



**COUNTY GOVERNMENT OF KISUMU
DEPARTMENT OF LANDS, HOUSING, PHYSICAL
PLANNING & URBAN DEVELOPMENT**

**EXPRESSION OF INTEREST FOR
PURCHASE OF LAND FOR A MARKET IN
NYALENDA B WARD**

TENDERNUMBER:

CGK/LHPP&UD/EOI/LP/2020/2021/008

CLOSING DATE: 12TH MARCH 2021 by 12:00 noon

**Prepared by:
The Chief Officer-Lands, Survey & Physical Planning
County Government of Kisumu
P. O. Box 2738
Kisumu.**

**Issued by:
County Secretary
County Government of Kisumu
P.O. Box 2738.
Kisumu.**

SECTION I: INVITATION TO TENDER

Date: 24th February 2021.

**EXPRESSION OF INTEREST FOR PURCHASE OF
LAND FOR A MARKET IN NYALENDA B WARD**

TENDER NO: CGK/LHPP&UD/EOI/LP/2020/2021/008

- 1.1 The County Government of Kisumu (CGK) Department of Lands, Housing, Physical Planning and Urban Development (hereafter referred to as “**the purchaser**”) invites parties who are interested in selling land for development of an ECD.
- 1.2 A complete set of tender documents may be downloaded free of charge from the County Government of Kisumu website at <https://www.kisumu.go.ke>
- 1.3 Prices quoted should be net, inclusive of all taxes, and delivery must be in Kenya Shillings and shall remain valid for **120 days** from the closing date of the tender.

Tenders will be received on or before 12TH MARCH 2021 by 12:00 noon.

CHIEF OFFICER - LANDS, SURVEY & PHYSICAL PLANNING

SECTION II: INSTRUCTIONS TO TENDERERS

1.0 INTRODUCTION

The County Government of Kisumu will purchase lands from bidders who will have submitted their bids in accordance with the method of selection detailed in clause 13.0.

2.0 ELIGIBILITY OF TENDERERS

2.1 This Invitation to tender is open to all the interested and eligible bidders as described in invitation to tender (ITT) above.

2.2 County Government of Kisumu Department of Lands, Housing, Physical Planning and Urban Development employees, are not eligible to participate in the tender.

2.3 Tenderers shall not be under a declaration of ineligibility for corrupt or fraudulent Practices or debarred to participate in public procurement.

3.0 COST OF BIDDING

Please note the following:

- (i) the costs of preparing the tender and of negotiating the Contract, including any visit to the county premises are not reimbursable as a direct cost of the assignment; and
- (ii) County Government is not bound to accept any of those costs regardless of the conduct or outcome of the bidding process.

4.0 BID DOCUMENTS

4.1 The contents of the Bid documents are listed below and should be read in conjunction with any addendum issued by The County Government of Kisumu (the purchaser).

Section I	:	Invitation To Tender
Section II	:	Instruction To bidders
Section III	:	Business Questionnaire
Section IV	:	Evaluation criteria
Section V	:	General Conditions of the contract
Section VI	:	Financial Forms

4.2 The bidder must familiarize themselves with the conditions and take them into account in preparing their tender. To obtain first-hand information on the assignment and on the conditions, bidders are encouraged to liaise with the purchaser regarding any information that they may require before submitting a tender.

5.0 AMENDMENTS AND REQUESTS FOR CLARIFICATIONS

5.1 At any time prior to the deadline for submission of tenders, the County Government of Kisumu for any reason, whether at its own initiative or in response to a clarification requested by a prospective bidder may modify when there is an addendum to that effect.

5.2 In order to allow prospective bidders reasonable time in which to take the addendum into account in preparing their tenders County Government of Kisumu at its discretion, may extend the deadline for the submission of tenders.

5.3 A prospective bidder requiring any clarification of the tender document may notify the purchaser in writing at the entity's address indicated herein. The purchaser will respond in writing to any request for clarification of the tender documents received.

5.4 Bidders may request a clarification of the tender document only up to four [7] days before the tender submission date. Written copies of the purchaser's response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective tenderers that have received the tender document.

