specified in the Special Conditions of Contract;
- (c) the cost of components, mandatory spare parts, and service;
- (d) the availability in Kenya of spare parts and after-sales services for the equipment offered in the tender;

23.5 Pursuant to paragraph 23.4 the following evaluation methods will be applied:

- (a) *Delivery schedule.*
 - (i) KWS requires that the goods under the Invitation for Tenders **shall be delivered at the time specified in the Schedule of Requirements**. Tenders offering deliveries longer than KWS's required delivery time will be treated as non-responsive and rejected.
- (b) *Deviation in payment schedule.*

Tenderers shall state their tender price for the payment of 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. KWS may consider the alternative payment schedule offered by the selected tenderer.

(c) *Spare parts and after sales service facilities.*

Tenderers must offer items with service and spares part back up. Documentary evidence and locations of such back-up must be given. Where a tenderer offers items without such back-up in the country, he must give documentary evidence and assurance that he will establish adequate back-up for items supplied.

24. Contacting Kenya Wildlife Service

24.1 Subject to paragraph 21, no tenderer shall contact KWS on any matter relating to its tender, from the time of the tender opening to the time the contract is awarded.

24.2 Any effort by a tenderer to influence KWS in its decisions on tender evaluation, tender comparison, or contract award may result in the rejection of the Tenderer's tender's bid proposal.

Award of Contract

25. Post-qualification

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

25.2 The determination will take into account the Tenderer's financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the tenderer, pursuant to paragraph 12.3, as well as such other information as KWS deems necessary and appropriate.

25.3 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 KWS will proceed to the next lowest evaluated tender to make a similar determination of that Tenderer's capabilities to perform satisfactorily.

26. Award Criteria

26.1 Subject to paragraph 10,23 and 28 KWS will award the contract to the successful tenderer(s) 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.

27. Kenya Wildlife Service's Right to Vary quantities

27.1 KWS reserves the right at the time of contract award to increase or decrease the quantity of goods originally specified in the Schedule of requirements without any change in unit price or other terms and conditions.

28. KWS Reserves Right to Accept or Reject Any or All Tenders

28.1 KWS 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 KWS's action.

29. Notification of Award

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

29.2 The notification of award will constitute the formation of the Contract.

29.3 Upon the successful Tenderer's furnishing of the performance security pursuant to paragraph 31, KWS will promptly notify each unsuccessful Tenderer and will discharge its tender security, pursuant to paragraph 14.

30. Signing of Contract

30.1 At the same time as KWS notifies the successful tenderer that its tender has been accepted, it will send the tenderer the Contract Form provided in the tender documents, incorporating all agreements between the parties.

30.2 Within thirty (30) days of receipt of the Contract Form, the successful tenderer shall sign and date the contract and return it to KWS.

31. Performance Security

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

31.2 Failure of the successful tenderer to comply with the requirement of paragraph 30 or paragraph 31 shall constitute sufficient grounds for the annulment of the award and forfeiture of the tender security, in which event KWS may make the award to the next lowest evaluated Candidate or call for new tenders.

32. Corrupt Fraudulent Practices

32.1 KWS requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts. In pursuance of this policy, KWS:-

- (a) Defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) “corrupt practice” means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution; and
 - (ii) “fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of KWS, and includes collusive practice among tenderer (prior to or after tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive KWS of the benefits of free and open competition;
- (b) 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;
- (c) will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded any contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a contract.

32.2 Furthermore, tenderers shall be aware of the provision stated in the General Conditions of Contract.

Section C-General Conditions of Contract

1. Definitions

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

- (a) “The Contract” means the agreement entered into between KWS 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 KWS under the Contract.
- (d) “KWS” means Kenya Wildlife Service, which is the organization purchasing the Goods under this Contract.
- (e) “The tenderer” means the individual or firm supplying the Goods under this Contract.

2. Application

2.1 These General Conditions shall apply in all Contracts made by KWS for the procurement of goods.

3. Country of Origin

3.1 For purposes of this Clause, “origin” means the place where the Goods were mined, grown, or produced.

3.2 The origin of Goods and Services is distinct from the nationality of the tenderer.

4. Standards

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

5. Use of Contract Documents and Information

5.1 The Candidate shall not, without KWS’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 KWS in connection therewith, to any person other than a person employed by the tenderer in the performance of the Contract.

5.2 The tenderer shall not, without KWS's prior written consent, make use of any document or information enumerated in paragraph 5.1 above.