5.5 The purchaser shall reply to any clarifications sought by the bidders within 5 days of receiving the request to enable the bidder to make timely submission of his/her tender.

5.6 For all enquiries or clarifications, please contact County Secretary, County Government of Kisumu vide the following:

(i) Email address: info@kisumu.go.ke

6.0 PREPARATION OF BIDS

6.1 TECHNICAL PROPOSAL

6.1.1 Bidders are expected to examine all instructions, forms, terms, requirements and other information in the bid document. Failure to submit a bid that is not substantially responsive may result in the rejection of bid. A bid will be deemed responsive when all the required documents/information is furnished.

6.2 FINANCIAL PROPOSAL

6.2.1 In preparing the Financial Proposal, bidders are expected to take into account the requirements and conditions outlined in the tender document.

6.2.2. The Financial Proposal should clearly identify as a separate amount, the duties, fees, levies and other charges imposed under the law.

7.0 VALIDITY PERIOD OF THE TENDER

7.1 Bids shall remain valid for a period of one hundred and twenty (120) days from the date of bid submission prescribed by the County Government of Kisumu.

8.0 SUBMISSION OF BIDS

8.1 The bidder has been provided with various forms to complete. These shall constitute part of this tender.

- 8.2** It is the duty of the bidder to ensure that he carefully reads the tender document to enable him/her adequately complete the bid documents. Failure to furnish all information required by the tender document or to complete/submit the bid in conformity with the requirements of this tender document shall result to its disqualification /rejection.
- 8.3** The bidder shall submit his/her bid as a single package. The submitted bid must conform to the format prescribed in Section I of this tender document.
- 8.4** All bids must be completed and be **signed** by the bidder or a person duly authorized. Any alteration and over writing should be initialed by the person signing the bid document. A bid not duly signed shall be considered nonresponsive and shall be disqualified.
- 8.5** For each proposal the individual consultants shall prepare the proposals in the number of copies indicated in the special conditions of contract. Each Technical proposal be marked “**ORIGINAL**” or “**COPY**” as appropriate. If there are any discrepancies between the original and the copies of the proposal, the original shall govern.
- 8.6** The completed Technical proposals must be delivered at the submission address on or before the time and date of the submission of the proposals indicated in the appendix to the instructions to consultants. Any proposals received later than the closing date for submission of proposals shall be rejected and returned to the individual consultant unopened. For this purpose, the inner envelope containing the technical proposal will bear the address of the individual consultant submitting the proposals.
- 8.7** All bids must be completed and be **signed** by the bidder or a person duly authorized. Any alteration and over writing should be initialed by the person signing the bid document. A bid not duly signed shall be considered nonresponsive and shall be disqualified.
- 8.8** Where the bidder submits unsealed or improperly marked envelopes the bid will be disqualified and the Board will not assume any responsibility for the bids misplacement or mishandling.
- 8.9** Your proposals shall be deposited in the Tender Box marked “County Government of Kisumu Tender Box” at the Prosperity House, Ground floor, Awour Otieno Road, Kisumu, Kenya or be addressed to:

**The County Secretary,
County Government of Kisumu
P.O. Box 2738 - 40100, Kisumu.**

So as to be received not later than **12TH MARCH 2021 by 12:00 noon.**

9.0 LANGUAGE OF THE BID

The language of the correspondences shall be in English language. Any printed literature furnished by the bidder may be written in another language provided they are accompanied by an accurate English translation of the relevant passages, which for purposes of interpretation of the bid, the English language translation shall govern.

10.0 PRICE

10.1 Bidders shall express the price of their proposals in **Kenya Shillings**. In the event that the bidder elects to submit the bid in any other currency, the county shall reserve the right to accept or reject the bid in total. Where the County Government of Kisumu accepts the bid the conversion to Kenya Shillings shall be effected using the selling exchange rate applied by Central Bank of Kenya on the closing day of the tender.

11.0 MODIFICATION AND WITHDRAWAL OF BIDS

11.1 The bidder may modify or withdraw its bid after submission; provided that the modification, substitution or written notice of withdrawal of the bid is received by the purchaser prior to the deadline prescribed for submission of bids. No bid may be modified or withdrawn after the deadline for submission of bids.

11.2 The bidder's modification or withdrawal notice shall be packaged and dispatched in accordance with tender procedures. A withdrawal notice may be sent by email.

11.3 No bid may be withdrawn in the interval between the deadline for submission of bids and the expiration of period of bid validity specified by the bidder on the bid Form. Withdrawal of a bid during this interval may result in the bidder's forfeiture of his bid security.

12.0 EVALUATION OF THE BIDS

12.1 PRELIMINARY EXAMINATION OF BIDS

12.1.1 The county shall examine the bids to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished and whether the bids are generally in order.

12.1.2 If a bid is not substantially responsive, it shall be rejected by the County and may not subsequently be made responsive by the Bidder by correction of the nonconformity. A substantially responsive bid is one which conforms to all the terms and conditions of the bid documents without material deviations. Deviations from, or objections or reservations to critical provisions, such as those concerning failure to comply with any one of the mandatory requirements, shall be deemed to be a material deviation.

13.2 EVALUATION PROCESS /CRETARIA

The Tender Processing committee appointed by the Departmental Chief Officer shall evaluate the bids on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria as follows;

a) Preliminary Mandatory Requirements

Bids not meeting all the mandatory requirements will receive no further consideration during the evaluation process. The Bidders shall be required to provide/meet the following: -

- (i) Copy of the title deed, Survey Map and/or Mutation form.
- (ii) Certified Copy of Owner's National Identity Card/ Certificate of incorporation and CR-12 Form (if company owned).
- (iii) Copy of KRA pin certificate.
- (iv) Original current official search certificate.
- (v) Sequential Serialization of the document.
- (vi) The minimum size for the proposed site must be at least 0.10 Hectares.

NOTE: Certification must be done by a Commissioner of Oaths.

b) Technical Evaluation:

This shall involve due diligence and confirmation of the following:

- (i) Due diligence on ownership of the land as per the Preliminary Mandatory Requirements attached.
- (ii) Accessibility from major roads.
- (iii) Whether the land is free from any encumbrances, cautions or caveats.
- (iv) Whether the land is not subject to any litigations or disputes.
- (v) Confirmation of Land value by Government valuer.

c) Comparison of financial offers

Responsive bidders will be invited to indicate their prices that will be subjected to comparison alongside other competitors and the winning bidder shall be the lowest evaluated price.

14.0 NEGOTIATIONS

14.1 Before the award of the purchase agreement, the purchaser may conduct negotiations with the successful evaluated bidders. The aim is to reach agreement on all points and sign a contract.

15.0 NOTIFICATION OF AWARD AND CONTRACTING

15.1 Prior to the expiration of the period of tender validity, County Government of Kisumu will notify the successful bidder in writing that his/her bid has been accepted.

15.2 The notification of award will signify the formation of the contract subject to the signing of the contract between the bidder and the purchaser. Simultaneously the other bidders shall be notified that their bids were not successful.

15.3 Successful bidder(s) shall be required to enter into a formal contract with the purchaser whose contents shall be derived mainly from this tender document and the bid submitted.

15.4 Successful bidder shall sign a contract with the purchaser within 14 days from the date of award.

15.5 The Laws of Kenya shall be applicable to the formal contract.

16.0 CORRUPT OR FRAUDULENT PRACTICES

The purchaser requires that all Tenderers observe the highest standards of ethics during the tendering process, execution of contracts and when the contract is in force. The purchaser will not enter into contract with any bidder who has engaged in corrupt or fraudulent practices during the tendering process.

Canvassing in any form is strictly prohibited and will lead to automatic disqualification.

SECTION IV: TECHNICAL BID FORMS

FORM T1: CONFIDENTIAL QUESTIONNAIRE

You are required to give the full particulars and disclosures sought for in this Questionnaire as far as it is applicable to your firms/individual details.