- 5.3 Any document, other than the Contract itself, enumerated in paragraph 5.1 shall remain property of KWS and shall be returned (all copies) to KWS on completion of the Tenderer's performance under the Contract if so required by KWS.

6. Patent Rights

- 6.1 The tenderer shall indemnify KWS 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 Kenya.

7. Performance Security

- 7.1 Within thirty (30) days of receipt of the notification of Contract award, the successful tenderer shall furnish to KWS the performance security in the amount specified in Special Conditions of Contract.
- 7.2 The proceeds of the performance security shall be payable to KWS as compensation for any loss resulting from the Tenderer's failure to complete its obligations under the Contract.
- 7.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to KWS and shall be in the form of a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in Kenya or abroad, acceptable to KWS, in the form provided in the tender documents.
- 7.4 The performance security will be discharged by KWS 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.

8. Inspection and Tests

- 8.1 KWS or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Contract specifications. KWS shall notify the tenderer in writing, in a timely manner, of the identity of any representatives retained for these purposes.
- 8.2 The inspections and tests may be conducted on the premises of the tenderer or its subcontractor(s), at point of delivery, and/or at the Goods' final destination. If conducted on the premises of the tenderer or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to KWS.
- 8.3 Should any inspected or tested Goods fail to conform to the Specifications, KWS may reject the Goods, and the tenderer shall either replace the rejected Goods or make alterations necessary to meet specification requirements free of cost to KWS.

- 8.4 KWS's right to inspect, test and, where necessary, reject the Goods after the Goods' arrival shall in no way be limited or waived by reason of the Goods having previously been inspected, tested, and passed by KWS or its representative prior to the Goods' delivery.
- 8.5 Nothing in paragraph 8 shall in any way release the tenderer from any warranty or other obligations under this Contract.

9. Packing

- 9.1 The tenderer shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract.
- 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.

10. Delivery and Documents

- 10.1 Delivery of the Goods shall be made by the tenderer in accordance with the terms specified by KWS in its Schedule of Requirements and the Special Conditions of Contract.

11. Insurance

- 11.1 The Goods supplied under the Contract shall be fully insured against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery in the manner specified in the Special conditions of contract

12. Payment

- 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.
- 12.2 Payments shall be made promptly by KWS as specified in the contract.

13. Prices

- 13.1 Prices charged by the tenderer for Goods delivered and Services 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.

14. Assignment

- 14.1 The tenderer shall not assign, in whole or in part, its obligations to perform under this Contract, except with KWS's prior written consent.

15.Subcontracts

15.1 The tenderer shall notify KWS 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.

16. Termination for Default

16.1 KWS 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 Goods within the period(s) specified in the Contract, or within any extension thereof granted by KWS.
- (b) if the tenderer fails to perform any other obligation(s) under the Contract.
- (c) if the tenderer, in the judgment of KWS has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.

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

17. Liquidated Damages

17.1 If the tenderer fails to deliver any or all of the goods within the period(s) specified in the contract, KWS 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 goods up to a maximum deduction of 10% of the delayed goods. After this the tenderer may consider termination of the contract.

18. Resolution of Disputes

18.1 KWS 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.

18.2 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 adjudication in an agreed national or international forum, and/or international arbitration.

19. Language and Law

19.1 The language of the contract and the law governing the contract shall be English language and the Laws of Kenya respectively unless otherwise stated.

20. Force Majeure

- 20.1 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.

Section D. Special Conditions of Contract

General

Special Conditions of Contract supplement the General Conditions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract.

1.0 Definitions (Clause 1.1)

**The Purchaser is:
The Director
Kenya Wildlife Service
P. O. Box 40241
NAIROBI.**

The Purchasers Representative is:

**The Head of Supply Chain Management
Kenya Wildlife Service
P. O. Box 40241
NAIROBI.**

2.0 Samples, Inspection and Tests (Clause 8)

The Tenderer shall submit as part of its bid samples of the following:

2.1 Posts

- Sample post of approximately 3 feet long
- Kenya Bureau of Standards test certificate for preservation of timber
- Copy of the Treatment Charge Sheet

3.0 Delivery and Documents (Clause 10)

The materials and goods shall be delivered as indicated in the Bills of Quantities All documentation catalogues and manufacturers' Authorizations must accompany the bid.

4.0 Payment (Clause 12)

One Hundred (100) percent of the contract price of the materials and goods delivered shall be paid upon the delivery, inspection, testing and acceptance of the same by the Employer's Representative.

5.0 Resolution of Disputes (Clause 18)

In case of a dispute between the Purchaser and the Supplier, the dispute shall be referred to Arbitration in accordance with the arbitration laws of Kenya.

6.0 Notices (Clause 19)

For the purposes of this Sub-Clause, the respective addresses are:

The Employer:
The Director
Kenya Wildlife Service
P. O. Box 40241
NAIROBI.

The Employers Representative
The Head of Supply Chain Management
Kenya Wildlife Service
P.O. Box 40241
NAIROBI.

FORM I KWS
KENYA WILDLIFE SERVICE

You are requested to give the particulars indicated in Part 1 and in Part 2.1 either Part 2(a), 2(b) or 2(c) whichever applies to your type of business

Please note that giving false information on this Form will lead to automatic disqualification.

Part 1: GENERAL INFORMATION

- 1.1 Business Name:
- 1.2 Location of business premises
Plot No Street/Road/Building/Floor.....
- 1.3 Postal Address Tel No
Fax: Email
- 1.4 Nature of business.....
.....
- 1.5 Current Trade Licence No Expiring date
Maximum value of business which you can handle at any one time: Kshs.....
Other Principal Bankers Branch
- 1.6 How long have you been in this particular business
Please give - Date of registration of business
Date actual operations started

Part 2: THE COMPANY

2.1 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	SHARES
1				
2				
3				
4				
5				
6				

Part 2(c) - Registered Company

Private or Public

State the nominal and issued capital of the company –

Nominal Kshs

Issued Kshs

Paid up Capital

Give details of all directors or partners as follows:

	NAME	NATIONALITY	CITIZENSHIP DETAILS	SHARES
1				
2				
3				
4				
5				

Date Signature of Tenderer

2.2 Do you own a timber treatment plant? YES/NO
 State the standards under which your products are treated: (for extra information, please put an attachment)

.....

2.3 List of your major customers:-

	NAME	ADDRESS	TEL NO
1			
2			
3			
4			
5			

Part 3: DOCUMENTS REQUIRED

- 4.1 Registration Certificate
- 4.2 Current Trade Licence
- 4.3 VAT Numbers
- 4.4 PIN Number
- 4.5 Audited Accounts for 2008/9 and 2009/10
- 4.6 Tax compliance certificate from Kenya Revenue Authority

Part 4: CERTIFICATIONS

- 6.1 I/We do hereby confirm that the information given above is correct
- 6.2 I/We do accept that we shall follow the conditions stipulated in your Procurement Orders.

NAME:..... SIGNATURE

DESIGNATION: DATE:

NAME OF WITNESS: SIGNATURE

ADDRESS: DATE:

Section E. Schedule of Requirements

Item	Description	Unit	Quantity	Rate in Kshs	Total Amount In Kshs	Delivery Period in Weeks
	The following in Eucalyptus or wattle timber posts: pressure impregnated with Tanalith 'C' to at least 25mm depth or equal approved					
1	Line Posts (10ft long x 5 - 6 Inches Diameter)					
1.01	Delivery Point Arabuko Sokoke	No	4,200			
1.02	Delivery Point Tsavo West Maktau	No	3,000			
1.03	Delivery Point Tsavo West Taveta	No	2,600			
1.04	Delivery Point Ruma	No	2,000			
	The following in Eucalyptus or wattle timber posts: pressure impregnated with Tanalith 'C' to at least 25mm depth or equal approved					
2	Strainer Assembly Posts (10ft Long x 6 -7 inches diameter)					
2.01	Delivery Point Arabuko Sokoke	No	300			
2.02	Delivery Point Tsavo West Maktau	No	1,050			
2.03	Delivery Point Tsavo West Taveta	No	910			
	Sub- Total					
	Add 16% Value added tax					
	Total Amount in Kenya Shillings carried to Form of Tender					

Section F. Technical Specifications

GENERAL

1. These specifications describe the basic requirements for goods. Tenderers are requested to submit with their offers the detailed specifications, drawings, catalogues, etc. for the products they intend to supply.

2. Tenderers must indicate on the specifications sheets whether the equipment offered comply with each specified requirement.

3. All the dimensions and capacities of the equipment to be supplied shall not be less than those required in these specifications. Deviations from the basic requirements, if any shall be explained in detail in writing with the offer, with supporting data such as calculation sheets, etc. KWS reserves the right to reject the products, if such deviations shall be found critical to the use and operation of the products.

4. The tenderers are requested to present information along with their offers as follows:

- i) Shortest possible delivery period of each product.
- ii) Information on proper representative and/or workshop for back-up service/repair and maintenance including their names and addresses.

Technical Specifications

SUPPLY & DELIVERY OF TIMBER POSTS

MATERIALS SPECIFICATIONS

All the materials to be used in fence construction shall conform to the following specifications.

1. WOODEN POSTS

Posts shall be of Eucalyptus or Wattle trees fully matured, well seasoned, cylindrical in shape, straight and devoid of any external knots or deformities. The upper part of the posts shall be wrapped four times round the circumference with galvanised high tensile steel wire, held in place with staples.

The posts shall be pressure treated with tanalith C or equal and approved to a minimum penetration of 25mm conform to the Kenya Bureau of Standards specifications for preservation of timber KS-02-94-1985.

The line posts shall be 10 feet long and an average of 5" to 6" thick in Diameter.

The Strainer posts shall be 10ft long an average of 6 to 7 inch thick in diameter

The Tenderer must submit as part of its bid a Sample for the posts proposed.

Section G. Tender Form and Price Schedules

(i) Form of Tender

Date: _____

Tender N^o: _____

To: THE DIRECTOR
KENYA WILDLIFE SERVICE
P.O. BOX 40241, NAIROBI

Gentlemen and/or Ladies:

1. Having examined the tender documents including Addenda Nos..... *[insert numbers]*, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to supply and deliver.....
[description of goods]
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.

2. We undertake, if our Tender is accepted, to deliver the goods in accordance with the delivery schedule specified in the Schedule of Requirements.

3. If our Tender is accepted, we will obtain the guarantee of a bank in a sum equivalent to _____ percent of the Contract Price for the due performance of the Contract, in the form prescribed by Kenya Wildlife Service.

4. 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.

5. 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.

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

Dated this _____ day of _____ 20_____.

[signature]

[in the capacity of]

Duly authorized to sign tender for and on behalf of _____

Section H. Tender Security Form

Whereas..... *[name of the tenderer]*
(hereinafter called “the tenderer”) has submitted its tender dated*[date of submission of tender]* for the supply of.....
[name and/or description of the goods]

(hereinafter called “the Tender”).....

KNOW ALL PEOPLE by these presents that

WE.....
of..... having our registered office at
..... (hereinafter called “the Bank”), are bound unto KWS
(hereinafter called “Kenya Wildlife Service”) in the sum of
for which payment well and truly to be made to the said KWS, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this ____ day of _____20____.

THE CONDITIONS of this obligation are:

1. If the tenderer withdraws its Tender during the period of tender validity specified by the tenderer on the Tender Form; or
2. If the tenderer, having been notified of the acceptance of its Tender by KWS during the period of tender validity:
 - (a) fails or refuses to execute the Contract Form, if required; or
 - (b) fails or refuses to furnish the performance security, in accordance with the Instructions to tenderers;

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

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

[signature of the bank]

Section I. Contract Form

THIS AGREEMENT made the _____ day of _____ 20____ between Kenya Wildlife Service of P.O. Box 40241 NAIROBI, KENYA (hereinafter called "KWS ") of the one part and..... [name of tenderer] of..... [city and country of tenderer] (hereinafter called "the tenderer") of the other part:

WHEREAS KWS invited tenders for certain goods, viz.,..... [brief description of goods] and has accepted a tender by the tenderer for the supply of those goods in the sum of..... [contract price in words and figures] (hereinafter called "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, viz.:
 - (a) the Tender Form and the Price Schedule submitted by the tenderer;
 - (b) the Schedule of Requirements;
 - (c) the Technical Specifications;
 - (d) the General Conditions of Contract;
 - (e) the Special Conditions of Contract; and
 - (f) the Notification of Award by KWS.
3. In consideration of the payments to be made by KWS to the tenderer as hereinafter mentioned, the tenderer hereby covenants with KWS to provide the goods and to remedy defects therein in conformity in all respects with the provisions of the Contract
4. KWS hereby covenants to pay the tenderer in consideration of the provision of the goods 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 here to 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 KWS)
Signed, sealed, delivered by _____ the _____ (for the tenderer)

In the presence of _____

Section J. Performance Security Form

To: KENYA WILDLIFE SERVICE

WHEREAS[*name of tenderer*]
(here in after called “the tenderer”) has undertaken, in pursuance of Contract
No. _____ [*reference number of the contract*] dated _____ 20____ to
supply.....
..... [*description of goods*] (herein after called “the Contract”).

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

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

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

This guarantee is valid until the _____ day of _____ 20_____.

Signature and seal of the Guarantors

[*name of bank or financial institution*]

[*address*]

[*date*]