PART 1: GENERAL INFORMATION

- a) Names in full: _____ Age _____
- b) Nationality _____ Country of Origin _____
- c) Citizenship Details: _____
- d) Postal address of business: _____ Tel No. _____
- e) Fax No. _____ E-mail add. _____
- f) Current Location sub county and ward _____
- g) Plot No _____
- h) State if the land is owned or leased: _____
- i) If leased confirm that the rates are either up-to date or in arrears:

- j) Name of your local bankers: _____ Branch

Confirmation of Declarations made

I/We the undersigned certify that the information given in this form is true to the best of my/our belief and knowledge.

Full Names of

Authorized Official _____

Designation _____

Bidder's Signature & Official Company Stamp _____

Date _____

NB: Completion of this form does not constitute a contract or commitment on the part of the purchaser to provide and/or guarantee the purchase.

FORM F3: PRICE SCHEDULE FORM

You are provided with the bid price table hereafter to place your bid to purchase of land.

No.	Location	N0.	Area In acres	Rate per acre (Kshs)	Total in (ksh.)
1					

SECTION G. TENDER FORM AND PRICE SCHEDULES

(i) Form of Tender

Date: _____

Tender NO: _____

To:

.....

[Name and address of procuring entity]

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 services]* In conformity with the said tender documents for the sum of..... *[Total tender amount in words and figures]*

2. We undertake, if our Tender is accepted, to provide the services in accordance with the services 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 10 percent of the Contract Price for the due performance of the Contract, in the form prescribed by

.....(Procuring entity).

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 _____

(ii) CONFIDENTIAL BUSINESS QUESTIONNAIRE

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/Email.....

Nature of Business.....

Registration Certificate No.....

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

Name of your bank

	<p style="text-align: center;">Part 2 (a) – Sole Proprietor</p> <p>Your name in full.....Age.....</p> <p>Nationality.....Country of Origin.....</p> <p>Citizenship details.....</p> <p>Date..... Signature of Tenderer.....</p>																				
	<p style="text-align: center;">Part 2 (b) – Partnership</p> <p>Given details of partners as follows</p> <table border="0" style="width: 100%;"> <thead> <tr> <th style="width: 15%;">Name</th> <th style="width: 35%;">Nationality</th> <th style="width: 35%;">Citizenship details</th> <th style="width: 15%;">Shares</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table> <p>Date..... Signature of Tenderer.....</p>	Name	Nationality	Citizenship details	Shares	1.	2.	3.	4.
Name	Nationality	Citizenship details	Shares																		
1.																		
2.																		
3.																		
4.																		
	<p style="text-align: center;">Part 2 (c) – Registered Company</p> <p>Private or Public</p> <p>State the nominal and issued capital of company</p> <p>Nominal Kshs.</p> <p>Issued Kshs.</p> <p>Given details of all directors as follows</p> <table border="0" style="width: 100%;"> <thead> <tr> <th style="width: 15%;">Name</th> <th style="width: 35%;">Nationality</th> <th style="width: 35%;">Citizenship details</th> <th style="width: 15%;">Shares</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>2.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>3.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> <tr> <td>4.</td> <td>.....</td> <td>.....</td> <td>.....</td> </tr> </tbody> </table>	Name	Nationality	Citizenship details	Shares	1.	2.	3.	4.
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Date..... Signature of Tenderer.....

(iii) 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.....

OfHaving our registered
office at..... (Hereinafter called “the Bank”), are bound
unto.....
[Name of procuring entity] (Hereinafter called “the Procuring entity”) in the
sum of

For which payment well and truly to be made to the said Procuring entity, the Bank
binds itself, its successors, and assigns by these presents. Sealed with
the Common Seal of the said Bank this _____ day of _____ 20 .

THE CONDITIONS of this obligation are:

1. If the tenderer withdraws its Tender during the period of tender validity specified by the tenderer on the Tender Form; or
2. If the tenderer, having been notified of the acceptance of its Tender by the Procuring entity 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 the Procuring entity up to the above amount upon receipt of its first written demand, without the Procuring entity having to substantiate its demand, provided that in its demand the Procuring entity 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.....[*name of Procurement entity*] of[*Country of Procurement entity*] (Hereinafter called “the Procuring entity”) of the one part and..... [Name of tenderer] of..... [City and country of tenderer] (Hereinafter called “the tenderer”) of the other part:

WHEREAS the Procuring entity 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 Procuring entity’s Notification of Award.
3. In consideration of the payments to be made by the Procuring entity to the tenderer as hereinafter mentioned, the tenderer hereby covenants with the Procuring entity to provide the goods and to remedy defects therein in conformity in all respects with the provisions of the Contract
4. The Procuring entity 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 hereto have caused this Agreement to be executed in accordance with their respective laws the day and year first above written.

Signed, sealed, delivered by _____ the _____ (for the Procuring entity)

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

In the presence of _____

Section J. Performance Security Form

To:

[Name of procuring entity]

WHEREAS..... *[Name of tenderer]*

(Hereinafter called “the tenderer”) has undertaken, in pursuance of Contract

No. _____ *[reference number of the contract]* dated _____

20____ to

supply.....

..... *[Description of goods]* (Hereinafter called “the Contract”).

AND WHEREAS it has been stipulated by you in the said Contract that the tenderer shall furnish you with a bank guarantee by a reputable bank for 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]

LETTER OF NOTIFICATION OF AWARD

Address of Procuring Entity

To: _____

RE: Tender No. _____

Tender Name _____

This is to notify that the contract/s stated below under the above-mentioned tender have been awarded to you.

1. Please acknowledge receipt of this letter of notification signifying your acceptance.
2. The contract/contracts shall be signed by the parties within 30 days of the date of this letter but not earlier than 14 days from the date of the letter.
3. You may contact the officer(s) whose particulars appear below on the subject matter of this letter of notification of award.

(*FULL PARTICULARS*) _____

SIGNED FOR ACCOUNTING
OFFICER

SELF DECLARATION FORMS

FORM SD1

SELF DECLARATION THAT THE PERSON/TENDERER IS NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015.

I,, of Post Office Box
being a resident of in the Republic of
..... do hereby make a statement as follows:-

1. THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Director of (insert name of the Company) who is a Bidder in respect of Tender No..... for(insert tender title/description) for(insert name of the Procuring entity) and duly authorized and competent to make this statement.

2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.

3. THAT what is deponed to hereinabove is true to the best of my knowledge, information and belief.

.....
(Title) (Signature) (Date)

FORM OF CONTRACT

THIS AGREEMENT, made the _____ day of _____ 2020
Between **THE COUNTY GOVERNMENT OF KISUMU DEPARTMENT OF LANDS, HOUSING, PHYSICAL PLANIING AND URBAN DEVELOPMENT** of Post office Box number 2738 – 40100 Kisumu (hereinafter called “**the Purchaser**”) of the one part and [Name of bidder] of Post Office Number (hereinafter called “**the Bidder**”) of the other part.

WHEREAS the Purchaser is desirous that the bidder executes the sale agreement for purchase of Land (hereinafter called “the service”) and the purchaser has accepted the tender submitted by the firms/owner for the execution and completion of such project for the **Contract**

Price of Kshs..... only.

NOW THIS AGREEMENT WITNESSETH as follows: -

1.0 In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.

2.0 The following documents shall be deemed to form an integral part and shall be read and construed as part of this Agreement viz:

- (i) Terms and Conditions of the Tender document
- (ii) Priced Schedule of Rates
- (iii) Notification of award

3.0 In consideration of the payments to be made by the purchaser to the bidder as hereinafter mentioned, the firm/bidder hereby Covenants with the purchaser to execute and complete the project in conformity with the provision of the contract.

4.0 The purchaser hereby covenants to pay the bidder in consideration of the execution and completion of the project 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 thereto have caused this Agreement to be executed the day and year first before written.

Signed for County Government of Kisumu
by:

Name

In the presence of:

**ACCOUNTING
OFFICER; LANDS,
HOUSING, PHYSICAL
PLANNING AND URBAN
DEVELOPMENT**

Signed for the bidders" firm by:

Name

(Who warrants that he is duly authorized to sign)

In the presence of:
