

**COUNTY GOVERNMENT OF BUNGOMA**



**MINISTRY OF TRADE, ENERGY AND INDUSTRIALIZATION**

**TENDER FOR PROPOSED CONSTRUCTION OF 10 No. BODABODA SHEDS  
ACROSS TOWNSHIP WARD-BUNGOMA COUNTY**

**TENDER NEGOTIATION No  
:2106952/25/26**

**FINANCIAL YEAR 2025-2026**

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## INVITATION TO TENDER

PROCURING ENTITY: TRADE, ENERGY AND INDUSTRIALIZATION

CONTRACT NAME AND DESCRIPTION: [PROPOSED CONSTRUCTION

OF BODABODA SHEDS (Department of Bungoma) invites sealed tenders for the construction of Bodaboda sheds

2. Tendering will be conducted under open competitive method (National) using a standardized tender document.  
Tendering is open to all qualified and interested Tenderers.  
In case this tender is subject to a Reservation, specify the Group that is eligible to tender, i.e. tendering is open to \_\_\_\_\_ e.g. all Small and Medium Enterprises registered appropriately with.....”.  
In case this tender is subject to Multiple contracts/lots, insert “Tenderers will be allowed to tender for one or more Lots”.
3. Qualified and interested tenderers may obtain further information and inspect the Tender Documents ~~office~~ during hours [insert office hours if applicable e.g. 0900 to 1500 hours] at the address given below.
4. A complete set of tender documents may be purchased or obtained by interested tenders upon payment of a ~~non-refundable fee of (Amount in Kenya shillings) to be obtained from a Banker's Cheque~~ ~~electronically payable to the~~ ~~Address (s)~~ [www.bungoma.go.ke/tenders](http://www.bungoma.go.ke/tenders), [www.supplier.treasury.go.ke](http://www.supplier.treasury.go.ke) or PPIP portal; [www.tenders.go.ke](http://www.tenders.go.ke).  
Tender documents obtained electronically will be free of charge.
5. Tender documents may be viewed and downloaded for free from the website ([www.bungoma.go.ke/tenders](http://www.bungoma.go.ke/tenders), [www.supplier.treasury.go.ke](http://www.supplier.treasury.go.ke) or PPIP portal; [www.tenders.go.ke](http://www.tenders.go.ke)).  
Tenderers who download the tender document must forward their particulars immediately to,
6. ~~Tenders shall be required to be in Kenya Shillings for the full amount of the tender.~~ Tenders shall remain valid for (120) days from the date of opening of tenders.
7. All Tenders must be accompanied by a [insert “tender Security” or “Tender-Securing Declaration,” as appropriate] of [insert amount and currency incase of a tender Security.]
8. The Tenderer shall chronologically serialize all pages of the tender documents submitted.
9. Completed tenders must be delivered to the address below on or before [**12 noon 2<sup>nd</sup> March 2026**].  
~~Manual tenders~~ permitted.
10. Tenders will be opened immediately after the deadline date and time specified above or any dead line date and times pecified later. Tenders will be publicly opened in the presence of the Tenderers' designated representatives
11. ~~late tenders will be rejected~~ address below.
12. The addresses referred to above are:
  - A. Address for obtaining further information and for purchasing tender documents
    - (1) Name of Procuring Entity. Trade, Energy and Industrialization
    - (2) Physical address for hand Courier Delivery to an office or Tender Box (City, Street Name, Building, Floor Number and Room). N/A
    - (3) Postal Address  
437, BUNGOMA.

- (4) Insert name, telephone number and e-mail address of the officer to be contacted.

B. Address for Submission of Tenders.

- 1) Name of Procuring Entity. Trade, Energy and Industrialization
- 2) Postal Address (include designation of Officer to be attentioned).N/a
- 3) Physical address for hand Courier Delivery to an office or Tender Box (City, Street Name, Building Number and Room).  
N/A

C. Address for Opening of Tenders.

- 1) Name of Procuring Entity. Trade Energy and Industrialization
- 2) Physical address for the location Trade offices next to County Assembly,Bungoma.

[Authorized Official (name, designation, Signature and date)]

Name REUBEN W. WAMBWA

(Official of the Procuring Entity issuing the invitation)

Designation: CHIEF OFFICER

Signature \_\_\_\_\_

Date \_\_\_\_\_

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PART1: TENDERING PROCEDURES

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## SECTION I - INSTRUCTIONS TO TENDERERS

### A GENERAL PROVISIONS

#### 1.0 Scope of tender

1.1 The Procuring Entity as defined in the Appendix to Conditions of Contract invites tenders for Works Contract as described in the tender documents. The name, identification, and number of lots (contracts) of this Tender

1.2 ~~Throughout this tendering~~ the TDS.

- a) The term "in writing" means communicated in written form (e.g. by mail, e-mail, fax, including if specified in the TDS, distributed or received through the electronic-procurement system used by the Procuring Entity) and, where context so requires, "singular" means "plural" and vice versa;
- b) "Day" means calendar day, unless otherwise specified as "Business Day". A Business Day is any day that is an official working day of the Procuring Entity. It excludes official public holidays.

#### 2.0 Fraud and corruption

2.1 The Procuring Entity requires compliance with the provisions of the Public Procurement and Asset Disposal Act, 2015, Section 62 "Declaration not to engage in corruption". The tender submitted by a person shall include

2.2 a declaration that the person shall not engage in any corrupt or fraudulent practice and a declaration that the Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices, in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and

2.3 criminal and/or civil sanctions may be imposed. To this effect, Tenders shall be required to complete and sign the "Certificate of Independent Tender Determination" annexed to the Form of Tender. Tenders shall permit and shall cause their agents (whether declared or not), subcontractors, sub-service providers, suppliers, and their personnel, to permit the Procuring Entity to inspect all accounts, records

2.4 and other documents relating to any initial selection process, pre-qualification process, tender submission, Unfair Competitive Advantage. Fairness and transparency in the tender process require that the firms proposal submission, and contract performance (in the case of award), and to have them audited by or their affiliates competing for a specific assignment do not derive a competitive advantage from having appointed by the Procuring Entity.

consulting services related to this tender. To that end, the Procuring Entity shall indicate in the Data Sheet and

3.0 Eligible tenderers make available to all the firms together with this tender document all information that would in that respect

3.1 A Tenderer may be a firm that is a private entity, a state-owned enterprise or institution subject to ITT give such firm any unfair competitive advantage over competing firms.

3.2, or an individual or any combination of such entities in the form of a joint venture (JV) under an existing agree mentor with the intent to enter in to such an agreement supported by a letter of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance

3.2 with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the tendering process and, in the event of a joint venture, their business associates or agents and firms/organizations in which they have a substantial controlling interest shall not be eligible to be jointly awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.

3.3 An individual tender, be a subcontractor in a separate tender or be part of another joint venture for the purposes of the same Tender. A Tenderer shall not have a conflict of interest. Any tenderer found to have a conflict of interest shall be disqualified. A tenderer may be considered to have a conflict of interest for the purpose of this tendering process, if the tenderer:

- a) Directly or indirectly controls, is controlled by or is under common control with an other tenderer;
  - b) Receives or has received any director indirect subsidy from another tenderer;
  - c) Has the same legal representative as an other tenderer;
  - d) Has a relationship with an other tenderer, directly or through common third parties, that puts it in a position to influence the tender of an other tenderer, or influence the decisions of the Procuring Entity regarding this tendering process;
  - e) Any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the goods or works that are the subject of the tender;
  - f) Any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity as a consultant for Contract implementation;
  - g) Would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the contract specified in this Tender Document;
  - h) Has a close business or personal relationship with senior management or professional staff of the Procuring Entity who has the ability to influence the bidding process and:
    - i) Are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract; or
    - ii) May be involved in the implementation or supervision of such Contract unless the conflicting relationship from such relationship has been resolved in a manner acceptable to the Procuring Entity
- 3.4 A tenderer shall not be involved in process and execution of the Contract in a fraudulent practice. A tenderer that is proven to have been involved in any of these practices shall be automatically disqualified
- 3.5 A Tenderer (either individually or as a JV member) shall not participate in more than one Tender, except for permitted alternative tenders. This includes participation as a subcontractor in other Tenders. Such participation shall result in the disqualification of all Tenders in which the firm is involved. Members of a joint venture may not also make an individual tender, be a sub-contractor in a separate tender or be part of a Tender for the purposes of the same Tender. A firm that is not a tenderer or a JV member may participate as a subcontractor in more than one tender.
- 3.6 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT3.9. A firm that is not a tenderer or a JV member may be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents.
- 3.7 A Tenderer that has been debarred from participating in public procurement shall be ineligible to tender on any contract. The list of debarred firms and individuals is available from the website of BPPRA-consultants for any part of the Contract including related Services.
- 3.8 A Tenderer that is a state-owned enterprise or a public institution in Kenya may be eligible to tender and be awarded Contract(s) only if it is determined by the Procuring Entity to meet the following conditions,
  - i) if it is a legal public entity of Government and/or public administration;
  - ii) financially autonomous and not receiving any significant subsidies or budget support from any public entity or Government; and
  - (iii) operating under commercial law and vested with legal rights and liabilities similar to any commercial enterprise to enable it to compete with firms in the private sector on an equal basis.
- 3.9 Firms and individuals shall be ineligible if their countries of origin
  - (a) As a matter of law or official regulations, Kenya prohibits commercial relations with that country;
  - (b) by act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person, or entity in that country.

- A tenderer shall provide such documentary evidence of eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.
- 3.10 Foreign tenderers are required to source at least forty (40%) percent of their contract inputs (in supplies, local sub-contracts and labor) from citizen suppliers and contractors. To this end, a foreign tenderer shall provide in its tender documentary evidence that this requirement is met. Foreign tenderers not meeting this criterion will be automatically disqualified. Information required to enable the Procuring Entity determine if this condition is met shall be provided for this purpose in “SECTION II - EVALUATION AND QUALIFICATION CRITERIA, foreign firms or individuals more than 10 percent of the contract price, excluding provisional sums. JVs are considered as foreign tenderers if the individual member firms registered in Kenya have less 51 percent ownership by nationals of Kenya. The JV shall not subcontract to foreign firms more than 10 percent of the contract price, excluding provisional sums.
- 3.11 Pursuant to the eligibility requirements of ITT 3.10, a tender is considered a foreign tenderer, If it is registered in Kenya and has less than 51 percent ownership by nationals of Kenya and if it does not subcontract to foreign firms or individuals more than 10 percent of the contract price, excluding provisional sums. JVs are considered as foreign tenderers if the individual member firms registered in Kenya have less 51 percent ownership by nationals of Kenya. The JV shall not subcontract to foreign firms more than 10 percent of the contract price, excluding provisional sums.
- 3.12 The National Construction Authority Act of Kenya requires that all local and foreign contractors be registered with the National Construction Authority and be issued with a Registration Certificate before they can undertake any construction works in Kenya. Registration shall not be a condition for tender, but it shall be a condition of contract award and signature. A selected tenderer shall be given opportunity to register before the Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for tender, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority may be accessed from the website [www.nca.go.ke](http://www.nca.go.ke).
- 3.13 A Kenyan tenderer shall be eligible to tender if it provides evidence of having fulfilled his/her tax obligations by producing valid tax compliance certificate or tax exemption certificate issued by the Kenya Revenue Authority. Application for exemption from the Competition Authority may be accessed from the website [www.cak.go.ke](http://www.cak.go.ke).
- 4.0 Kenya may be accessed from the website [www.cak.go.ke](http://www.cak.go.ke).
- 4.1 Goods, equipment and services to be supplied under the Contract may have their origin in any country that is not ineligible under ITT 3.9. At the Procuring Entity's request, Tenderers may be required to provide evidence of the origin of Goods, equipment and services.
- 4.2 Any goods, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement.
- 5.0 Tenderer's responsibilities
- 5.1 The tenderer shall bear all costs associated with the preparation and submission of his/her tender, and the Procuring Entity will in no case be responsible or liable for those costs.
- 5.2 The tenderer, at the tenderer's own responsibility and risk, is encouraged to visit and examine and inspect the Site of the Works and its surroundings and obtain all information that may be necessary for preparing the tender and entering into a contract for construction of the Works. The costs of visiting the Site shall be the tenderer's own expense.
- 5.3 The Tenderer and any of its personnel or agents will be granted permission by the Procuring Entity upon its premises and lands for the purpose of such visit. The Tenderer shall indemnify the Procuring Entity again stall liability arising from death or personal injury, loss of or damage to property, and any other losses and expenses incurred as a result of the examination and inspection.

- 5.4 The tenderer shall provide in the Form of Tender and Qualification Information, a preliminary description of the proposed work method and schedule, including charts, as necessary or required.
- B. CONTENTS OF TENDER DOCUMENTS
- 6.0 Sections of Tender Document
- 6.1 The tender document consists of Parts 1, 2, and 3, which includes all the sections specified below, and which should be read in conjunction with any Addenda issued in accordance with ITT 10.
- PART 1: Tendering Procedures  
 Section I – Instructions to Tenderers  
 Section II – Tender Data Sheet (TDS)  
 Section III- Evaluation and Qualification  
 Criteria Section IV – Tendering Forms
- PART 2: Works' Requirements  
 Section V - Bills of Quantities  
 Section VI - Specifications  
 Section VII - Drawings
- PART 3: Conditions of Contract and Contract Forms  
 Section VIII - General Conditions (GCC)  
 Section IX - Special Conditions of Contract  
 Section X- Contract Forms
- 6.2 The Invitation to Tender Notice issued by the Procuring Entity is not part of the Contract documents. Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of the Tender document, responses to requests for clarification, the minutes of a pre-arranged site visit and those of the Tenderer's meeting (if any), and Addenda, Instructions, Form documents, and specifications with the Tender Documents and traditional documents tenderable directly from the Procuring Entity, shall prevail.
- 6.3 Confirmation of Tender Document, Site Visit, Pre-tender Meeting
- 7.0
- 7.1 A Tenderer requiring any clarification of the Tender Document shall contact the Procuring Entity in writing at the Procuring Entity's address specified in the TDS or raise its enquiries during the pre-Tender meeting if provided for in accordance with ITT 7.2. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the TDS prior to the deadline for submission of tenders. The Procuring Entity shall forward copies of its response to all tenderers who have acquired the Tender documents in accordance with ITT 7.4, including a description of the
- 7.2 The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine and publish the required contracts and obtain all information that may be necessary for preparing a tender. The essential elements of the Tender Documents, the Procuring Entity shall amend the Tender Documents following the pre-arranged Site visit and or a pre-tender meeting will be held, when and where. The Tenderer's representative is invited to attend a pre-arranged site visit and a pre-tender meeting, as the case may be. The purpose of the site visit and the pre-tender meeting will be to clarify issues and to answer questions
- 7.3 Minutes of a pre-arranged site visit and those of the pre-tender meeting, if applicable, including the matter that may be raised at that stage
- 7.4

will be transmitted promptly to all Tenderers who have acquired the Tender Documents. Minutes shall not identify the source of the questions asked.

- 7.5 The Procuring Entity shall also promptly publish anonymized (no names) Minutes of the pre-arranged site visit and those of the pre-tender meeting at the web page identified in the TDS. Any modification to the Tender Documents through the issuance of necessary Tender amendments or the Non-attendance at this pre-arranged site visit and the pre-tender meeting will not be a cause for disqualification of a Tenderer shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT 22.2.
- 8.0 Amendment of Tender Documents
- 8.1 At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the Tender Documents by issuing addenda.
- 8.2 Any addendum issued shall be part of the Tender Documents and shall be communicated in writing to all who have obtained the Tender Documents from the Procuring Entity. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's website and include it into account in preparing their Tenders, the Procuring Entity should extend the dead line for the submission of Tenders, pursuant to ITT 22.2.

### C. PREPARATION OF TENDERS

#### 9. Cost of Tendering

The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Procuring Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the

#### 10.0 Language of Tender

The Tender, as well as all correspondence and documents relating to the tender exchanged by the tenderer and the Procuring Entity, shall be written in the English Language. Supporting documents and printed literature that are part of the Tender may be in another language provided they are accompanied by an accurate and

- 11.0 Detailed translations of the relevant passages into the English Language, in which case, for purposes of
- 11.1 The Tender shall be the Tender, such translation shall govern. following:

- a) Form of Tender prepared in accordance with ITT 13;
- b) Schedules including priced Bill of Quantities, completed in accordance with ITT 12 and ITT 14;
- c) Tender Security or Tender-Securing Declaration, in accordance with ITT 19.1;
- d) Authorization, written commitment authorizing the signatory of the Tender to commit the Tenderer in accordance with ITT 20.3;
- f) Qualifications: documentary evidence in accordance with ITT 17 establishing the Tenderer's
- g) Uniformity: a technical proposal in accordance with ITT 16;
- h) Any other document required in the TDS.

- 11.2 In addition to the requirements under ITT 11.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful Tender shall be signed by all members and submitted with the Tender, together with a copy of the proposed JV Agreement. Change of membership and conditions of the JV prior to contract signature will render the tenderer liable for disqualification.

## 12.0 Form of Tender and Schedules

- 12.1 The Form of Tender and Schedules, including the Bill of Quantities, shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITT 20.3. All blank spaces shall be filled in with the information requested. The Tenderer shall chronologically serialize all pages of the tender documents.
- 12.2 The Tenderer shall furnish in the Form of Tender information on commissions and gratuities, if any, paid to agents or any other party relating to this Tender.
13. Alternative Tenders
- 13.1 Unless otherwise specified in the TDS, alternative Tenders shall not be considered.
- 13.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the TDS, and the method of evaluating different alternative times for completion will be described in Section III.
- 13.3 Except as provided in the TDS, Tenderers wishing to offer technical alternatives to the requirements of the Tender Documents must first price the Procuring Entity's design as described in the Tender Documents and shall further provide all information necessary for a complete evaluation of the alternative by the Procuring Entity, including drawings, design calculations, technical specifications, breakdown of prices, and proposed prices.
- 13.4 Where specified in the TDS, Tenderers are permitted to submit technical alternatives, if any, for the specified parts of the Works. The Tenderer shall provide details of the technical alternatives, including drawings, design calculations, technical specifications, breakdown of prices, and proposed prices, in accordance with the TDS. The Procuring Entity shall be the sole authority for the consideration and description of the alternatives.
- 14.0 Tender Prices and Discounts Requirements.
- 14.1 The prices and discounts (including any price reduction) quoted by the Tenderer in the Form of Tender and in the Bill of Quantities shall conform to the requirements specified below.
- 14.2 The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Tenderer shall be deemed covered by the rates for other items in the Bill of Quantities and will not be paid for separately by the Procuring Entity. An item not listed in the priced Bill of Quantities shall be assumed to be not included in the Tender, and provided that the Tenderer is permitted to substantially increase the price of an item, standing this with ITT 12.1, shall be the total price of the item, by substantially discounts offered.
- 14.3 The Tenderer shall quote any discounts and the methodology for their application in the Form of Tender, which will be used for price comparison.
- 14.4 It will be specified in the TDS if the rates and prices quoted by the Tenderer are or are not subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract, except in cases where the contract is subject to fluctuations and adjustments, not fixed price. In such a case, the Tenderer shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Data and the Procuring Entity may require the Tenderer to justify its proposed indices and weightings.
- 14.6 Tenderers are being invited for individual lots (contracts) or for any combination of lots (packages). Tenderers wishing to offer discounts for the award of more than one Contract shall specify in their price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITT 14.4, provided the Tenders for all lots (contracts) are opened at the same time.

- 147 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 30 days prior to the deadline for submission of Tenders, shall be included in the rates and prices and the total Tender Price submitted by the Tenderer.
- 150 ~~Currencies of Tender and Payment~~
- 151 The currency(ies) of the Tender and the currency(ies) of payments shall be the same
- 152 Tenderers shall quote entirely in Kenya Shillings. The unit rates and the prices shall be quoted by the Tenderer
- a) ~~The Bidder~~ ~~Quantities~~ ~~inputs to the Works~~ ~~supplied from~~ other currencies for inputs to the Works supplied from outside Kenya (referred to as “the foreign currency requirements”) shall (if so allowed in the TDS) indicate
- b) ~~The rate~~ of exchange to be used by the Tenderer in arriving at the local currency equivalent and the Tenderer for the payment of such foreign currency requirements, limited to no more than two percentage(s) mentioned in (a) above shall be specified by the Tenderer in the Appendix to ~~Tenders and~~
- 153 shall be based on the exchange rate provided by the Central Bank of Kenya on the date 30 days prior to the actual date of tender opening. Such exchange rate shall apply for all foreign payments under the Contract.
- Tenderers may be required by the Procuring Entity to justify, to the Procuring Entity's satisfaction,
- 16.0 ~~their local~~ Documents Comprising the Technical Proposal and foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices
- The Tenderer shall furnish a technical proposal including a statement of work methods, equipment, personnel, schedule, and any other information as stipulated in Section IV, Tender Forms, insufficient detail to demonstrate a detailed break down of the foreign currency requirements shall be provided by Tenderers.
- 170 ~~The adequacy of the Tenderer's proposal to meet the work's requirements and the completion time.~~ Documents Establishing the Eligibility and Qualification Criteria of the Tenderer
- 171 Tenderers shall complete the Form of Tender, included in Section IV, Tender Forms, to establish Tenderer's
- 172 eligibility in accordance with ITT 4. In accordance with Section III, Evaluation and Qualification Criteria, to establish its qualifications to perform
- 173 the Contract the Tenderer shall provide the information requested in the corresponding information sheets, included in Section IV, Tender Forms.
- If a margin of preference applies as specified in accordance with ITT 33.1, national tenderers, individually or
- 174 in joint ventures, applying for eligibility for national preference shall supply all information required to satisfy the criteria for eligibility specified in accordance with ITT 33.1.
- Tenderers shall be asked to provide, as part of the data for qualification, such information, including details of
- ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a particular contractor or group of contractors qualifies for a margin of preference. Further
- 175 the information will enable the Procuring Entity identify any actual or potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between tenderers, and thereby help to prevent any corrupt influence in relation to the procurement process or contract management.
- 176 work and receive public sector funds. Thus, confidentiality will not be accepted by the Procuring Entity as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership and control which information on any changes to the information was provided by the tenderer under ITT 6.4. The obligations to require this information shall continue for the
- 177 duration of the procurement process and contract performance and after completion of the contract, if any information provided by the tenderer pursuant to these requirements must be complete, current and accurate to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.

- as at the date of provision to the Procuring Entity. In submitting the information required pursuant to these requirements, the Tenderer shall warrant that the information submitted is complete, current and accurate as at
- 178 If a tenderer fails to submit the information required by these requirements, its tender will be rejected.
- Similarly, if the Procuring Entity is unable, after taking reasonable steps, to verify to a reasonable degree the
- 179 If information submitted by a tenderer pursuant to these requirements, in its own or through the Procuring Entity (whether through its own enquiries, through notification by the public or otherwise), shows any conflict of interest which could materially and improperly benefit the tenderer in relation to the procurement or contract management process, then:
- i) If the procurement process is still ongoing, the tenderer will be disqualified from the procurement process;
  - ii) If the contract has been awarded to that tenderer, the contract award will be set aside pending the outcome of (iii);
  - iii) the tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other person have committed any criminal offence.
- 17.10 If a tenderer submits information pursuant to these requirements that is incomplete, inaccurate or out-of-date, attempts to obstruct the verification process, then the consequences of ITT 17.8 will ensue unless the tenderer can show to the reasonable satisfaction of the Procuring Entity that any such act was not material, or was due
- 18.0 Origin of Validity of Tenders is not attributable to the intentional act, negligence or recklessness of the tenderer.
- 18.1. Tenders shall remain valid for the Tender Validity period specified in the TDS. The Tender Validity period starts from the date fixed for the Tender submission deadline (as prescribed by the Procuring Entity in accordance
- 18.2 In the event of a tenderer's request to extend the period of validity of their Tenders, the Procuring Entity shall be responsive.
- request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 19, it shall also be extended for thirty (30) days beyond the deadline of the extended validity period. A Tenderer may refuse the request without
- 190 Tender Security
- its Tender security. A Tenderer granting the request shall not be required or permitted to modify its Tender.
- 191 The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender Security as specified in the TDS, in original form and, in the case of a Tender Security, in the amount and currency
- 192 If a Tender Security or Tender-Securing Declaration is requested, the Tender Security shall be in the form of the following forms at the Tenderer's option:
- ii) a bank guarantee;
  - iii) a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority
  - (iv) a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya, from a reputable source, and an eligible country.
- 193 If an unconditional bank guarantee is issued by a bank located outside Kenya, the issuing bank shall have a correspondent bank located in Kenya to make it enforceable. The Tender Security shall be valid for thirty (30) days beyond the original validity period of the Tender, or beyond any period of extension if
- 194 Requested Tender Security or Tender-Securing Declaration is specified pursuant to ITT 19.1, any Tender not accompanied by a substantially responsive Tender Security or Tender-Securing Declaration shall be rejected
- 195 If a Tender-Securing Declaration is specified pursuant to ITT 19.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's signing the Contract and furnishing the Performance Security and any other documents required in the TDS. The Procuring Entity shall also promptly

- return the tender security to the tenderers where the procurement proceedings are terminated, all tenders were determined non-responsive or a bidder declines to extend tender validity period.
- 19.6 The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required Performance Security, and any other documents
- 19.7 ~~The Tender Security may be forfeited or the Tender-Securing Declaration executed on the~~  
 a) If a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer on the  
 b) ~~Form of Tender or any extension~~ there to provided by the Tenderer; or  
 i) sign the Contract in accordance with ITT 47;  
 ii) ~~Furnish a Performance Security and if required in the TDS, and any other documents required in the TDS.~~
- 19.8 Where tender securing declaration is executed, the Procuring Entity shall recommend to the PPRA to debar the Tenderer from participating in public procurement as provided in the law.
- 19.9 The Tender Security or the Tender-Securing Declaration of a JV shall be in the name of the JV that submits the Tender. If the JV has not been legally constituted into a legally enforceable JV at the time of tendering, the Tender Security or the Tender-Securing Declaration shall be in the names of all future members as
- 19.10 ~~A tenderer shall not issue a tender security to guarantee the letter of intent referred to in ITT 4.1 and ITT 11.2.~~
- 20.0 Format and Signing of Tender

- 20.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 11 and clearly mark it "ORIGINAL." Alternative Tenders, if permitted in accordance with ITT 13, shall be clearly marked "ALTERNATIVE." In addition, the Tenderer shall submit copies of the Tender, in the number specified
- 20.2 ~~The TDS shall clearly mark "CONFIDENTIAL" in the event of any disclosure between the confidential nature of the original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the TDS and shall be attached to the Tender. The name and position held by each person signing the Tender shall be signed by hand with the signature. All pages of the Tender shall be signed by hand with the signature. All pages of the Tender shall be signed by hand with the signature. All pages of the Tender shall be signed by hand with the signature.~~  
 business, the original shall include proprietary information, trade secrets, or commercial or financially sensitive information and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the TDS and shall be attached to the Tender. The name and position held by each person signing the Tender shall be signed by hand with the signature. All pages of the Tender shall be signed by hand with the signature. All pages of the Tender shall be signed by hand with the signature.
- 20.3 ~~The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the TDS and shall be attached to the Tender. The name and position held by each person signing the Tender shall be signed by hand with the signature. All pages of the Tender shall be signed by hand with the signature. All pages of the Tender shall be signed by hand with the signature.~~  
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- 20.4 ~~The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the TDS and shall be attached to the Tender. The name and position held by each person signing the Tender shall be signed by hand with the signature. All pages of the Tender shall be signed by hand with the signature. All pages of the Tender shall be signed by hand with the signature.~~  
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- 20.5 ~~Legally authorized representatives' overwriting shall be valid only if they are signed or initialed by the person signing the Tender.~~  
 Legally authorized representatives' overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

D. SUBMISSION AND OPENING OF TENDERS

- 21.0 Sealing and Marking of Tenders
- 21.1 The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to the Procuring Entity and  
 a) in an envelope or package or container marked "ORIGINAL" all documents comprising the Tender, as  
 b) in a envelope or package or container marked "COPIES", all required copies of the  
 c) Tender; and  
 if alternative Tenders are permitted in accordance with ITT 13, and if relevant.

- i) in an envelope or package or container marked “ORIGINAL –ALTERNATIVE TENDER”, the
- ii) alternative Tender, and in the envelope or package or container marked “COPIES- ALTERNATIVE TENDER”, all required copies of the alternative Tender.

The inner envelopes or packages or containers shall bear the name and address of the Procuring

- b) Entity,
- c) bear the name and address of the Tenderer; and bear the name and Reference number of the

212 If an envelope or package or container is not sealed and marked as required, the Procuring Entity will assume no responsibility for the misplacement or premature opening of the Tender. Tenders misplaced or opened

220 ~~Deadline for Submission of Tenders~~

221 Tenders must be received by the Procuring Entity at the address specified in the TDS and no later than the date and time also specified in the TDS. When so specified in the TDS, tenderers shall have the option of submitting their Tenders electronically. Tenderers submitting Tenders electronically shall follow the electronic

222 ~~The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by submitting the procedures specified in the TDS.~~  
Tender Documents in accordance with ITT 8, in which case all rights and obligations of the Procuring Entity

23.0 ~~and Tenders~~ previously subject to the deadline shall there after be subject to the deadline as extended.

The Procuring Entity shall not consider any Tender that arrives after the deadline for submission of tenders, in accordance with ITT 22. Any Tender received by the Procuring Entity after the deadline for submission of

240 ~~Withdrawal, Substitution, Late Modification and Return of Tenders~~ opened to the Tenderer.

241 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance

a) with ITT 20.3 (except that withdrawal notices do not require copies). The corresponding notices prepared and submitted in accordance with ITT 20 and ITT 21 (except that withdrawal notices substitution or modification of the Tender must accompany the respective written notice. All notices must be: **“WITHDRAWAL”**

b) received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT 22.

242 Tenders requested to be withdrawn in accordance with ITT 24.1 shall be returned unopened to the Tenderers.

243 No Tender may be withdrawn, substituted, or modified 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 Form of Tender or

25. ~~Tender Opening~~ any extension thereof.

251 Except in the cases specified in ITT 23 and ITT 24.2, the Procuring Entity shall publicly open and read out all Tenders received by the deadline, at the date, time and place specified in the TDS, in the presence of Tenderers' designated representatives who chooses to attend. Any specific electronic Tender opening procedures

252 ~~For~~ envelopes marked “WITHDRAWAL” shall be opened and read out and the envelopes if electronic Tendering is permitted in accordance with ITT 22.1, shall be as specified in the TDS. corresponding Tender shall not be opened but returned to the Tenderer. No Tender withdrawal shall be

253 ~~Withdrawal~~ envelopes marked “SUBSTITUTION” shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the

- Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening.
- 254 Next, envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid
- 255 authorization to request the modification and is read out at Tender opening; the name of the Tenderer and whether there is a modification; the total Tender Price, per lot (contract) if applicable, including any discounts and
- 256 alternative Tenders; the presence or absence of a Tender Security or Tender-Securing Declaration, if applicable; and other details as the Procuring Entity may consider appropriate. Only the Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further for evaluation. The Form of Tender and pages of the Bill of Quantities (to be decided on by
- 257 the tender opening committee) are to be initialed by the members of the tender opening committee. At the Tender Opening, the Procuring Entity shall neither discuss the merits of any Tender nor reject any Tender.
- 258 (except for late Tenders, in accordance with ITT 23.1). The Procuring Entity shall prepare minutes of the Tender Opening that shall include, as a minimum:
- a) the name of the Tenderer and whether there is a withdrawal, substitution, or
  - b) the Tender Price, per lot (contract) if applicable, including any discounts;
  - c) any alternative Tenders;
  - d) the presence or absence of a Tender Security, if new as required;
  - e) number of pages of each tender document submitted.
- 259 The Tenderers' representatives who are present shall be requested to sign the minutes. The omission of a Tenderer's signature on the minutes shall not invalidate the contents and effect of the minutes. A copy of the
- E. ~~TENDER OPENING AND COMPARISON OF TENDERS~~
26. Confidentiality
- 26.1 Information relating to the evaluation of Tenders and recommendation of contract award shall not be disclosed to Tenderers or any other persons not officially concerned with the Tender process until information on
- 262 Intention to Award for the Contract is transmitted to all Procuring Entity, or the evaluation of the Tenders or Contract award decisions may result in the rejection of its tender.
- 263 Notwithstanding ITT 26.2, from the time of tender opening to the time of contract award, if a tenderer wishes
- 270 to contact the Procuring Entity on any matter related to the tendering process, it shall do so in writing.
- 27.1 Clarification of Tenders
- 27.1 To assist in the examination, evaluation, and comparison of the tenders, and qualification of the tenderers, the Procuring Entity may, at its discretion, ask any tenderer for a clarification of its tender, given a reasonable time for a response. Any clarification submitted by a tenderer that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the response shall be in
- 272 writing. No changes, including any clarifications, in its tender may be made, in the application or submitted to the Procuring Entity, shall be requested for clarification, permitted, except to correct the correction of arithmetic errors discovered
- 28.0 Deviations, Reservations, and Omissions
- 28.1 During the evaluation of tenders, the following definitions apply:
- a) "Deviation" is a departure from the requirements specified in the tender document;
  - b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the



### 33.0 Margin of Preference and Reservations

33.1 A margin of preference may be allowed only when the contract is open to international competitive tendering where foreign contractors are expected to participate in the tendering process and where the contract exceeds the value/threshold specified in the Regulations.

33.2 A margin of preference shall not be allowed unless it is specified so in the TDS.

33.3 Contracts procured on basis of international competitive tendering shall not be subject to reservations exclusively for specific groups as provided in ITT

33.4.

33.4 Where it is intended to reserve a contract to a specific group of businesses (these groups are Small and Medium

Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case may be), and who are appropriately registered as such by the authority to be specified in the TDS, a

procuring entity shall ensure that the invitation to tender specifically indicates that only businesses or firms

34.0 belonging to the specified group are eligible to tender. No tender shall be reserved to more than one group. If

34.1 Unless otherwise stated in the TDS, the Procuring Entity does not intend to execute any specific element of

the Works by subcontractors selected/nominated by the Procuring Entity. In case the Procuring Entity

nominates a subcontractor, the subcontract agreement shall be signed by the Subcontractor and the Procuring

34.2 Entity. The Tenderer may propose sub-contracting up to the percentage of total value of contracts or the volume of works

as specified in the TDS. Subcontractors proposed by the Tenderer shall be fully qualified for their

34.3 parts of the Works. Domestic subcontractor's qualifications shall not be used by the Tenderer to qualify for the Works

unless their specialized parts of the Works were previously designated so by the Procuring Entity in the TDS a scan

be met by subcontractors referred to hereafter as 'Specialized Subcontractors', in which case, the

35. Evaluation of Tenders

35.1 Specialized Subcontractors proposed by the Tenderer may be added to the qualifications of the Tenderer. The Procuring Entity shall use the criteria and methodologies listed in this ITT and Section III,

Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted. By applying the

35.2 criteria and methodologies the Procuring Entity shall determine the Lowest Evaluated Tender in accordance with ITT

35.2 To evaluate a Tender, the Procuring Entity shall consider the following price adjustment in accordance with ITT 31.1 (iii); excluding provisional sums and

a) contingencies, if any, but including Daywork items, where priced competitively

b) price adjustment due to discounts offered in accordance with ITT 14.4

c) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT 32.

d) price adjustment due to quantifiable non-material non-conformities in accordance with ITT 30.3 and

e) any additional evaluation factors specified in the TDS and Section III, Evaluation and Qualification Criteria.

35.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period

of execution of the Contract, shall not be considered in Tender evaluation.

35.4 Where the tender involves multiple lots or contracts, the tenderer will be allowed to tender for one or more lots

(contracts). Each lot or contract will be evaluated in accordance with ITT 35.2. The methodology to determine

the lowest evaluated tenderer or tenderers base done lot (contract) or based on a combination of lots (contracts),

will be specified in Section III, Evaluation and Qualification Criteria. In the case of multiple lots or contracts, tenderer will be required to prepare the Eligibility and Qualification Criteria Form for each lot

## 36.0 Comparison of tenders

The Procuring Entity shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 35.2 to determine the Tender that has the lowest evaluated cost.

## 37.0 Abnormally low tenders and abnormally high tenders

### Abnormally Low Tenders

- 37.1 An Abnormally Low Tender is one where the Tender price, in combination with other elements of the Tender, appears so low that it raises material concerns as to the capability of the Tenderer in regards to the Tenderer's ability to perform the Contract for the offered Tender Price or that genuine competition between Tenderers is compromised.
- 37.2 In the event of identification of a potentially Abnormally Low Tender, the Procuring Entity shall seek clarifications from the Tenderer, including detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and a re-evaluation of the price analyses, in the event that the Procuring Entity determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, the Procuring Entity shall reject the tender.

### Abnormally high tenders

- 37.4 An abnormally high tender price is one where the tender price, in combination with other constituent elements of the Tender, appears unreasonably too high to the extent that the Procuring Entity is concerned that it (the Procuring Entity) may not be getting value for money or it may be paying too high a price for the contract.
- 37.5 In the event of an abnormally high price, the Procuring Entity shall make a survey of the market prices, check for the estimated cost of the contract is correct and review the Tender Documents to check if the specifications, scope of work and conditions of contract are contributory to the abnormally high tenders. The Procuring Entity may also seek written clarification from the tenderer on the reason for the high tender price. The Procuring Entity may accept or not accept the tender depending on the Procuring Entity's budget considerations. If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, the Procuring Entity shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work and conditions of contract, as the case may be.
- 37.6 If the Procuring Entity determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (often due to collusion, corruption or other manipulations), the Procuring Entity shall reject all Tenders and shall institute or cause competent Government Agencies to investigate on the cause of the compromise, before retendering.
- 38.0 In addition to and/ or front-loaded tenders
- 38.1 If in the Procuring Entity's opinion, the Tender that is evaluated as the lowest evaluated price is seriously unbalanced and/or frontloaded, the Procuring Entity may require the Tenderer to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the tender prices with the evaluation of the information and detailed price analyses presented by the Tenderer, the scope of works, proposed methodology, schedule and any other requirements of the Tender document. The Procuring Entity may as appropriate:
- require that the total amount of the Performance Security be increased at the expense of the Tenderer to a level not exceeding a 30% of the Contract Price;
  - agree on a payment mode that eliminates the inherent risk of the Procuring Entity paying too much for undelivered works;
  - reject the Tender;

39.0 Qualifications of the tenderer

39.1 The Procuring Entity shall determine to its satisfaction whether the eligible Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender, meets the qualifying criteria specified

39.2 ~~The Section III, Evaluation and Qualification Criteria~~ In Section III, Evaluation and Qualification Criteria, the Procuring Entity shall determine the qualification of the Tenderer, pursuant to ITT 17. The determination shall not take into consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates,

subcontractors (other than Specialized Sub-contractors if permitted in the Tender document), or any affiliate firm(s) different from the Tenderer.

39.3 A negative determination shall be a prerequisite for award of the Contract to the Tenderer. A determination shall result in disqualification of the Tender, in which event the Procuring Entity shall proceed to the Tenderer who offers a substantially responsive Tender with the next lowest evaluated price to the lowest evaluated tender

40.0 ~~lowest~~ Having compared the evaluated prices of Tenders, the Procuring Entity shall determine the Lowest Evaluated Tender. The Lowest Evaluated Tender is the Tender of the Tenderer that meets the Qualification Criteria and is most responsive to the Tender document; whose Tender has been determined to be:

a) the lowest evaluated price.

41.0 Procuring entity's right to accept any tender, and to reject any or all tenders.

The Procuring Entity reserves the right to accept or reject any Tender and to annul the Tender process and reject

all Tenders at any time prior to Contract Award, without there by incurring any liability to Tenderers. In case of

annulment, all Tenders submitted and specifically, Tender securities, shall be promptly returned

F. AWARD OF CONTRACT

Tenderers.

42.0 Award criteria

The Procuring Entity shall award the Contract to the successful tenderer whose tender has been determined to be the Lowest Evaluated Tender.

43.0 Notice of Intention to Enter into a Contract/Notification of Award

Upon award of the contract and Prior to the expiry of the Tender Validity Period the Procuring Entity shall issue

a Notification of Intention to Enter into a Contract/Notification of award to all tenderers which shall contain the name and address of the Tenderer submitting the successful

tender, at a minimum, the following information:

b) the Contract price of the successful tender;

c) a statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was

unsuccessful, unless the price information in (c) above already reveals the reason;

d) the expiry date of the Standstill Period;

e) and instruction on how to request a debriefing and/ or submit a complaint during the stand still period;

44.0 Stand still Period

44.1 The Contract shall not be signed earlier than the expiry of a Standstill Period of 14 days to allow any dissatisfied tender to launch a complaint. Where only one Tender is submitted, the Standstill Period shall not apply.

44.2 Where a Standstill Period applies, it shall commence when the Procuring Entity has transmitted to each Tenderer the Notification of Intention to Enter into a Contract with the successful Tenderer.

45.0 Debriefing by The Procuring Entity

45.1 On receipt of the Procuring Entity's Notification of Intention to Enter into a Contract referred to in ITT 43, an unsuccessful tenderer may make a written request to the Procuring Entity for a debriefing on specific issues or concerns regarding their tender. The Procuring Entity shall provide the debriefing within five days of receipt of the request. The Tenderer shall bear the costs of attending such a debriefing meeting.

46.0 Letter of Award

Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 42.1, upon addressing a complaint that has been filed with in the Standstill Period, the Procuring Entity shall transmit the Letter of Award to the successful Tenderer. The letter of award shall request the successful

47.0 ~~Signing of Contract~~ furnish the Performance Security within 21 days of the date of the letter.

47.1 Upon the expiry of the fourteen days of the Notification of Intention to enter in to contract and upon the parties meeting their respective statutory requirements, the Procuring Entity shall send the successful Tenderer the

47.2 ~~Within 14 days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return to the Procuring Entity.~~

47.3 The written contract shall be entered into within the period specified in the notification of award and before expiry of the tender validity period.

48.0 Performance Security

48.1 Within twenty-one (21) days of the receipt of the Letter of Award from the Procuring Entity, the successful Tenderer shall furnish the Performance Security and, any other documents required in the TDS, in accordance with the General Conditions of Contract, subject to ITT 38.2 (b), using the Performance Security and other

48.2 ~~Failure of the successful Tenderer to submit the above-mentioned Performance Security and other documents required in the TDS or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security. In that event the Procuring Entity may award the Contract to the~~ Foreign Tenderer providing a bank guarantee shall have a correspondent financial institution located in Kenya, as required in the TDS or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security. In that event the Procuring Entity may award the Contract to the

48.3 ~~Performance security shall not be required for contracts estimated to cost less than the amount specified in the Regulations.~~

49.0 Publication of Procurement Contract

Within fourteen days after signing the contract, the Procuring Entity shall publish the awarded contract at its notice boards and websites; and on the Website of the Authority. At the minimum, the notice shall contain the following information:

- b) name and reference number of the contract being awarded, a summary of its scope and the selection method used;
- c) the name of the successful Tenderer, the final total contract price, the contract duration;
- d) dates of signature, commencement and completion of contract;
- e) names of all Tenderers that submitted tenders, and their Tender prices as readout at Tender opening.

50.0 Procurement related Complaints and Administrative Review

50.1 The procedures for making Procurement-related Complaints are as specified in the TDS.

50.2 A request for administrative review shall be made in the form provided under contract forms.

Section II - Tender Data Sheet (TDS)

The following specific data shall complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT).

Whenever there is a conflict, the provisions herein shall prevail over those in ITT.

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
A. General	
ITT 1.1	<p>The name of the contract is __ Construction of Bodaboda Shed</p> <p>The reference number of the Contract is __ Negotiation No. _____</p> <p><del>The number and identification of lots (contracts) comprising this [contract]</del></p> <p>Lot 1- Name _____ N/a _____</p> <p>Lot 2- Name _____ N/a _____</p> <p>Lot... Name _____ N/a _____</p>
ITT 2.4	The information made available on competing firms is as follows:
ITT 2.4	The firms that provided consulting services for the contract being tendered for are:
ITT 3.1	Maximum number of members in the Joint Venture (JV) shall be: [insert a number]
B. Contents of Tender Document	
ITT 7.1	<p>(i) The Tenderer will submit any request for clarifications in writing at the Address _____</p> <p>to reach the Procuring Entity not later than _____</p> <p>(ii) The Procuring Entity shall publish its response at the website _____</p>
ITT 7.2	<p>(A) A pre-arranged pretender site visit [insert “shall” or “shall not”] take place at the following date, time and place:</p> <p>Date: _____</p> <p>Time: _____</p> <p>Place: _____</p> <p>(B) Pre-Tender meeting [insert “shall” or “shall not”] take place at the following date, time and place:</p> <p>Date: _____</p> <p>Time: _____</p> <p>Place: _____</p>
ITT 7.3	The Tenderer will submit any questions in writing, to reach the Procuring Entity not later than _____ before the meeting.
ITT 7.5	The Procuring Entity’s website where Minutes of the pre-Tender meeting and the pre-arranged pretender will be published is _____
ITT 9.1	For Clarification of Tender purposes, for obtaining further information and for purchasing tender documents, the Procuring Entity’s address is:

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	(1) Name of Procuring Entity Trade ,Energy and Industrialization (2) Physical address for hand Courier Delivery to an office or Tender Box (City, Building, <del>Street</del> Number and Room) ----- --- (3) Postal Address ----- (4) Insert name, telephone number and e-mail address of the officer to be contacted. --- -----
<b>C. Preparation of Tenders</b>	
ITT 11.1 (h)	The Tenderer shall submit the following additional documents in its Tender: [list any additional document not already listed in ITT 11.1 that must be submitted with the Tender. The list of
ITT 13.1	<del>additional documents, should include the following: ]</del> _____ [If alternative times for completion shall be considered, the methodology shall be defined in Section III, and Evaluation Criteria.]
ITT 13.2	Alternative times for completion [insert “shall be” or “shall not be”] [If alternative times for completion are permitted, the evaluation method will be as <del>specified in</del> Evaluation and Qualification Criteria.]
ITT 13.4	Alternative technical solutions shall be permitted for the following parts of the Works: _____ [insert parts of the Works]: [If alternative technical solutions are permitted, the evaluation method will be as <del>specified in</del> Evaluation and Qualification Criteria.]
ITT 14.5	The prices quoted by the Tenderer shall be: _____ [insert “subject to <del>adjustment</del> ”]
ITT 15.2 (a)	Foreign currency requirements allowed/not allowed.
ITT 18.1	The Tender validity period shall be _____ [insert a number of days that is a multiple of <del>seven</del> counting as of the deadline for Tender submission] days.
ITT 18.3	(a) The Number of days beyond the expiry of the initial tender validity period will be _____ days.  (b) The Tender price shall be adjusted by the following percentages of the tender price: (i) By _____ % of the local currency portion of the Contract price adjusted to reflect local inflation during the period of extension, and (ii) By _____ % the foreign currency portion of the Contract price adjusted to reflect the international inflation during the period of extension.
ITT 19.1	Tender shall provide a Tender-Securing Declaration or a Tender Security (select <del>The</del> type of Tender security shall be -----in the amount of Kenya shillings _____ (specify currency of Tender)
ITT 20.1	In addition to the original of the Tender, the number of copies _____ [insert number of is: copies]
ITT 20.3	The written confirmation of authorization to sign on behalf of the Tenderer shall <u>consist</u> of: insert the name and description of the documentation required to demonstrate the authority of the signatory to sign the Tender]

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
<b>D. Submission and Opening of Tenders</b>	
ITT 22.1	<p>(A) For <u>Tender submission purposes only</u>, the Procuring Entity’s address is:</p> <ol style="list-style-type: none"> <li>(1) Name of Procuring Entity Trade ,Energy and Industrialization</li> <li>(2) Postal Address (include name of Officer to be attentional)</li> <li>(3) Physical address for hand Courier Delivery to an office or Tender Box (City, Building, Street or Number and Room)</li> <li>(4) Date and time for submission of Tenders.....</li> </ol>
ITT 25.1	<p>(B) <del>The Tender opening shall take place at the time and</del> the address for Opening of Tenders provided below:</p> <ol style="list-style-type: none"> <li>(1) Name of Procuring Entity Trade ,Energy and Industrialization</li> <li>(2) Physical address for the location (Trade Boardroom next to county Assembly)</li> <li>(3) State date and time of tender opening at 12noon on 25/2/2026</li> </ol>
ITT 25.1	<p>If Tenderers are allowed to submit Tenders electronically, they shall follow the electronic tender submission procedures specified below [insert a description of the electronic Tender opening procedures]:</p> <hr/>
<b>E. Evaluation, and Comparison of Tenders</b>	
ITT 30.3	<p>The adjustment shall be based on the _____ [insert “average” or “highest”] price <del>if the</del> or component as quoted in other substantially responsive Tenders. If the price of the item or component cannot be derived from the price of other substantially responsive Tenders, the</p>
TT 32.1	<p><del>The currency that shall be used for Tender evaluation and comparison purposes only to</del> convert at the selling exchange rate all Tender prices expressed in various currencies into a single currency  <del>The source of exchange rate shall be the</del> The Central bank of Kenya (mean rate)  The date for the exchange rate shall be: the deadline date for Submission of the Tenders.  For comparison of Tenders, the Tender Price, corrected pursuant to ITT 31, shall first be broken down into the respective amounts payable in various currencies by using the selling exchange rates specified by the Procuring Entity and converted into the amounts in various currencies in which the Tender Price is payable (excluding Provisional Sums but including Daywork where priced competitively) to the single currency identified above at the selling rates established for similar transactions by the authority specified and, on the date, stipulated above.</p>

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 33.2	A margin of preference [insert either “shall” or “shall not”] [If a margin of preference applies, the application methodology shall be defined in Section III and Qualification Criteria.]
ITT 33.4	The invitation to tender is extended to the following group that qualify for Reservations _____  _____  (These groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case may be; describe precisely which
ITT 34.1	At this time, the Procuring Entity _____ [insert “intends” or “does not intend”] to
ITT 34.2	execute certain specific parts of the Works by subcontractors selected in advance. Contractor of the proposed subcontracting. Maximum percentage of subcontracting of total of work shall specify, in the Form of Tender, the activity (ies) or parts of the Works to be subcontracted along with complete details of the subcontractors and their qualification and experience.
ITT 34.3	[Indicate N/A if not applicable] The parts of the Works for which the Procuring Entity permits Tenderers to propose Specialized Subcontractors are designated as follows:  _____  For the above-designated parts of the Works that may require Specialized Subcontractors, the relevant qualifications of the proposed Specialized Subcontractors will be added to the qualifications of
ITT 35.2 (e)	Additional requirements apply. These are detailed in the evaluation criteria in Tender II, for the purpose of evaluation. Evaluation and Qualification Criteria.
ITT 48.1	Other documents required in addition to the Performance Security are _____
ITT 50.1	The procedures for making a Procurement-related Complaint are detailed in the “Notice of Intention to Award the Contract” herein and are also available from the PPRA Website <a href="mailto:Procurement@ppra.gov.pk">If a Tenderer wishes to make a Procurement-related Complaint</a> , the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email). By hand delivery: [insert full name of person receiving complaints]  Title/position: [insert title/position] Procuring Entity: [Trade, Energy and Industrialization]  Email address: [insert email address] In summary, a Procurement-related Complaint may challenge any of the following (among others): (i) the terms of the Tender Documents; and (ii) the Procuring Entity’s decision to award the contract.

SECTION III - EVALUATION AND QUALIFICATION CRITERIA

1.0 GENERAL PROVISIONS

1.1 This section contains the criteria that the Employer shall use to evaluate tender and qualify tenderers. No other

factors, methods or criteria shall be used other than specified in this tender document. The Tenderer shall

provide all the information requested in the forms included in Section IV, Tendering Forms. The

1.2 ~~When~~ a Tenderer is required to state a monetary amount, Tenderers should indicate the Kenya ~~Shilling~~ shall use the Standard Tender Evaluation Document for Goods and Works for

evaluating Tenders the rate of exchange determined as follows:  
a) For construction turnover or financial data required for each year - Exchange rate prevailing on the last

day of the respective calendar year (in which the amounts for that year is to be converted) was

b) ~~originally~~ value of single contract - Exchange rate prevailing on the date of the contract

(c) ~~established~~ Exchange rates shall be taken from the publicly available source identified in the ITT 14.3. Any

error in determining the exchange rates in the Tender may be corrected by the Procuring Entity.

1.3 EVALUATION AND CONTRACT AWARD CRITERIA

The Procuring Entity shall use the criteria and methodologies listed in this Section to evaluate tenders and arrive

at the Lowest Evaluated Tender. The tender that (i) meets the qualification criteria, (ii) has been determined to

be substantially responsive to the Tender Documents, and (iii) is determined to have the Lowest

2.0 ~~Preliminary~~ PRELIMINARY EXAMINATION FOR DETERMINATION OF

Tender price shall be selected for award of contract.

RESPONSIVENESS Preliminary examination for Determination of Responsiveness

The Procuring Entity will start by examining all tenders to ensure they meet in all respects the eligibility criteria

and other mandatory requirements in the ITT, and that the tender is complete in all aspects in meeting the

requirements provided for in the preliminary evaluation criteria outlined below. The Standard Tender

Evaluation Report Document for Goods and Works for evaluating Tenders provides very clear guide

to the Procuring Entity will provide the preliminary evaluation criteria. To facilitate, a template

available with clearly describes all information and lists that do not pass the Preliminary Examination to

will be considered non-responsive if the Tenderer not be considered further.

3.0 TENDER EVALUATION (ITT 35)

Price evaluation: in addition to the criteria listed in ITT 35.2 (a) – (d) the following criteria shall apply:

(i) Alternative Completion Times, if permitted under ITT 13.2, will be evaluated as follows:

(ii) Alternative Technical Solutions for specified parts of the Works, if permitted under ITT 13.4, will be evaluated as

(iii) Other Criteria, if permitted under ITT

35.2(j):.....

4.0 MULTIPLE CONTRACTS

4.1 Multiple contracts will be permitted in accordance with ITT 35.4. Tenderers are evaluated on basis of Lots and

a lowest evaluated tenderer identified for each Lot. The Procuring Entity will select one Option of the two

OPTIONs listed below for award of Contracts.

(i) If a tenderer wins only one Lot, the tenderer will be awarded a contract for that Lot, provided the tenderer meets the Eligibility and Qualification Criteria for that Lot.

- (ii) If a tenderer wins more than one Lot, the tender will be awarded a contract for all won Lots, provided the tenderer meets the aggregate Eligibility and Qualification Criteria for all the won Lots. The tenderer will be awarded only the combinations for which the tenderer qualifies and the others will be considered for

**OPTIONAL**

second lowest the tenderers.

The Procuring Entity will consider all possible combinations of won Lots [contract(s)] and determine the combination with the lowest evaluated price. Tenders will then be awarded to the Tenderer or Tenderers in the

combination provided the tenderer meets the aggregate Eligibility and Qualification Criteria for all

**5.0 ALTERNATIVE TENDERS (ITT 13.1)**

Lots.

Alternative Tenders (ITT 13.1)

An alternative if permitted under ITT 3.1, will be evaluated as follows:

The Procuring Entity shall consider Tenders offered for alternatives as specified in Part 2 - Works requirements.

Only the technical alternatives, if any, of the Tenderer with the Best Evaluated Tender conforming to the basic

**6.0 MARGIN OF PREFERENCE** shall be considered by the Procuring Entity.

- 6.1 If the TDS so specifies, the Procuring Entity will grant a margin of preference of fifteen percent (15%) to be loaded on evaluated prices of the foreign tenderers, where the percentage of share holding of Kenyan citizens is

- 6.2 Contractors shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the

- 6.3 Procuring Entity, a particular contractor reviewed by the Procuring Entity, responsive tenders shall be assessed to ascertain their percentage of shareholding of Kenyan citizens. Responsive tenders shall be classified into tenders offered by Kenyan Contractors and other Tenderers where Kenyan citizens hold the following group percent (51%).

- ii) Group B: tenders offered by foreign Contractors and other Tenderers where Kenyan citizens hold shares of less than fifty one percent (51%).

- 64 All evaluated tenders in each group shall, as a first evaluation step, be compared to determine the lowest tender, and the lowest evaluated tender in each group shall be further compared with each other. If, as a result of this comparison, a tender from Group A is the lowest, it shall be selected for the award of contract. If a tender from Group B is the lowest, an amount equal to the percentage indicated in Item 6.1 of the respective tender price, including unconditional discounts and excluding provisional sums and the cost of day works, if any, shall be

7. ~~Based on the evaluated price offered (Item 39) tender from Group B. All tenders shall then be compared using the tender was subject to post-qualification, the contract shall be awarded to the lowest evaluated tender, subject to confirmation of pre-qualification data, if so~~  
 b) If the tender was not subject to post-qualification, the tender that has been determined to be the lowest Group A is still the lowest tender, it shall be selected for award. If not, the lowest evaluated tender from Group B based on the first evaluation price shall be selected.

- ii) The tenderer shall demonstrate that it has access to, or has available, liquid assets, \_\_\_\_\_ conditions \_\_\_\_\_  
 real assets, lines of credit, and other financial means (independent of any contractual \_\_\_\_\_  
 advance payment) sufficient to meet the construction cash flow of Kenya Shillings \_\_\_\_\_ [insert amount],  
 equivalent calculated as total certified payments received for contracts in progress and/or completed \_\_\_\_\_  
 within the last \_\_\_\_\_ [insert of year] years.

iii) At least \_\_\_\_\_ (insert number) of contract(s) of a similar nature within Kenya, or the East African Community, that have been satisfactorily and substantially executed, or as a prime contractor, or joint venture member or sub-contractor each of minimum Kenya shillings \_\_\_\_\_ equivalent.

iv) Contractor's Representative and Key Personnel, which are \_\_\_\_\_ specified as

v) Contractor's key equipment listed on the table "Contractor's Equipment" below and more specifically \_\_\_\_\_ listed as [specify requirements for each lot as applicable]

iv) Other conditions depending on their seriousness.

a) History of non-performing contracts:

Tenderer and each member of JV in case the Tenderer is a JV, shall demonstrate that Non-  
performance of a contract did not occur in the last \_\_\_\_\_ (specify years). The required information shall be furnished in appropriate form. \_\_\_\_\_ the

b) Pending Litigation

Financial position and prospective long-term profit ability of the Single Tenderer, and in the case the Tenderer is a JV, of each member of the JV, shall remain sound according to criteria established with respect to Financial Capability under Paragraph (i) above if all pending litigation will be

c) Litigation Against the Tenderer. Tenderer shall provide information on pending litigations in the

\_\_\_\_\_ The \_\_\_\_\_ shall form a consistent history of court/arbitral award decisions against the Tenderer, in the last \_\_\_\_\_ (specify years). All parties to the contract shall furnish the information in

the appropriate form about any litigation or arbitration resulting from contracts completed or on going under its execution over the years specified. A consistent history of awards against the Tenderer or any member of a JV may result in rejection of the tender.

QUALIFICATION FORM\*

1	2	3	4	5
Item No.	Qualification Subject	Qualification Requirement	Document To be Completed by Tenderer	For Procuring Entity's Use (Qualification met or Not Met)
1	Nationality	Nationality in accordance with ITT 3.6	Forms ELI – 1.1 and 1.2, with attachments	
2	Tax Obligations for Kenyan Tenderers	Has produced a current tax clearance certificate or tax exemption certificate issued by Kenya Revenue Authority	Attachment	
3	Conflict of Interest	No conflict of interest in accordance with ITT 3.4	Form of Tender	
4	PPRA Eligibility	3.3 Not having been declared ineligible by the PPRA	Form of Tender	
5	State- owned Enterprise	Meets conditions of ITT 3.8 described in ITT 3.7	Forms ELI – 1.1 and 1.2, with attachments	
6	Goods, equipment and services to be supplied under the contract	To have their origin in any country that is not determined ineligible under ITT 4.1	Forms ELI – 1.1 and 1.2, with attachments	
7	History of Non-Performing Contracts	Non-performance of a contract did not occur as a result of	Form CON-2	
8	Suspension Based on Execution of Tender/Proposal Securing Declaration by the Procuring Entity	contractor default since 1 <sup>st</sup> January [.....]. Tender/Proposal Securing Declaration pursuant to ITT 19.9	Form of Tender	
9	Pending Litigation	Tender's financial position and prospective long-term profitability still sound according to criteria established in 11 and assuming that all pending litigation will NOT be resolved against the Tenderer.	Form CON – 2	
10	Litigation History	No consistent history of court/arbitral award decisions against the Tenderer since 1 <sup>st</sup> January [insert year].	Form CON – 2	
11	Financial Capabilities	(i) The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated as Kenya Shillings [insert amount] equivalent for the subject contract(s) net of the Tenderer's other commitments of the Procuring Entity, that it has adequate sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.	Form FIN – 3.1, with attachments	

1	2	3	4	5
Item No.	Qualification Subject	Qualification Requirement	Document To be Completed by Tenderer	For Procuring Entity's Use (Qualification met or Not Met)
		(iii) The audited balance sheets or, if not required by the laws of the Tenderer's country, other financial statements acceptable to the Procuring Entity, for the last [insert number of years] years shall be submitted and must demonstrate the current soundness of the Tenderer's financial position and indicate its prospective long-term solvability.		
12	Average Annual Construction Turnover	Kenya shillings [insert amount], equivalent calculated as total certified payments received for contracts in progress under [insert number of years] years	Form FIN – 3.2	
13	General Construction Experience	Completed within the last [insert of years] years, provided by prime contractor, JV member, sub-contractor, or management contractor for at least the last [insert number of years] years, starting 1 <sup>st</sup> January [insert year].	Form EXP – 4.1	
14	Specific Construction & Contract Management Experience	A minimum number of [state the number] similar contracts specified below that have been satisfactorily and specifically managed by the contractor under submission between [insert number] (number) contracts, each of minimum value Kenya shillings..... equivalent. Under the Works contract to be tendered, the individual number of contracts required for purposes of evaluating qualification. The selection of the contracts shall be based on the following: [Based on Section VII, Scope of Works, specify the minimum key requirements in terms of physical size, complexity, construction method, technology and/or other characteristics including part of the requirements that may be met by specialized subcontractors, if permitted in accordance with ITT 34.3]	Form EXP 4.2(a)	

SECTION IV - TENDERING FORMS

QUALIFICATION FORMS

1. FOREIGN TENDERERS 40%RULE

Pursuant to ITT 3.9, a foreign tenderer must complete this form to demonstrate that the tender fulfils this condition.

ITEM	Description of Work Item	Describe location of Source	COST in K. shillings	Comments, if any
<b>A</b>	<b>Local Labor</b>			
1				
2				
3				
4				
5				
<b>B</b>	<b>Sub contracts from Local sources</b>			
1				
2				
3				
4				
5				
<b>C</b>	<b>Local materials</b>			
1				
2				
3				
4				
5				
<b>D</b>	<b>Use of Local Plant and Equipment</b>			
1				
2				
3				
4				
5				
<b>E</b>	<b>Add any other items</b>			
1				
2				
3				
4				
5				
6				
	TOTAL COST LOCAL		XXXXX	
	PERCENTAGE OF CONTRACT PRICE			

2. FORMEQU: EQUIPMENT

The Tenderer shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III, Evaluation and Qualification Criteria. A separate Form shall

be prepared for each item of equipment listed, or for alternative equipment proposed by the Tenderer.

Equipment information	Name of manufacturer	Model and power rating
	Capacity	Year of manufacture
Current status	Current location	
	Details of current commitments	
Source	Indicate source of the equipment Owned                      Rented                      Leased                      Specially manufactured	

Omit the following information for equipment owned by the

Tenderer.	Name of owner	
	Address of owner	
	Telephone	Contact name and title
	Fax	Telex
Agreements	Details of rental / lease / manufacture agreements specific to the project	

3. FORM PER -1

Contractor's Representative and Key Personnel Schedule

Tenderers should provide the names and details of the suitably qualified Contractor's Representative and Key

Personnel to perform the Contract. The data on their experience should be supplied using the Form PER-2 below for

Contractor's Representative and Key Personnel

1.	Title of position: Contractor's Representative	
	Name of candidate: appointment:	[insert the whole period (start and end dates) for which this position will be engaged]
	Time commitment: for this position:	[insert the number of days/week/months/ that has been scheduled for this position]
	Expected time schedule for this position:	[insert the expected time schedule for this position (e.g. attach high level position)]
2.	Title of position: Gantt chart]	
	[ ]	
	Name of candidate: appointment:	[insert the whole period (start and end dates) for which this position will be engaged]
	Time commitment: for this position:	[insert the number of days/week/months/ that has been scheduled for this position]
3.	Title of position: Gantt chart]	
	[ ]	
	Name of candidate: appointment:	[insert the whole period (start and end dates) for which this position will be engaged]
	Time commitment: for this position:	[insert the number of days/week/months/ that has been scheduled for this position]
4.	Title of position: Gantt chart]	
	[ ]	
	Name of candidate: appointment:	[insert the whole period (start and end dates) for which this position will be engaged]
	Time commitment: for this position:	[insert the number of days/week/months/ that has been scheduled for this position]
5.	Title of position: [insert title] Gantt chart]	
	Name of candidate	
	Duration of appointment:	[insert the whole period (start and end dates) for which this position will be engaged]
	Time commitment: for this position:	[insert the number of days/week/months/ that has been scheduled for this position]
	Expected time schedule for this position:	[insert the expected time schedule for this position (e.g. attach high level position)]

4. FORM PER - 2:

Resume and Declaration - Contractor's Representative and Key Personnel.

Name of Tenderer
------------------

Position [#1]: [title of position from Form PER-1]	
Personnel information	Name: <span style="float: right;">Date of birth:</span>
	Address: <span style="float: right;">E-mail:</span>
	Professional qualifications:
	Academic qualifications:
	Language proficiency: [language and levels of speaking, reading and writing skills]
Details	Address of Procuring Entity:
	Telephone: <span style="float: right;">Contact (manager / personnel officer):</span>
	Fax:
	Job title: <span style="float: right;">Years with present Procuring Entity:</span>

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

Project	Role	Duration of involvement	Relevant experience
[main project details]	[role and responsibilities on the project]	[time in role]	[describe the experience relevant to position]
-----	-----	-----	-----
-----	-----	-----	-----
-----	-----	-----	-----

Declaration

I, the undersigned [insert either “Contractor’s Representative” or “Key Personnel” as applicable], certify that to the best of my knowledge and belief, the information contained in this Form PER-2 correctly describes myself, my qualifications and my experience certified in the following table and throughout the expected time schedule for this position as provided in the Tender:

Commitment	Details
Commitment to duration of contract:	[insert period (start and end dates) for which this Contractor’s Representative or Key Personnel is available]
Time commitment:	[insert period (start and end dates) for which this Contractor’s Representative or Key Personnel is available to work on this contract]

I understand that any misrepresentation or omission in this Form may:

- (a) be taken into consideration during Tender evaluation;
- (b) result in my disqualification from participating in the Tender;
- (c) result in my dismissal from the contract.

Name of Contractor’s Representative or Key Personnel: [insert name]

Signature:

\_\_\_\_\_

Date: (day month year):

\_\_\_\_\_

Signature of authorized representative of the Tenderer:

\_\_\_\_\_

Date: (day month year):

\_\_\_\_\_

5. TENDERERS QUALIFICATION WITHOUT PREQUALIFICATION

To establish its qualifications to perform the contract in accordance with Section III, Evaluation and Qualification Criteria the Tenderer shall provide the information requested in the corresponding Information Sheets included hereunder:

5.1 FORM ELI -1.1

Tenderer Information Form

Date: \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

Tenderer's name
In case of Joint Venture (JV), name of each member:
Tenderer's actual or intended country of registration:
Tenderer's actual or intended year of incorporation:
Tenderer's legal address [in country of registration]:
Tenderer's authorized representative information
Name:
Address:
Telephone and fax numbers
Articles of Incorporation (or equivalent documents of constitution or association), E-mail address:
Documents of registration of the legal entity formed in accordance with ITT 3.5
In case of state-owned enterprise or institution, in accordance with ITT 3.8, documents establishing:
<ul style="list-style-type: none"> <li>• Organization financial autonomy             <ol style="list-style-type: none"> <li>1. Establishing that the Tenderer is not under the supervision of the Procuring Entity</li> <li>2. Included are the organizational chart and a list of Board of Directors</li> </ol> </li> </ul>

Tenderer's JV Information Form  
 (to be completed for each member of Tenderer's JV)

Date: \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

Tenderer's JV name:

JV member's name:

JV member's country of registration:

JV member's year of constitution:

JV member's legal address in country of constitution:

JV member's authorized representative information

Name:

Address:

Telephone/Fax numbers:

1. Attached are copies of original documents of E-articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITT 3.6. ~~In case of a state-owned enterprise or institution, that they are establishing the legal and financial autonomy, Entity, in accordance with ITT 3.5.~~
2. Included are the organizational chart and a list of Board of Directors.

Historical Contract Non-Performance, Pending Litigation and Litigation History

Tenderer's Name: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 JV Member's Name \_\_\_\_\_  
 ITT No. and title: \_\_\_\_\_

**Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria**  
 Contract non-performance did not occur since 1<sup>st</sup> January [insert year] specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.1.  
 Contract(s) not performed since 1<sup>st</sup> January [insert year] specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.1

Contract(s) withdrawn since 1<sup>st</sup> January [insert year] specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.1

Year	Non- performed Contract Identification portion of contract	Total Contract Amount (current value, currency, exchange rate and Kenya Shilling equivalent)
[insert year]	[insert amount and percentage] Contract Identification: [indicate complete contract name/ number], and any other identification] Name of Procuring Entity: [insert full name] Address of Procuring Entity: [insert street/city/country] Reason(s) for nonperformance: [indicate main reason(s)]	[insert amount]

**Pending Litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.**  
 Pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3 indicated as follows:

Year of dispute	Amount in dispute (currency)	Contract Identification	Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)
		Contract Identification: _____ Name of Procuring Entity: _____ Address of Procuring Entity: _____ Matter in dispute: _____	
		Party who initiated the dispute: _____ Status of dispute: _____ Contract Identification: _____ Name of Procuring Entity: _____ Address of Procuring Entity: _____ Matter in dispute: _____	

**Litigation History in accordance with Section III, Evaluation and Qualification Criteria**  
 No Litigation History in accordance with Section III, Evaluation and Qualification Criteria, 2.4. Sub-Factor  
 Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4 as follows:

Year of dispute	Amount in dispute (currency)	Contract Identification	Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)
[insert year]	[insert percentage]	Contract Identification: [indicate complete contract name, number, and any other identifying information] Name of Procuring Entity: [insert full name] Address of Procuring Entity: [insert street/city/country] Matter in dispute: [indicate main issues in dispute] Party who initiated the dispute: [indicate "Procuring Entity" or "Contractor"] Reason(s) for Litigation and award decision [indicate main reason(s)]	[insert amount]

Include details relating to potential bid-rigging practices such as previous occasions where tenders were withdrawn, joint bids with competitors, subcontracting work to unsuccessful tenderers, etc.

5.4 FORM FIN – 3.1:

Financial Situation and Performance

Tenderer's Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member's Name \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

5.4.1. Financial Data

Type of Financial information in \_\_\_\_\_ (currency)      Historic information for previous \_\_\_\_\_ years, \_\_\_\_\_ (amount in currency, currency, exchange rate\*, USD equivalent)

	Year 1	Year 2	Year 3	Year 4	Year 5
Statement of Financial Position (Information from Balance Sheet)					
Total Assets (TA)					
Total Liabilities (TL)					
Total Equity/Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
Working Capital (WC)					
Information from Income Statement					
Total Revenue (TR)					
Profits Before Taxes (PBT)					
Cash Flow Information					
Cash Flow from Operating Activities					

\*Refer to ITT 15 for the exchange rate

#### 5.4.2 Sources of Finance

Specify sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.

No.	Source of finance	Amount (Kenya Shilling equivalent)
1		
2		
3		

#### 5.4.3 Financial documents

The Tenderer and its parties shall provide copies of financial statements for \_\_\_\_\_ years pursuant Section III, Evaluation

(a) reflect the financial situation of the Tenderer or in case of JV member, and not an affiliated entity (such as parent company or group member).

(b) be independently audited or certified in accordance with local legislation.

(c) be complete, including all notes to the financial statements.

(d) correspond to accounting periods already completed and audited.

Attached are copies of financial statements<sup>1</sup> for the \_\_\_\_\_ years required above; and complying with the requirements

<sup>1</sup>If the most recent set of financial statements is for a period earlier than 12 months from the date of Tender, the reason for this should be justified.

5.5 FORM FIN – 3.2:

Average Annual Construction Turnover

Tenderer's Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member's Name \_\_\_\_\_

ITT No. and title:

Annual turnover data (construction only)			
Year	Amount Currency	Exchange rate	Kenya Shilling equivalent
[indicate year]	[insert amount and indicate currency]		
Average Annual Construction Turnover *			

\* See Section III, Evaluation and Qualification Criteria, Sub-Factor 3.2.

5.6 FORM FIN – 3.3:

Financial Resources

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cash flow demands of the subject contract

Financial Resources		
No.	Source of financing	Amount (Kenya Shilling equivalent)
1		
2		
3		

5.7 FORM FIN – 3.4:

Current Contract Commitments / Works in Progress

Tenderers and each member to a JV should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion,

but for which a qualified, full completion certificate has yet to be issued.

Commitments No.	Name of Contract	Procuring Entity's Contact Address, Tel,	Value of Outstanding Work [Current Kenya Shilling /month Equivalent]	Estimated Completion Date	Average Monthly Invoicing Over Last Six Months [Kenya Shilling /month]
1					
2					
3					
4					
5					

5.8 FORM EXP - 4.1

General Construction Experience

Tenderer's Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member's Name \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

Starting Year	Ending Year	Contract Identification	Role of Tenderer
		Contract name: _____ <u>Brief Description of the Works performed by the Tenderer:</u> _____ Amount of contract: _____ Name of Procuring Entity: _____ Address: _____ Contract name: _____ <u>Brief Description of the Works performed by the Tenderer:</u> _____ Amount of contract: _____ Name of Procuring Entity: _____ Address: _____ Contract name: _____ <u>Brief Description of the Works performed by the Tenderer:</u> _____ Amount of contract: _____ Name of Procuring Entity: _____ Address: _____	

5.9 FORM EXP - 4.2(a)

Specific Construction and Contract Management Experience

Tenderer's Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member's Name \_\_\_\_\_

ITT No. and title:

Similar Contract No. _____	Information			
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor	Member in JV	Management Contractor	Sub-contractor
Total Contract Amount				Kenya Shilling
If member in a JV or sub-contractor, specify participation in total Contract				
Accounting Entity's Name:				
Address:				
Telephone/fax number				
E-mail:				

5.9 FORM EXP - 4.2(a)

Specific Construction and Contract Management Experience

Tenderer's Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member's Name \_\_\_\_\_

ITT No. and title:

Similar Contract No. _____	Information			
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor	Member in JV	Management Contractor	Sub-contractor
Total Contract Amount				Kenya Shilling
If member in a JV or sub-contractor, specify participation in total Contract				
Accounting Entity's Name:				
Address:				
Telephone/fax number				
E-mail:				

5.9 FORM EXP - 4.2 (a) (cont.)

Specific Construction and Contract Management Experience (cont.)

Similar Contract No.	Information
Description of the similarity in accordance	
with Sub-Factor 4.2(a) of Section III:	
2. Physical size of required items works	
3. Complexity	
4. Methods/Technology	
5. Construction rate for key activities	
6. Other Characteristics	

5.10 FORM EXP - 4.2(b)

Construction Experience in Key Activities

Tenderer's Name: \_\_\_\_\_

Date: \_\_\_\_\_

Tenderer's JV Member Name: \_\_\_\_\_

Sub-contractor's Name<sup>2</sup> (as per ITT 34): \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

All Sub-contractors for key activities must complete the information in this form as per ITT 34 and Section III, Evaluation and Qualification Criteria, Sub-Factor 4.2.

1. Key Activity No One: \_

		Information			
Contract Identification					
Award date					
Completion date					
Role in Contract		Prime Contractor	Member in JV	Management Contractor	Sub-contractor
Total Contract Amount		Kenya Shilling			
Quantity (Volume, number or rate of production, as applicable) performed under the contract per year or part of the year	Total quantity in (i)	Percentage participation (ii)	Actual Quantity Performed (i) x (ii)		
Year 1					
Year 2					
Year 3					
Year 4					
Procuring Entity's Name:					
Address: Telephone/fax number E-mail:					

<sup>2</sup>If applicable

	Information
Description of the key activities in accordance with Sub-Factor 4.2(b) of Section III:	

- 2. Activity No. Two
- 3. ....

## OTHER FORMS

### 6. FORM OF TENDER

(Amended and issued pursuant to PPRA CIRCULAR No. 02/2022)

#### INSTRUCTIONS TO TENDERERS

- i) All italicized text is to help the Tenderer in preparing this form.
- ii) The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address. Tenderers are reminded that this is a mandatory requirement.
- iii) Tenderer must complete and sign CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELF

DECLARATION FORMS OF THE TENDERER as listed under (xxii) below.

Date of this Tender submission:.....[insert date (as day, month and year) of Tender submission]

Tender

Name and Identification:.....[insert identification] Alternative

No.:.....[insert identification No if this is a Tender for an alternative]

To: ..... [Insert complete name of Procuring

Entity]

Date of this Tender submission: [insert date (as day, month and year) of Tender submission]

Request for Tender No.: [insert identification] Name and description of Tender [Insert as per ITT) Alternative

No.: [insert identification No if this is a Tender for an alternative]

To: [insert complete name of Procuring Entity]

Dear Sirs,

1. In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Quantities for the execution of the above named Works, we, the undersigned offer to construct and complete the Works and remedy ~~any~~ ~~defects~~ ~~therein~~ for the sum<sup>3</sup> of Kenya Shillings [[Amount in figures] \_\_\_\_\_ Kenya Shillings. The above amount includes foreign currency<sup>4</sup> amount (s) of [state figure or a percentage and currency] [figures] \_\_\_\_\_ [words] \_\_\_\_\_

2. We undertake, if our tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Architect notice to commence, and to complete the whole of the Works comprised in the Contract

3. ~~We hereby declare that we are bound by the Special Conditions of Contract~~ [insert date], and it shall remain binding us and may be accepted at any time before that \_\_\_\_\_ upon date.

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

5. We, the under signed, further declare that:

- i) No reservations: We have examined and have no reservations to the tender document, including Addenda issued in accordance with ITT 28;
- ii) Eligibility: We meet the eligibility requirements and have no conflict of interest in accordance with ITT 3

<sup>3</sup>This sum should be carried forward from the Summary of the Bills of Quantities.

<sup>4</sup>The percentage quoted above should not include provisional sums, and not more than

two foreign currencies are allowed.

and 4;

- iii) Tender - Securing Declaration: We have not been suspended nor declared ineligible by the Procuring Entity based on execution of a Tender-Securing or Proposal-Securing Declaration in the Procuring Entity's
- iv) Conformity with the Tender: We offer with JTT 19 & conformity with the tendering documents and in accordance with the implementation and completion specified in the construction schedule, the following Works: [insert a brief
- v) Tender Price of The Works: Price of our Tender, excluding any discounts offered in item 1 above is: [Insert one of the options below as appropriate]
- vi) Option 1, in case of one lot: Total price is: [insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies]; or Option 2, in case of multiple lots:
- (a) Total price of each lot [insert the total price of each lot in words and figures, indicating the various amounts and the respective currencies]; and
- (b) Total price of all lots (sum of all lots) [insert the total price of all lots in words and figures, indicating the various amounts and the respective currencies];
- vii) Discounts: The discounts offered and the methodology for their application are:
- viii) The discounts offered are: [Specify in detail each discount offered.]
- ix) The exact method of calculations to determine the net price after application of discounts is shown below [Specify in detail the method that shall be used to apply the discounts];
- x) Tender Validity Period: Our Tender shall be valid for the period specified in TDS 18.1 (as amended, if applicable) from the date fixed for the Tender submission deadline specified in TDS 22.1 (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the
- xi) Execution of Security: If our Tender is accepted, we commit to obtain a Performance Security in accordance with the Tendering document;
- xii) One Tender Per Tender: We are not submitting any other Tender(s) as an individual Tender, and we are not participating in any other Tender(s) as a Joint Venture member or as a sub-contractor, and meet the
- xiii) Suspensions and Debarment: We and all of our subcontractors, suppliers, vendors, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any individual that is subject to, a temporary suspension or a debarment imposed by the Public
- xiv) State-owned enterprise or institution: [select the appropriate option and delete the other] [We are not a Regulatory Authority or any other entity of the Government of Kenya, or any international organization enterprise or institution]/[We are a state-owned enterprise or institution but meet the
- xv) Commissions, gratuities, fees: We have paid, or will pay the following commissions, gratuities, or fees with respect to the tender process or execution of the Contract: [insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency

Name of Recipient	Commission or gratuity	Address	Reason	Amount

(If none has been paid or is to be paid, indicate "none.")

xvi) Binding Contract: We understand that this Tender, together with your written acceptance there of included

in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is

xvii) ~~Not Bound to Accept:~~ We understand that you are not bound to accept the lowest evaluated cost Tender, the Most Advantageous Tender or any other Tender that you may receive;

xviii) Fraud and Corruption: We here by certify that we have taken steps to ensure that no person acting for us

or on our behalf engages in any type of Fraud and Corruption; and

xix) Collusive practices: We hereby certify and confirm that the tender is genuine, non-collusive and made

with the intention of accepting the contract if awarded. To this effect we have signed the "Certificate of

xx) ~~We understand that the Tender by the Tenderer is subject to the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal, copy available from \_\_\_\_\_ (specify website) during the procurement process and execution of any resulting \_\_\_\_\_ the contract.~~

xxi) Beneficial Ownership Information: We commit to provide to the procuring entity the Beneficial Ownership

Information in conformity with the Beneficial Ownership Disclosure Form upon receipt of notification of

intention to enter into a contract in the event we are the successful tenderer in this subject

xxii) ~~Procurement~~ Tenderer, have duly completed, signed and stamped the following Forms as part of our Tender proceeding.

a) Tenderer's Eligibility; Confidential Business Questionnaire - to establish we are not in any conflict to interest.

(b) Certificate of Independent Tender Determination - to declare that we completed the tender without colluding with other tenderers.

(a) Self-Declaration of the Tenderer - to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.

(d) Declaration and commitment to the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal.

Further, we confirm that we have read and understood the full content and scope of fraud and corruption

as informed in "Appendix 1 - Fraud and Corruption" attached to the Form of Tender.

Name of the Tenderer: \*[insert complete name of person signing the Tender]

Name of the person duly authorized to sign the Tender on behalf of the Tenderer: \*\*[insert complete

name of person duly authorized to sign the Tender]

Title of the person signing the Tender: [insert complete title of the person signing the Tender]

Signature of the person named above: [insert signature of person whose name and capacity are shown above]

Date signed [insert date of signing] day of [insert month], [insert year]

Date signed \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

Notes

\* In the case of the Tender submitted by joint venture specify the name of the Joint Venture as

\*\*Person signing the Tender shall have the power of attorney given by the Tenderer to be attached with

(a) TENDERER'S ELIGIBILITY-CONFIDENTIAL BUSINESS QUESTIONNAIRE

Instruction to Tenderer

Tender is instructed to complete the particulars required in this Form, one form for each entity if Tender is a JV.

Tenderer is further reminded that it is an offence to give false information on this Form.

(a) Tenderer's details

ITEM	DESCRIPTION
1	Name of the Procuring Entity
2	Reference Number of the Tender
3	Date and Time of Tender
4	<del>Opening</del> Name of the Tenderer
5	Full Address and Contact Details of the Tenderer. 1. Country 2. City 3. Location 4. Building 5. Floor 6. Postal Address 7. Name and email of contact person.
6	Current Trade License Registration
7	Number and Expiring date Name, country and full address (postal and physical addresses, email, and telephone number) of
8	<del>Registering Body/Agent of Business</del>
9	Maximum value of business which the
10	<del>Tenderer and its Company is listed in stock exchange, give name and full address (postal and physical addresses, email, and telephone number) of state which stock exchange</del>

General and Specific Details

(b) Sole Proprietor, provide the following details.

Name in full \_\_\_\_\_ Age \_\_\_\_\_  
Nationality \_\_\_\_\_ Country of Origin \_\_\_\_\_  
Citizenship \_\_\_\_\_

(c) Partnership, provide the following details.

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

(d) Registered Company, provide the following details.

1) ~~Private or public Company~~ \_\_\_\_\_

- ii) State the nominal and issued capital of the \_\_\_\_\_  
 Company  
 Nominal Kenya Shillings  
 (Equivalent).....  
 Issued Kenya Shillings  
 (Equivalent).....

(f) Give details of Directors as follows.....

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

(e) DISCLOSURE OF INTEREST - Interest of the Firm in the Procuring Entity.

- i) Are there any person/persons in..... (Name of Procuring Entity) who has/have an interest or relationship in this firm? Yes/No.....  
 If yes, provide details as follows.

	Names of Person	Designation in the Procuring Entity	Interest or Relationship with Tenderer
1			
2			
3			

(iii) Conflict of interest disclosure

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with
1	Tenderer is directly or indirectly controls, is controlled by or is under common control with another		Tenderer
2	Tenderer receives or has received any direct or indirect subsidy from		
3	Another tenderer and the tenderer have the same legal representative as another tenderer		
4	Tenderer has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process.		
5	Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical		
6	specifications of the works that are the subject of the tender. Tenderer would be providing goods, works, non-consulting services or consulting services during		
7	implementation of the contract specified in this Tender Document. Tenderer has staff of the Procuring Entity who are directly or indirectly		

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with
	Tender document or specifications of the Contract, and/or the Tender evaluation process of such		Tenderer
8	contract. Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision		
9	of the such Contract. Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.		

Certification

On behalf of the Tenderer, I certify that the information given above is complete, current and accurate as at the date of submission.

Full Name \_\_\_\_\_

Title or Designation \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

b) CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

I, the undersigned, in submitting the accompanying Letter of Tender \_\_\_\_\_  
to the \_\_\_\_\_ [Name of Procuring Entity] for:  
\_\_\_\_\_ [Name and number of tender] in  
response to the request for tenders made by: \_\_\_\_\_ [Name of Tenderer] do hereby  
make the following statements that I certify to be true and complete in every  
respect:  
I certify, on behalf of \_\_\_\_\_ [Name of Tenderer] that:

1. I have read and I understand the contents of this Certificate;
2. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am the authorized representative of the Tenderer with authority to sign this Certificate, and to ~~submit~~ ~~submit~~ the behalf of the Tenderer;
4. For the purposes of this Certificate and the Tender, I understand that the word "competitor" shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:
  - a) Has been requested to submit a Tender in response to this request for tenders;
  - b) could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;
5. The Tenderer discloses that [check one of the following, as applicable]:
  - a) The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
  - b) the Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons
6. In ~~addition~~ ~~addition~~ without limiting the generality of paragraphs (5)(a) or (5)(b) above, there has been no consultations, communications, agreements or arrangements; communication, agreement or arrangement with any competitor regarding:
  - a) prices;
  - b) methods, factors or formulas used to calculate prices;
  - c) the intention or decision to submit, or not to submit, a tender; or
  - d) the submission of a tender which does not meet the specifications of the request for Tenders; except as specifically disclosed pursuant to paragraph (5)(b) above;
7. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this request for tenders relates, except as specifically authorized by the procuring authority or as specifically
8. ~~The~~ ~~contents~~ of the Tender have not been, and will not be, knowingly disclosed by the Tenderer, directly or ~~indirectly~~, to any competitor, prior to the date and time of the official tender opening, or of the awarding of the Contract, whichever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph (5)(b)

Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

[Name, title and signature of authorized agent of Tenderer and Date]





DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

I ..... (person) on behalf of (Name of the Business/  
Company/Firm) ..... declare that I have read and fully understood the  
Public Procurement & Asset Disposal Act, 2015, Regulations and the Code of Ethics for persons  
participating in  
Public Procurement and Asset Disposal and my responsibilities under the Code.

I do here by commit to abide by the provisions of the Code of Ethics for persons participating in Public  
Procurement  
and Asset Disposal.

Name of Authorized  
signatory.....

Sign.....  
.....

Position.....

Office address.....

Telephone.....

E-  
mail.....  
.....

Name of the  
Firm/Company.....

Date  
Witness.....  
.....

Name  
(Company Seal/ Rubber Stamp where applicable).....  
.....

Sign.....  
.....

Date.....  
.....

(d) APPENDIX 1 - FRAUD AND CORRUPTION

(Appendix 1 shall not be modified)

1. Purpose

- 1.1 The Government of Kenya's Anti-Corruption and Economic Crime laws and their sanction's policies and procedures, Public Procurement and Asset Disposal Act (no. 33 of 2015) and its Regulation, and any other Kenya's Acts or Regulations related to Fraud and Corruption, and similar offences, shall apply with respect to
2. ~~Respect to~~ Public Procurement Processes and Contracts that are governed by the laws of Kenya.
- 2.1 The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics
- 2.2 ~~Kenya's public procurement and asset disposal act (no. 33 of 2015) under Section 66 describes the procurement process, selection and contract execution of all contracts, and refrain from Fraud and Corruption and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, the provisions noted below highlight Kenya's policy of no tolerance for such practices and behavior:~~
- 1) or fraudulent practice; or conflicts of interest in any procurement or as set disposal proceeding;
  - 2) A person referred to under subsection (1) who contravenes the provisions of that sub-section commits an offence;
  - 3) Without limiting the generality of the subsection (1) and (2), the person shall be: -
    - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
    - b) if a contract has already been entered into with the person, the contract shall be voidable;
  - 4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
  - 5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement: -
    - a) Shall not take part in the procurement proceedings;
    - b) shall not, after a procurement contract has been entered in to, take part in any decision relating to the procurement or contract; and
    - c) shall not be a subcontractor for the tender to whom was awarded contract, or a member of the group of tenderers to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act
  - 6) An employee or agent of the procuring entity described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;
  - 7) ~~Conflicts of interest to the procuring entity (1)~~ with respect to a conflict of interest described in subsection (5)(a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the
3. In compliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity shall be made good by the awarding officer. Etc.

a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:

- i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything
- ii) "fraudulent practice" is a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid
- iii) "coercive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party; "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of a party to influence improperly the actions of a party;

- Deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive,
- acts of inside practice, and/or impeding, harassing, or intimidating the PPRA or the appointed authority's investigating and knowledge provided for under paragraph 2 investigation or from pursuing

b) Defines more specifically, in accordance with the above procurement Act provisions set forth for corrupt and collusive practices as follows:

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or process the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits

c) Refers a proposal for award<sup>1</sup> of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers,

suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits

d) Collusive, to the Kenya's above stated Acts and Regulations, may recommend to appropriate authority (contract) or to the benefit of incompetent individual, as applicable, under the Acts and Regulations;

e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring(i)

Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect<sup>2</sup> all accounts, records and other documents

f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their procurement process, selection and/or contract execution, and to have them audited by Applicants/Tenders/Proposals a "Self-Declaration Form" as included in the procurement documents appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; declaring that they and all parties involved in the procurement process and contract execution have not

<sup>1</sup> For the avoidance of doubt, a party's eligibility to be awarded a contract shall include, without limitation, (i) a party's eligibility to be awarded a contract, (ii) a party's eligibility to be awarded a contract as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract and (iii) entering into an addendum or amendment introducing a material modification to an existing contract. Investigations (i.e., forensic) in nature. They involve fact finding and evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/audit, and making copies thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information

FORM OF TENDER SECURITY-[Option 1–Demand Bank Guarantee]

Beneficiary: \_\_\_\_\_

Request for Tenders No: \_\_\_\_\_

Date: \_\_\_\_\_

TENDER GUARANTEE No.: \_\_\_\_\_

Guarantor: \_\_\_\_\_

1. We have been informed that \_\_\_\_\_ (here inafter called "the Applicant") has submitted will submit to the Beneficiary its Tender (here inafter called" the Tender") for the execution of \_\_\_\_\_ under Request for Tenders No. \_\_\_\_\_ ("the ITT").
2. Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.
3. At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary ~~on your own~~ not exceeding in total an amount \_\_\_\_\_ (\_\_\_\_\_) upon receipt by us of the ~~complying~~ demand, supported by the Beneficiary's statement, ~~where Beneficiary~~ demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:
  - (a) has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Applicant; or
  - b) having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension there to provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the Performance.
4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant
5. ~~Consequently, any demand for payment under this guarantee must be received by us at the office indicated above of the results of the Tendering process, or (ii) thirty days after the end of the Tender Validity Period.~~onor before that date.

\_\_\_\_\_  
[signature(s)]

Note: All italicized text is for use in preparing this form and shall be deleted from the final product.

FORMAT OF TENDER SECURITY [Option 2–Insurance Guarantee]

TENDER GUARANTEE No.: \_\_\_\_\_

1. Whereas ..... [Name of the tenderer] (hereinafter called “the tenderer”) has submitted its tender ..... [Date of submission of tender] for the ~~dated~~ ..... [Name and/or description of the tender] (hereinafter called “the Tender”) for the execution of \_\_\_\_\_ under Request for Tenders No. \_\_\_\_\_ (“the Tender”)
2. ~~KNOW ALL PEOPLE~~ by these presents that WE ..... of ..... [Name of Insurance Company] registered office at ..... (hereinafter called “the Guarantor”), are bound ~~to~~ [Name of Procuring Entity] (hereinafter called “the Procuring Entity”) in the sum of \_\_\_\_\_ (Currency and guarantee amount) for which payment ~~of well and truly to be made~~ to the said Procuring Entity, the Guarantor binds itself, its successors and assigns, jointly and severally, firmly by these presents. Sealed with the Common Seal of the said Guarantor this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_.
3. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Applicant:
  - a) has withdrawn its Tender during the period of Tender validity set forth in the Principal's Letter of Tender (“the Tender Validity Period”), or any extension thereto provided by the Principal; or
  - b) having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity Period or any extension thereto provided by the Principal; (i) failed to execute the Contract agreement; or (ii) has failed to furnish the Performance Security, in accordance with the ~~then instructions~~ the Applicant undertakes to immediately pay to the Procuring Entity up to the above amount upon receipt of the Procuring Entity's first written demand, without the Procuring Entity having to substantiate its demand, provided that in its demand the Procuring Entity shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.
4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of a copy of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification of the Applicant's demand for payment of the Tendering process, or (ii) twenty eight days after the official publication or before that date.
5. The Applicant of the Tendering process must be received by the Procuring Entity within the Tender Validity Period.

\_\_\_\_\_  
[Date ]  
\_\_\_\_\_  
[Witness]

\_\_\_\_\_  
[Signature of the Guarantor]  
\_\_\_\_\_  
[Seal]

Note: All italicized text is for use in preparing this form and shall be deleted from the final product.

FORM OF TENDER - SECURING DECLARATION

[The Bidder shall complete this Form in accordance with the instructions indicated]

Date: ..... [insert date (as day, month and year) of Tender Submission]

Tender No.: ..... [insert number of tendering process]  
To: ..... [insert complete name of Purchaser] I/We, the undersigned, declare that:

1. I/We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.
2. I/We accept that I/we will automatically be suspended from being eligible for tendering in any contract with the Purchaser for the period of time of [insert number of months or years] starting on [insert date], if we are in breach of our obligation(s) under the bid conditions, because we—(a) have withdrawn our tender during the period of tender validity specified by us in the Tendering Data Sheet; or (b) having been notified of the acceptance of our tender by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the instructions to tenders. thirty days after the expiration of our Tender.
3. I/We understand that this Tender Securing Declaration shall expire if we are not the successful Bidder(s) Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the instructions to tenders. thirty days after the expiration of our Tender.
4. I/We understand that if I am /we are/ in a Joint Venture, the Tender Securing Declaration must be in the name of the Joint Venture that submits the bid, and the Joint Venture has not been legally constituted at the time of bidding.

Signature: ..... Capacity/Title (direct or indirect) of participant.

sole proprietor, etc.) .....

Name: ..... Duly authorized to sign the

bid for and on behalf of: [insert complete name of Tenderer]

Dated on ..... day of ....., ..... [Insert date of signing] Seal or stamp

Appendix to Tender

Schedule of Currency requirements

Summary of currencies of the Tender \_\_\_\_\_ [insert name of Section of the Works]  
for

Name of currency	Amounts payable
Local currency: _____	
Foreign currency #1: _____	
Foreign currency #2: _____	
Foreign currency #3: _____	
Provisional sums expressed in local currency	[To be entered by the Procuring Entity]

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PART II - WORKS REQUIREMENTS

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## SECTION V - BILLS OF QUANTITIES

### A. Notes and Sample Items for Preparing a Bill of Quantities

1. These Notes for Preparing a Bill of Quantities are intended only as information for the Procuring Entity or the person drafting the Tender Documents. Priced Bills of Quantities shall be part and parcel of the Contract
2. The objectives and purpose of the Bills of Quantities are to provide sufficient information on the specifications, descriptions and quantities of Works to be performed to enable tenders to be prepared efficiently and accurately and when a contract has been entered into, to provide a priced Bill of Quantities for use in the periodic valuation of Works executed. In order to attain these objectives, Works should be itemized in the Bill of Quantities
3. The Bills of Quantities should be divided generally into the following sections:
  - a) Items in different locations or in other circumstances which may give rise to different rates
  - b) Consistent with these requirements, the layout and content of the Bill of Quantities should be as simple as possible;
  - c) Daywork Schedule; and
  - d) Provisional items
  - e) Summary.

### 4. NOTES TO PREPARING PREAMBLES

- 4.1 The Preambles should include only those items that constitute the cost of the works but would not be priced separately as they are expected to be included in the unit prices. Care should be taken to ensure that these items are not a part of the conditions of contract. The Preambles should indicate the inclusiveness of the unit prices and should state the methods of measurement that have been adopted in the preparation of the Bill of Quantities, that are to be used for the measurement of any part of the Works. The units of measurement and abbreviations shall be used, unless otherwise stated, and any mandatory national units defined and described. The methods of measurement and abbreviations should be defined and any mandatory national units defined and described. The methods of measurement and abbreviations should be defined and any mandatory national units defined and described. The methods of measurement and abbreviations should be defined and any mandatory national units defined and described.
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Unit	Abbreviation	Unit	Abbreviation
cubic meter	m <sup>3</sup> or cu m	millimetre	mm
hectare	ha	month	mon
hour	h	number	nr
kilogram	kg	square meter	m <sup>2</sup> or sq m
lump sum	ls	square millimeter	mm <sup>2</sup> or sq mm
meter	m	week	wk
metric ton	t		

- 4.3 The Bills of Quantities shall be read in conjunction with the Instructions to Tenders, General and Special Conditions of Contract, Technical Specifications, and Drawings.
- 4.4 The quantities given in the Bills of Quantities are estimated and partly provisional and are given to provide a common basis for tendering. The basis of payment will be the actual quantities of work ordered and carried out, as measured by the Contractor and verified by the Architect and valued at the rates and prices tendered in the priced

Bills of Quantities, where applicable, and otherwise at such rates and prices as the Architect may fix within the terms of the Contract.

- 4.5. The rates and prices tender in the priced Bills of Quantities shall, except in so far as it is otherwise provided under the Contract, include all Constructional Plant, labour, supervision, materials, erection, maintenance, insurance, profit, taxes, and duties, together with all general risks, liabilities, and obligations set out or implied in the Contract.
- 4.6. A rate or price shall be entered against each item in the priced Bill of Quantities, whether quantities are stated or not. The cost of Items against which the Contractor has failed to enter a rate or price shall be deemed to be included in the Items provided in the priced Bills of Quantities, and where no Items are provided, the cost shall be deemed to be distributed among the Items.
- 4.7. General descriptions and descriptions of Items of Work are not necessarily repeated nor summarized in the Bills of Quantities. References to the relevant sections of the Contract documents shall be made before entering the Bills of Quantities.
- 4.8. Prices against Sub-items in the priced Bills of Quantities designated in the Bills of Quantities shall be expended in whole or in part at the direction and discretion of the Architect in accordance with Sub-Clause 13.6 of the General Conditions of contract.
- 4.9. If a tenderer omits to price any item in any section of the Bills of Quantities including Preliminary items, it will be assumed that he/she has spread its cost in other areas that he/she will have priced. Therefore, the item or items will be executed without any additional costs or without being treated like variations.
- 4.10. NOTES ON PREPARING BILLS OF QUANTITIES
- 4.11. The Preliminary Items should be limited to tangible items that should be priced by the tenderer, are identifiable and can be priced separately and included in the interim valuations precisely. Such items may include such items as site office, notice boards, and other temporary works, otherwise items such as security for the Works which by nature, location, access, timing, or any other special characteristics may give rise to different methods of construction, or phasing of the Works, or considerations of cost. Such groups could be Quantities calculated from drawings, etc. General items otherwise in the Bills of Quantities should be grouped as separate sections in the Bills of Quantities where appropriate. Where the measured items are not to be exact because of the likelihood that the scope can change during the execution of the works, such items could be subject to re-measurement, the word "provisional" should be used to identify such cases. Where whole sections of the work items are to be listed, for example, in the Bills of Quantities as Provisional Sums for particular items or class of Work, which may be subject to a nominated subcontract or separate measurements at a later date during the execution of the works. For example, before such works cover is ready, a provisional sum can be allowed in the Bills of Quantities for "Installation of Electrical Works" to be executed later when actual design details are completed. To the extent not covered above, there should be in Bills of Quantities a general provision for physical and financial contingencies made as a "Provisional Sum for

- 5.1. The Preliminary Items should be limited to tangible items that should be priced by the tenderer, are identifiable and can be priced separately and included in the interim valuations precisely. Such items may include such items as site office, notice boards, and other temporary works, otherwise items such as security for the Works which by nature, location, access, timing, or any other special characteristics may give rise to different methods of construction, or phasing of the Works, or considerations of cost. Such groups could be Quantities calculated from drawings, etc. General items otherwise in the Bills of Quantities should be grouped as separate sections in the Bills of Quantities where appropriate. Where the measured items are not to be exact because of the likelihood that the scope can change during the execution of the works, such items could be subject to re-measurement, the word "provisional" should be used to identify such cases. Where whole sections of the work items are to be listed, for example, in the Bills of Quantities as Provisional Sums for particular items or class of Work, which may be subject to a nominated subcontract or separate measurements at a later date during the execution of the works. For example, before such works cover is ready, a provisional sum can be allowed in the Bills of Quantities for "Installation of Electrical Works" to be executed later when actual design details are completed. To the extent not covered above, there should be in Bills of Quantities a general provision for physical and financial contingencies made as a "Provisional Sum for
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- Contingencies” and “Provisional Sum for Fluctuations”. The inclusion of such provisional sums often facilitates budgetary approval by avoiding the need to request periodic supplementary approvals as the future
- 5.6 ~~Provisional~~ sums to cover specialized works normally carried out by Nominated Sub Contractors should be avoided and instead Bills of Quantities of the specialized Works should be included as a section of the main Bills of Quantities to be priced by the Main Contractor. The Main Contractor should be required to indicate the name(s) of the specialized firms he proposes to engage to carry out the specialized Works as his ~~App~~ Daywork Schedule should be included if the probability of unforeseen work, outside the items ~~indicated in~~ ~~the Bill of~~ ~~Quantities,~~ is relatively high. Only provisional sums to cover specialized Works by statutory authorities ~~should be included in the Bills of Quantities.~~
- 5.7 ~~By the tenderer, the Daywork Schedule should formally comprise:~~
- i) basic.
  - ii) Daywork rates and prices for various categories of labor are to be inserted by the tenderer, together with the conditions under which the Contractor will be paid for Work executed on a Daywork basis.
  - iii) A percent to be entered by the tenderer against each basic Day work item.
  - iv) Subtotal amount for labor, materials and plant representing the Contractor's profit, overheads, provision and other charges.
- 5.8 The Summary should contain a tabulation of the separate parts of the Bills of Quantities carried forward, with provisional sums for Daywork, Provisional sums and Contingencies, and provision for Total Costing. The last line should allow for tenderer to indicate any discounts before arriving at a total cost carried forward to the Form of Tender.

## BILLS OF QUANTITIES

### (a) Preambles

1. The method of measurement of completed work for payment shall be in accordance with [insert the name of a standard reference guide, or full details of the methods to be used].
2. The Site is situated in (provide full description where the site is situated, coordinates from the nearest landmark like a town and its \_\_\_\_\_ It is approximately \_\_\_\_\_ Kilometers from \_\_\_\_\_). Access to the site shall be \_\_\_\_\_, through \_\_\_\_\_, Which is an existing public road. Any damage caused to the surfaces of this road shall be made good at the Contractor's expense. The Contractor shall visit the site and acquaint itself with its nature and position, the nature of the ground, substrata and other local conditions, positions of existing power, water and other services,
3. ~~The Contractor shall obtain the necessary approvals for the site progress. No claim for buildings shall be considered on account of lack of knowledge in this respect.~~ temporary access path, and storage of materials. The Contractor shall also obtain the Architect approval and
4. ~~The drawings used in the preparation of this Bill of Quantities can be inspected at the offices of the Procuring Entity or Procuring Entity's Representative during normal working hours. Two sets of the Working Drawings shall be provided to the contractor but additional copies shall be provided at a cost to be determined by the Contractor.~~ shall allow for the payment of all bank charges in connection with the procurement of Bank Guarantees and stamp charges in connection with this contract Agreement.
6. The Contractor shall carry out the various sections of the Works in such an order as the Architect May direct. The Procuring Entity reserves the right to occupy the Works by sections on completion provided that such
7. ~~The Contractor shall be fully responsible for employing his Sub-Contractors but the Procuring Entity shall allow for the payment of all bank charges in connection with this contract Agreement.~~ The Contractor shall allow for the payment of all bank charges in connection with the procurement of Bank Guarantees and stamp charges in connection with this contract Agreement.
8. ~~The Contractor shall be fully responsible for employing his Sub-Contractors but the Procuring Entity shall allow for the payment of all bank charges in connection with this contract Agreement.~~ The Contractor shall allow for the payment of all bank charges in connection with the procurement of Bank Guarantees and stamp charges in connection with this contract Agreement.
9. ~~The Contractor shall, upon receiving instructions to proceed with the Works, draw up a Programme and Chart setting out the order in which the Works are to be carried out, with the appropriate dates there of. This Chart shall be agreed with the Architect and no deviation from the order set out in it will be permitted without the written consent of the Engineer. The Contractor will be responsible for arranging the above~~ The Contractor shall, upon receiving instructions to proceed with the Works, draw up a Programme and Chart setting out the order in which the Works are to be carried out, with the appropriate dates there of. This Chart shall be agreed with the Architect and no deviation from the order set out in it will be permitted without the written consent of the Engineer. The Contractor will be responsible for arranging the above
10. ~~The Contractor shall submit to the Architect on the first day of each week or such longer period as the Architect may direct. All prints shall be full plate size, unmounted, and marked on the reverse side with the date of exposure, identification reference and brief description. The copyright of all photographs shall be vested in the Procuring Entity. The negatives and four prints from each negative shall be delivered to the Procuring Entity within two weeks of exposure.~~ The Contractor shall submit to the Architect on the first day of each week or such longer period as the Architect may direct. All prints shall be full plate size, unmounted, and marked on the reverse side with the date of exposure, identification reference and brief description. The copyright of all photographs shall be vested in the Procuring Entity. The negatives and four prints from each negative shall be delivered to the Procuring Entity within two weeks of exposure.

12. Figured dimensions are to be followed in preference to dimensions scaled from the Drawings, but where possible dimensions are to be taken on the Site or from the buildings. Before any work is commenced by Sub-Contractors or Specialist Firms, dimensions must be checked on the site comparable dimensions shown on the Drawings. The Contractor shall be responsible for the accuracy of such dimensions.
13. Prior to the commencement of the Works, the Contractor shall be responsible for ascertaining from the relevant Authorities the exact position, depth and level of all existing electric cables, waterpipes or other services in the area and he shall make whatever provisions may be required by the Authorities concerned for the support and protection of such services. Any damage or disturbance caused to any services shall be reported immediately to the Architect and the relevant Authority and shall be made good to their satisfaction, at the Contractor's expense. Where appropriate the Contractor shall suspend by use of ground anchors and by the use of trench shields and digging if necessary, the Contractor will be required to make good, at his own expense and damage he may cause to the present road precisely the position and details of the services which are likely to affect his operations. surface and pavements within or beyond the boundary of the Site, during the period of the works. All existing paths, storm water channels, etc., that may be destroyed or damaged during the progress of the Works shall be replaced to the satisfaction of the Engineer.
16. The Contractor is to allow for complying with all instructions and regulations of the Police Authorities indicated by the Contractor to the satisfaction of the Engineer.
17. All water shall be fresh, clean and pure, free from earthy, vegetable or organic matter, acid or alkaline substance in solution. The Contractor shall provide at his own risk and cost all water for use in connection with the Works, (including works of sub-contractors). If need be, he shall make arrangements with the Local Water Authority for the installation of a separate meter for all water used by him throughout the Contract and pay all the Contractor shall provide all artificial lighting and power for his own use on the Works, (including Sub-Contractor's) including all temporary connections, wiring, fittings, etc., and clearing away on completion.
18. The Contractor shall provide all artificial lighting and power for his own use on the Works, (including Sub-Contractor's) including all temporary connections, wiring, fittings, etc., and clearing away on completion.
19. The Contractor shall employ and keep on the Works a full-time, English speaking Agent or Representative, competent and experienced in the kind of work involved, who shall give his whole time to the superintendence of the works. (Including works of sub – contractors). Such Agent or Representative shall receive on behalf of the Contractor directions and instruction from the Engineer, and such directions and instructions shall be given to the contractor in accordance with the Conditions of Contract. The Agent shall not be responsible for the safety of his work people and all authorized visitors to the site are protected against falling materials, tools on site, dust, nail and other sharp objects. The site shall be kept tidy and clear of all rubbish.
20. The Contractor shall ensure that the safety of his work people and all authorized visitors to the site are protected against falling materials, tools on site, dust, nail and other sharp objects. The site shall be kept tidy and clear of all rubbish.
21. The Contractor shall ensure that the safety of his work people and all authorized visitors to the site are protected against falling materials, tools on site, dust, nail and other sharp objects. The site shall be kept tidy and clear of all rubbish.
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23. The Contractor shall ensure that the safety of his work people and all authorized visitors to the site are protected against falling materials, tools on site, dust, nail and other sharp objects. The site shall be kept tidy and clear of all rubbish.



to all in term payments exceeding Kshs..... for work done in respect of building or civil works.

The contractor shall allow for any costs arising resulting there from in the build-up of rates.

38. Blasting will only be allowed with the express permission of the Architect in writing. All blasting operations shall be carried out at the Contractor's sole risk and cost, in accordance with any Government regulations in force for the time being, and any special regulations laid down by the Architect governing the use and
39. The National Construction Authority is a state corporation established under the national construction authority act No.14 of 2011. The broad Mandate of the Authority is to over see the construction industry and coordinate its development. The National Construction Authority Regulations 2014 with an effective date of 1<sup>st</sup> June 2014. The contractor attention is drawn to Finance Bill of 1993 where VAT was introduced in all construction services. The tenderer is also drawn to VAT Act Cap 476 clause 19(9). The tenderer must allow for
40. The contractor shall allow for all insurance to cover risks and indemnities required Items 17 and 18 of conditions of contract and also specified in the Special Conditions of Contract.
41. The contractor shall allow for all insurance to cover risks and indemnities required Items 17 and 18 of conditions of contract and also specified in the Special Conditions of Contract.

BILL NO. 1 - PRELIMINARY ITEMS

ITEM No.	DESCRIPTION	AMOUNT
1.	<p>The Contractor shall provide, or erect and maintain an approved lock-up office for the sole use of the Architect and his own site staff. The office, which will have a total floor area of not less than -----square metres, will be divided into two separate interconnected offices. Services to be provided shall include: a telephone, water, sanitary and electrical supply and fittings. The office shall be supplied with furniture and equipment that shall include: and drawing stools: 4 No. waste paper baskets: sufficient number of pin boards: and any additional furniture and fittings as may reasonably be required during the Contract period. The Contractor shall provide the Architect and site staff with computer sets or laptops, printers and telephones all that are necessary for project use.</p>	
2	<p>The Procuring Entity/Contractor shall provide a house for the approval of the Engineer. The Contractor shall also provide all labor, equipment, and consumable start-up equipment throughout the currency of the contract.</p>	
3	<p>and provide maintenance and paying of bills of water and electricity up to and including end of the contract period. Provide a signboard not less than _____ square meters in size of a design type, and with lettering and coloring and in a position approved by the Engineer. The signboard shall be for the display of the</p>	
4	<p>Main Contractor's name and the names of all his Sub-Contractors,</p>	
5	<p>with</p>	
6	<p>the Procuring Entity's name painted thereon. All Consultants names</p>	
<p><b>TOTAL CARRIED TO GRAND SUMMARY</b></p>		

printed in letters not exceeding 50 mm high. No other signboard or advertising shall be allowed. The signboard shall be fully maintained during the Contract Period and shall be pulled down and removed at the end of the contract.



Bill No. 3: Schedule of Daywork Rates - Labor

Item no.	Description	Unit	Nominal quantity	Rate	Amount
	Subtotal				
	Allow ____ percent <sup>a</sup> of Subtotal for Contractor's profit, etc., in accordance with paragraph 3 (b)				
	above				
	Total for Daywork (carried forward to Daywork Summary, p. ____)				

a. To be entered by the Tenderer.



Bill No. 5: Schedule of Daywork Rates - Contractor's Equipment

Item no.	Description	Nominal quantity (hours)	Basic hourly rental rate	Extended amount
	Allow _ percent <sup>a</sup> of Subtotal for Contractor's overhead, profit, etc., in			
Total for Daywork Contractor's Equipment (carried forward to Daywork Summary, p. _____)				

a. To be entered by the Tenderer.

Bill No. 6: Daywork Summary

	Amount <sup>a</sup>	% Foreign	Currency
1. Total for Daywork: Labor			
2. Total for Daywork: Materials			
3. Total for Daywork: Contractor's			
Equipment (Provisional Sum) (carried forward from Summary of Bills of Quantities, _____)			

p.

Bill No. 7: Provisional Sums

Bill no.	Item no.	Description	Amount
1			
2			
3			
4			
etc.			
Total for Specified Provisional Sums (carried forward to Grand Summary)			

GRAND SUMMARY

SUMMARY ITEMS	Page	Amount
Bill No. 1: Preliminary Items		
Bill No. 2: Work Items		
Bill No 3: Daywork Summary		
Bill No 4: Provisional Sums		
Subtotal of Bills No 1-4		
Allow for any Discounts <sup>1</sup>		
<b>TOTAL TENDER PRICE</b> Carried forward to Form of Tender		

(i) If a percentage used, it should be indicated on which Bill No. items but on Bill No.4 – Provisional Sums.

## SECTION VI - SPECIFICATIONS

### Notes for preparing Specifications

1. Specifications must be drafted to present a clear and precise statement of the required standards of materials, and workmanship for tenderers to respond realistically and competitively to the requirements of the Procuring Entity and ensure responsiveness of tenders. The Specifications should require that all materials, plant, and other supplies to be permanently incorporated in the Works be new, unused, of the most recent or current
2. Specifications from previous similar projects are useful and materials shall be provided otherwise in the Specifications for
3. ~~Contract Works~~ Contractor is responsible for the design of any part of the permanent Works, the Procuring Entity of considerable advantages in standardizing General Specifications for repetitive Works in his obligations must be stated. public sectors, such as high ways, urban housing, irrigation and water supply. The General Specifications should cover all classes of workmanship, materials and equipment commonly involved in constructions,
4. ~~Contract Works~~ Contractor is responsible for the design of any part of the permanent Works, the Procuring Entity of considerable advantages in standardizing General Specifications for repetitive Works in his obligations must be stated. public sectors, such as high ways, urban housing, irrigation and water supply. The General Specifications should cover all classes of workmanship, materials and equipment commonly involved in constructions,
5. ~~Contract Works~~ Contractor is responsible for the design of any part of the permanent Works, the Procuring Entity of considerable advantages in standardizing General Specifications for repetitive Works in his obligations must be stated. public sectors, such as high ways, urban housing, irrigation and water supply. The General Specifications should cover all classes of workmanship, materials and equipment commonly involved in constructions,
6. ~~Contract Works~~ Contractor is responsible for the design of any part of the permanent Works, the Procuring Entity of considerable advantages in standardizing General Specifications for repetitive Works in his obligations must be stated. public sectors, such as high ways, urban housing, irrigation and water supply. The General Specifications should cover all classes of workmanship, materials and equipment commonly involved in constructions,
7. ~~Contract Works~~ Contractor is responsible for the design of any part of the permanent Works, the Procuring Entity of considerable advantages in standardizing General Specifications for repetitive Works in his obligations must be stated. public sectors, such as high ways, urban housing, irrigation and water supply. The General Specifications should cover all classes of workmanship, materials and equipment commonly involved in constructions,

## SECTION VII - DRAWINGS

has priced the item as described in the Procuring Entity's design included with the tender documents.

Note A list of drawings should be inserted here. The actual drawings including Site plans should be annexed in a separate booklet.

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PART III - THE CONDITIONS OF  
CONTRACT AND CONTRACT

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SECTION VIII - GENERAL CONDITIONS OF CONTRACT (GCC)

[Name of Procuring Entity]

[Name of Contract]

[Architect Name and Address]

General Conditions of Contract

1. GENERAL PROVISIONS

1.1 Definitions

In this Contract, except where context otherwise requires, the following terms shall be interpreted as indicated below.

Words indicating persons or parties include corporations and other legal entities, except where the context requires

“Accepted Contract Amount” means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.

“Base Date” means a date 30 day prior to the submission of tenders.

“Bill of Quantities” means the priced and completed Bill of Quantities forming part of the tender.

“Completion Date” means the date of completion of the Works as certified by the Engineer.

“Contract Price” means the price defined in the contract and there after as adjusted in accordance with the provisions of the contract.

“Contract” means the agreement entered into between the Procuring Entity and the Contractor as recorded in the Agreement Form and signed by the parties including all attachments and appendices thereto and all documents incorporated by reference therein to execute, complete, and maintain the Works.

“Contractor's Documents” means the calculations, computer programs and other software, progress reports, manuals, models and other documents of a technical nature (if any) supplied by the Contractor under the Contract.

“Contractor's Equipment” means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any defects. However, Contractor's Equipment excludes

Temporary Works, Procuring Entity's Equipment (if any), Plant, Materials and any other things intended to form or

part of the Permanent Works. Contractor's Representative and all personnel whom the Contractor utilizes may include the staff, labor and other employees of the Contractor and of each Subcontractor; and any other personnel assisting the Contractor in the execution of the Works.

“Contractor's Representative” means the person named by the Contractor in the Contract appointed from time to time by the Contractor who acts on behalf of the Contractor.

“Contractor” means the person(s) named as contractor in the Form of Tender accepted by the Procuring Entity.

“Cost” means expenditure reasonably incurred (or to be incurred) by the Contractor, whether on or off the job, including overhead and similar charges, but does not include profit.

“Day” means a calendar day and “year” means 365 days.

“Dayworks” means Work inputs subject to payment on a time basis for labour and the associated materials and plant.

“Defect” means any part of the Works not completed in accordance with the Contract.

“Defects Liability Certificate” means the certificate issued by Architect upon correction of defects by the Contractor.

“Defects Liability Period” means the period named in the Special Conditions of Contract and calculated from the Completion Date, within which the contractor is liable for any defects that may develop in the handed over works.

“Defects Notification Period” means the period for notifying defects in the Works under Section 14.13 [Completion of Outstanding Work and Remediating Defects], which extends over the days stated in the Special Conditions of Contract.

“Drawings” means the drawings of the Works, as included in the Contract, and any additional and modified issued by (or on behalf of) the Procuring Entity in accordance with the Contract.

“Final Payment Certificate” means the payment certificate issued under Sub-Clause 14.13 [Issue of Final Certificate].

“Final Statement” means the statement defined in Sub-Clause 14.11 [Application for Final Payment Certificate].

“Force Majeure” is defined in Clause 19 [Force Majeure].

“Foreign Currency” means a currency of another country (not Kenya) in which part (or all) of the Contract price is payable but not the Local Currency.

“Goods” means Contractor's Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.

“Interim Payment Certificate” means a payment certificate issued under Clause 14 [Contract Price and Payment] the Final Payment Certificate.

“Laws” means all national legislation, statutes, ordinances, and regulations and by-laws of any legally constituted authority.

“Letter of Acceptance” means the letter of formal acceptance of a tender, signed by Procuring Entity, including any memoranda comprising agreements between and signed by both Parties.

“Local Currency” means the currency of Kenya.

“Materials” means things of all kinds (other than Plant) intended to form or forming part of the Permanent Works including the supply-only materials (if any) to be supplied by the Contractor under the Contract.

“Notice of Dissatisfaction” means the notice given by either Party to the other under Sub-Clause 20.3 [Dissatisfaction] and intention to commence arbitration.

“Special Conditions of Contract” means the pages completed by the Procuring Entity entitled Special Conditions which constitute Part A of the Special Conditions.

“Party” means the Procuring Entity or the Contractor, as the context requires.

“Payment Certificate” means a payment certificate issued under Clause 14 [Contract Price and Payment].

“Performance Certificate” means the certificate issued under Sub-Clause 11.9 [Performance Certificate].

“Performance Security” means the security (or securities, if any) under Sub-Clause 4.2 [Performance Security].

“Permanent Works” means the permanent works to be executed by the Contractor under the Contract.

“Works” including apparatus, machinery and vehicles (if any) made available by the Procuring Entity and relating to the construction and operation of the Works.

“Procuring Entity's Equipment” means the apparatus, machinery and vehicles (if any) made available by the

Procuring Entity for the use of the Contract or in the execution of the Works, as stated in the Specification; but does not include Plant which has not been taken over by the Procuring Entity.

“Procuring Entity's Personnel” means the Engineer, the assistants and all other staff, labor and employees of the Architect and of the Procuring Entity; and any other personnel notified to the Contractor, by the Procuring Entity or the Engineer, as Procuring Entity's Personnel.

“Procuring Entity” means the Entity named in the Special Conditions of Contract.

“Engineer” is the person named in the Appendix to Conditions of Contract (or any other competent person appointed by the Procuring Entity and notified to the Contractor, to act in replacement of the Engineer) who is responsible for supervising the execution of the Works and administering the Contract and shall be an “Architect” or a “Quantity Surveyor” registered under the Architects and Quantity Surveyors Act Cap 525 or an “Engineer” registered under the Engineers Registration Act Cap 530.

“Engineer” means the person appointed by the Procuring Entity to act as the Architect for the purposes of the Contract or other person appointed from time to time by the Procuring Entity and notified to the Contractor

“Provisional Sum” means a sum (if any) which is specified in the Contract as a provisional sum, for the execution of the Works or for the supply of Plant, Materials or services under Sub-Clause 13.5 [Provisional Sums].

“Retention Money” means the accumulated retention moneys which the Procuring Entity retains under Sub-Clause 14.1 [Application for Interim Payment Certificates] and pays under Sub-Clause 14.9 [Payment of Retention Money].

“Schedules” means the document(s) entitled schedules, completed by the Contractor and submitted with the Tender, as included in the Contract.

“Section” means a part of the Works specified in the Special Conditions of Contract as a Section (if any)

“Site Investigation Reports” are those reports that may be included in the tendering documents which are a reference to actual interpretation about the surface and sub-surface condition at the Site.

“Site” means the places where the Permanent Works are to be executed, including storage and working areas, Plant and Materials are to be delivered, and any other places as may be specified in the Contract as forming part of the Site.

“Specification” means the document entitled specification, as included in the Contract, and any modifications and the specification in accordance with the Contract. Such document specifies the Works.

“Start Date” or “Commencement Date” is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with the Site possession date(s).

“Statement” means a statement submitted by the Contractor as part of an application, under Clause 14 [Contract Payment], for a payment certificate.

“Subcontractor” means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Works.

“Taking-Over Certificate” means a certificate issued under Clause 10 [Procuring Entity's Taking Over].

“Temporary Works” means all temporary works of every kind (other than Contractor's Equipment) required for the execution and completion of the Permanent Works and the remedying of any defects.

“Temporary works” means works designed, constructed, installed, and removed by the Contractor which are required for the construction or installation of the Works.

“Tender” means the Form of Tender and all other documents which the Contractor submitted with the Tender, as included in the Contract.

“Tests after Completion” means the tests (if any) which are specified in the Contract and which are carried out in

accordance with the Specification after the Works or a Section (as the case may be) are taken over by the Procuring Entity.

“Test on Completion” means the tests which are specified in the Contractor agreed by both Parties or variations, and which are carried out under Clause 9 [Tests on Completion] before the Works or a Section (as the case may be) are taken over by the Procuring Entity.

“Time for Completion” means the time for completing the Works or a Section (as the case may be) as stated in the Special Conditions of Contract (with any extension calculated from the Commencement Date.

“Unforeseeable” means not reasonably foreseeable by an experienced contractor by the Base Date.

“Variation” means any change to the Works, which is instructed or approved as a variation under [Clause 13 and Adjustments].

“Works” means the items the Procuring Entity requires the Contractor to undertake as defined in the Special Conditions of Contract. “Works” may also mean the Permanent Works and the Temporary Works, or either of them as appropriate.

## 1.2 Interpretation

In the Contract, except where the context requires

a) other words indicating one gender include all genders;

b) words indicating the singular also include the plural and words indicating the plural also include the

c) provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in

d) writing;

“written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

## 1.3 Communications

1.3.1 Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:

a) In writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of

the agreed systems of electronic transmission as stated in the Special Conditions of Contract; and

b) delivered, sent or transmitted to the address or the recipient's communications as stated in the Special Conditions of Contract. However:

ii) if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

1.3.2 Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a

certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a

Party, by the other Party or the Engineer, a copy shall be sent to the Architect or the other Party, as may be.

## 1.4 The Contract Language

1.4.1 The Contract shall be governed by the laws of

Kenya.

1

1.4.2 The ruling language of the Contract shall be English.

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

- a) The Contract Agreement,
- b) The Letter of Acceptance,
- c) The Special Conditions – Part A,
- d) the Special Conditions – Part B
- e) the General Conditions of Contract
- f) Contract
- g) the Specifications and Bills of Quantities
- h) the Drawings, and
- i) the Schedules and any other documents forming part of the Contract.

If an ambiguity or discrepancy is found in the documents, the Architect shall issue any necessary clarification or instruction.

1.6 Contract Agreement

The Parties shall enter into a Contract Agreement within 14 days after the Contractor receives the Contract Agreement, unless the Special Conditions establish otherwise. The Contract Agreement shall be based upon the form annexed to the Special Conditions. The costs of stamp duties and similar charges (if any)

1.7 Assigned by

law in connection with entry into the Contract Agreement shall be borne by the Procuring Entity. The Contractor shall not assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, the contractor:

- a) May as sign the whole or any part with the prior consent of the Procuring Entity, and
- b) may, as security in favor of a bank or financial institution, assign its right to moneys due, or to become due, under the Contract.

1.8 Care and Supply of Documents

1.8.1 The Specifications and Drawings shall be in the custody and care of the Procuring Entity. Unless otherwise stated in the Contract, two copies of the Contract and of each subsequent Drawings and Bills of Materials shall be supplied to the Contractor, who may make or request further copies at the cost of the Contractor.

1.8.2 Each of the Contractor's Documents shall be in the custody and care of the Contractor, unless and until taken over by the Procuring Entity. Unless otherwise stated in the Contract, the Contractor shall supply to the

1.8.3 The Contractor copies of each of the Contractor's Documents, publications named in the Specification, the Contractor's Documents (if any), the Drawings and Variations and other communications given under the Contract. The Procuring Entity's Personnel shall have the right of access to all these documents at all

1.8.4 If a Party becomes aware of an error or defect in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.

1.9 Timely provision of Drawings or Instructions

1.9.1 The Contractor shall give notice to the Architect whenever the Works are likely to be delayed or disrupted if necessary drawing or instruction is not issued to the Contractor within a particular time, which shall be reasonable. The notice shall include details of the necessary drawing or instruction, details of why and by

1.9.2 If the Contractor suffers, delays and/or incurs costs as a result of a failure of the Architect to issue the drawing or instruction within a time which is reasonable and is specified in the notice with supporting details, the Contractor shall give a further notice to the Architect and shall be entitled subject to Sub-clause 20.1.1 the Contractor shall give a further notice to the Architect and shall be entitled subject to Sub-clause 20.1.1 Clause 8.4 [Extension of Time for Completion], and

- b) payment of any other associated costs accrued, which shall be included in the Contract Price.
- 1.93 After receiving this further notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.
- 1.94 However, if and to the extent that the Architect failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall
- 1.10 ~~be deemed to be liable for the costs~~ accrued.
- 1.10.1 As agreed between the Parties, the Contractor shall retain the copyright and other intellectual property rights in the Contractor's Documents and other design documents made by (or on behalf of) the Contractor
- 1.10.2 ~~The Contractor shall be deemed (by signing the Contract) to give to the Procuring Entity a non-terminable transferable non-exclusive royalty-free license to copy, use and communicate the Contractor's Documents,~~
  - a) ~~including making and using modifications of working files (which shall be longer) of the relevant parts of the~~
  - b) Works, entitle any person in proper possession of the relevant part of the Works to copy, use and communicate
  - c) ~~the Contractor's Documents for the purposes of operating, repairing, altering, adjusting, repairing and maintaining the Works, the Site and other places as envisaged by the Contract, including~~
- 1.10.3 ~~The Contractor's Documents supplied by the Contractor~~ by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the
- 1.11 ~~Procuring Entity for purposes that have not been permitted under Sub-Clause 1.10.2.~~

As agreed between the Parties, the Procuring Entity shall retain the copyright and other intellectual property rights in the Specification, the Drawings and other documents made by (or on behalf of) the Procuring Entity.

The Contractor may, at his cost, copy, use, and obtain communication of these documents for the purposes

- 1.12 ~~Confidential Details~~ shall not, without the Procuring Entity's consent, be copied, used or communicated to
- 1.12.1 ~~the Contractor or the Procuring Entity's Personnel for the purposes of the Contract~~ at all times. The confidentiality shall survive termination or completion of the contract. They shall disclose all such
- 1.12.2 ~~With the Contractor's and the Procuring Entity's Personnel shall also treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable Laws. Each of them shall not publish or disclose any particulars of the Works prepared by the other Party without the previous agreement of the other Party. However, the Contractor shall~~ Laws be permitted to disclose any publicly available information, or information otherwise required to ~~the Contractor shall, in performing the Contract, comply with applicable Laws. Unless otherwise stated in the Special Conditions of Contract:~~
  - a) The Procuring Entity shall have obtained (or shall obtain) the planning, zoning, building permit or similar permission for the Permanent Works, and any other permissions described in the Specifications as having been (or to be) obtained by the Procuring Entity; and the Procuring Entity shall indemnify and hold the Contractor harmless against and from the consequences of any failure to do so and
- 1.13 ~~Contractor shall~~ Laws be permitted to disclose any publicly available information, or information otherwise required to

- b) the Contractor shall give all notices, pay all taxes, duties and fees, and obtain all permits, licenses and approvals, as required by the Laws in relation to the execution and completion of the Works and the remedying of any defects; and the Contractor shall indemnify and hold the Procuring Entity harmless
- 1.14 **Joint and Several Liability** The Contractor shall be jointly and severally liable for the consequences of any failure to do so, unless the Contractor is impeded to do so. If the Contractor is a partnership (under applicable Laws), its joint venture, consortium or other unincorporated grouping of two or more persons:
- These persons shall be deemed to be jointly and severally liable to the Procuring Entity for the
  - performance of the Contract; these persons shall notify the Procuring Entity of their leader who shall have authority to
  - bind the Contractor and each of these persons; and the Contractor shall not alter its composition or legal status without the prior consent of the Procuring Entity.
- 1.15 **Inspection and Audit** by the Procuring Entity. Pursuant to paragraph 2.2(e). of Appendix B to the General Conditions, the Contractor shall permit and shall cause its subcontractors and sub-consultants to permit, the Public Procurement Regulatory Authority, Procuring Entity and/or persons appointed or designated by the Government of Kenya to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by the Procuring Entity if requested by the Procuring Entity. The Contractor's and its Subcontractors' and sub-consultants' attention is drawn to Sub-
- 2 **The PROSECUTOR (Anti-Corruption)** which provides, inter alia, that acts intended to materially impede the
- 2.1 **Exercise of Access to the Site** The Procuring Entity's inspection and audit rights constitute a prohibited practice subject to contract
- 2.1.1 **The Procuring Entity shall give the Contractor right of access to, and possession of, all parts of the Site within the prevailing conditions (procedures) stated in the Special Conditions of Contract. The right and possession may not be exclusive to the Contractor. If, under the Contract, the Procuring Entity is required to give (to the Contractor) possession of any foundation, structure, plant or means of access, the Procuring Entity shall do so in the time such time is stated in the Special Conditions of Contract, the Procuring Entity shall give the Contractor the right of access to, and possession of, the Site within such times as required to enable the Contractor to possess until the Performance Security has been received.**
- 2.1.3 **If the Contractor suffers delay and with incurs Cost as a result of a failure by the Procuring Entity to give any such right or possession within such time, the Contractor shall give notice to the Architect and shall be entitled extension of time for any such delay, if completion is or will be delayed, under Sub-subject Clause 20.1 [Contractor's Claims] to:**
- Extension of Time for Completion], and
  - payment of any such Cost-plus profit, which shall be included in the Contract Price.
- 2.14 After receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.
- 2.15 However, if and to the extent that the Procuring Entity's failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time, Cost or profit.

## 2.2 Permits, Licenses or Approvals

2.2.1 The Procuring Entity shall provide, at the request of the Contractor, such reasonable assistance as to allow

the Contractor to obtain properly:

- a) Copies of the Laws of Kenya which are relevant to the Contract but are not readily
- b) available, and any permits, licenses or approvals required by the Laws of Kenya:
  - i) which the Contractor is required to obtain under Sub-Clause 1.13 [Compliance with Laws],
  - ii) for the delivery of Goods, including clearance through customs, and
  - iii) for the export of Contractor's Equipment when it is removed from the Site.

## 2.3 Procuring Entity's Personnel

The Procuring Entity shall be responsible for ensuring that the Procuring Entity's Personnel and the

Procuring Entity's other contractor son the Site:

- a) co-operate with the Contractor's efforts under Sub-Clause 4.6 [Co-operation], and
- b) take action ssimilar to those which the Contractor is required to take under sub-paragraphs (a), (b) and (c) of Sub-Clause 4.8 [Safety Procedures] and under Sub-Clause 4.18 [Protection of the

## 2.4 Procuring Entity's Financial Arrangements

The Procuring Entity shall make and maintain all necessary financial arrangements which will enable the Procuring Entity to pay the Contract Price punctually (as estimated at that time) in accordance with Clause 14

## 3. THE ENGINEER

### 3.1 Architect Duties and Authority

3.1.1 The Procuring Entity shall appoint the Architect who shall carry out the duties as signed to him in the Contract.

The Architect staff shall include suitably qualified Assistants and other professionals who are competent to

carry out these duties. The Architect Name and Address shall be provided in the Special

3.1.2 ~~The Architect~~ Conditions of shall have no authority to amend the Contract.

3.1.3 The Architect May exercise the authority attributable to the Architect as specified in or necessarily to be implied from the Contract. If the Architect is required to obtain the approval of the Procuring Entity before exercising a specified authority, the requirements shall be as stated in the Special Conditions of Contract.

3.1.4 ~~If the Procuring Entity shall promptly inform the Procuring Entity of any change in the authority attributed to the Architect, then (for the purposes of the Contract) the contractor shall require the Architect to provide evidence~~

3.1.5 ~~Except as otherwise stated in the Special Conditions:~~ Conditions:

- a) Whenever carrying out duties or exercising authority, specified in or implied by the Contract, the Architect shall be deemed to act for the Procuring Entity;
- b) the Architect has no authority to relieve either Party of any duties, obligations or responsibilities under the Contract;
- c) any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the Architect (including absence of disapproval) shall not relieve the Contractor from any responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances; and
- d) any act by the Architect in response to a Contractor's request shall be notified in writing to the Contractor within 14 days of receipt.

- 3.1.6 The following provisions shall apply:  
The Architect shall obtain the specific approval of the Procuring Entity before taking action under the following Sub-Clauses of these Conditions:
- a) Sub-Clause 4.12: agreeing or determining an extension of time and/or additional cost.
  - b) ~~Sub-Clause 13.1: instructing a Variation, except~~  
    - 1) In an emergency situation as determined by the Engineer,
    - 2) If such a Variation would increase the Accepted Contract Amount by less than the percentage specified in the Special Conditions of Contract
  - c) ~~Sub-Clause 15.3: Approving a proposal for Variation submitted by the Contractor in accordance with~~
  - d) ~~Sub-Clause 13.4 or 13.2:~~ Specifying the amount payable in each of the applicable three currencies.
- 3.1.7 Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Engineer, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Contractor of any of his duties and responsibility under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Engineer, be necessary to abate or reduce the risk. The Contractor shall forth with comply, despite the absence of approval of the
- 3.2 ~~Delegation~~ by the Engineer Entity, with any such instruction of the Engineer. The Architect shall determine an addition to the
- 3.2.1 ~~Contract~~ Architect may from time to time assign duties and delegate authority to assistants and may also ~~revoke~~ in respect of such instruction, in accordance with Clause 13 and shall notify the Contractor ~~such assignment or delegation~~. These assistants may include a resident Engineer, and/or ~~independently~~ to the Procuring Entity.
- 3.2.2 ~~Parties~~ assistant, to whom duties have been assigned or authority has been delegated, shall only be ~~authorized~~ unless otherwise agreed by both Parties, the Architect shall not delegate the authority to ~~the same~~ instructions to the Contractor to the extent defined by the delegation. Any approval, check, ~~or matter~~ in accordance with Sub-Clause 3.5 [Determinations].
- 3.2.3 ~~Any failure to do so~~ consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by an assistant, in ~~accordance with the delegation, shall only be valid if the Architect has given his approval and the Engineer shall~~
- 3.2.4 ~~How~~ therefore not prejudice the right of the Architect to reject the work, Plant or Materials;
- a) If the Contractor questions any determination or instruction of an assistant, the Contractor may refer the matter to the Engineer, who shall promptly confirm, reverse or vary the determination or instruction.
- 3.3 Instructions of the Engineer
- 3.3.1 The Architect may issue to the Contractor (at anytime) instructions and additional or modified Drawings which may be necessary for the execution of the Works and the remedying of any defects, all in accordance with the Contract. The Contractor shall only take instructions from the Engineer, or from an assistant to
- 3.3.2 ~~The Contractor~~ shall comply with the instructions given by the Architect or delegated assistant, on any ~~that~~ appropriate authority has been delegated under Clause 3.2.1. related to the Contract. Whenever practicable, their instructions shall be given in writing. If the Architect or
- a) ~~delegated assistant:~~
    - a) Gives an oral instruction,
    - b) receives a written confirmation of the instruction, from (or on behalf of) the Contractor, within two working days after giving the instruction, and

- c) does not reply by issuing a written rejection and/or instruction within two working days after receiving the confirmation,  
Then the confirmation shall constitute the written instruction of the Architect or delegated assistant (as the case may be).

3.4 Replacement of the Engineer

If the Procuring Entity intends to replace the Engineer, the Procuring Entity shall, in not less than 21 days before the intended date of replacement, give notice to the Contractor of the name, address and relevant

3.5 Determination of the intended person to replace the Engineer.

3.5.1 Whenever these Conditions provide that the Architect shall proceed in accordance with this Sub-Clause 3.5 to agree or determine any matter, the Architect shall consult with each Party in an endeavor to reach

3.5.1.1 agreement. If agreement is not achieved, the Architect shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.

particulars, within 30 days from the receipt of the corresponding claim or request except when otherwise specified. Each Party shall give effect to each agreement or determination unless and until revised

4. THE CONTRACTOR

Clause 20 [Claims, Disputes and Arbitration].

4.1 Contractor's General Obligations

4.1.1 The Contractor shall design (to the extent specified in the Contract), execute and complete the Works in

4.1.2 accordance with the Contract and with the Architect instructions, and shall remedy any defects in the Works. The Contractor shall provide the Plant and Contractor's Documents specified in the Contract, and all

4.1.3 Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects.

4.1.4 in any eligible source country. The Contractor shall be responsible for the adequacy, stability and safety of all Site operations and of all methods of construction. Except to the extent specified in the Contract, the Contractor (i) shall be responsible

4.1.5 for all Contractor's Documents, Temporary Works, and such design of each item of Plant and Materials as is required for the item to be in accordance with the Contract, and (ii) shall not otherwise be responsible

for the design or specification of the Permanent Works.

4.1.6 If the Contract specifies that the Contractor shall design any part of the Permanent Works, then arrangements and methods shall be made without this having previously been notified to the Engineer unless otherwise stated in the Special Conditions:

- a) The Contractor shall submit to the Architect the Contractor's Documents for this part in accordance with the procedures specified in the Contract;
- b) these Contractor's Documents shall be in accordance with the Specification and Drawings, shall be written in the language for communications defined in Sub-Clause 1.4 [Law and Language], and shall be in the Contractually defined format;
- c) the Contractor shall be responsible for the design of this part and shall add to the Works as completed, such parts of design which the part is intended as are specified in the Contract; and
- d) prior to the commencement of the Tests on Completion, the Contractor shall submit to the Architect the documents and, if applicable, operation and maintenance manuals in accordance with the Specification and in sufficient detail for the Procuring Entity to operate, maintain, dismantle, reassemble, adjust and repair this part of the Works. Such part shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections] until these documents and manuals have been submitted to the Engineer.

- 42 Performance Security
- 42.1 The Contractor shall obtain (at his cost) a Performance Security for proper performance, in the amount stated in the Special Conditions of Contract and denominated in the currency (ies) of the Contract or in a freely convertible currency acceptable to the Procuring Entity. If an amount is not stated in the Special Conditions of Contract, this Sub-Clause shall not apply.
- 42.2 The Contractor shall deliver the Performance Security to the Procuring Entity within 30 days after the Notification of Award and shall send a copy to the Engineer. The Performance Security shall be issued by a reputable bank selected by the Contractor and shall be in the form annexed to the Special Conditions, as stipulated by the Procuring Entity in the Special Conditions of Contract, enforceable for the approved Contractor has completed the Works and remedied any defects. If the terms of the Performance Security specify 30 days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the expiry date, and the Contractor shall be entitled to receive the Performance Certificate by the expiry date.
- 42.3 The Procuring Entity shall not make a claim under the Performance Security, except for amounts to which the Procuring Entity is entitled under the Contract.
- 42.4 The Procuring Entity shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to which the Procuring Entity is entitled under the Contract.
- 42.5 The Procuring Entity shall not make a claim under the Performance Security to which the Contractor is entitled under the Contract within 14 days after receiving a copy of the Taking-Over Certificate.
- 42.6 Without limitation to the provisions of the rest of this Sub-Clause, whenever the Architect determines an addition or a reduction to the Contract Price as a result of a change in cost and/ or legislation, or as a result of a Variation, amounting to more than 25 percent of the portion of the Contract Price payable in a specific Contract, the Contractor shall at the Architect request promptly increase, or may decrease, as the case may be, the Contract Price by the amount of the Contractor's Representative's Name and Address shall be necessary to act on the Contractor's behalf under the Contract. The Contractor's Representative's Name and Address shall be provided in the Special Conditions of Contract.
- 43 The Contractor shall at the Architect request promptly increase, or may decrease, as the case may be, the Contract Price by the amount of the Contractor's Representative's Name and Address shall be necessary to act on the Contractor's behalf under the Contract. The Contractor's Representative's Name and Address shall be provided in the Special Conditions of Contract.
- 43.1 The Contractor shall at the Architect request promptly increase, or may decrease, as the case may be, the Contract Price by the amount of the Contractor's Representative's Name and Address shall be necessary to act on the Contractor's behalf under the Contract. The Contractor's Representative's Name and Address shall be provided in the Special Conditions of Contract.
- 43.2 Unless the Contractor's Representative is named in the Contract, the Contractor shall, prior to the Commencement Date, submit to the Architect for consent the name and particulars of the person the Contractor proposes to appoint as Contractor's Representative. If consent is withheld or subsequently revoked in terms of Sub-Clause 6.9 [Contractor's Personnel], or if the appointed person fails to act as Contractor's Representative, the Contractor shall similarly submit the name and particulars of an other suitable Representative or appoint are placement.
- 43.3 The Contractor shall not, without the prior consent of the Engineer, revoke the appointment of the Contractor's Representative, the Contractor shall similarly submit the name and particulars of an other suitable Representative or appoint are placement.
- 43.4 The whole time of the Contractor's Representative shall be given to directing the Contractor's performance of the Contract. If the Contractor's Representative is to be temporarily absent from the Site during the execution of the Works, a suitable replacement person shall be appointed, subject to the Architect prior consent, and the Contractor's Representative shall, on behalf of the Contractor, receive instructions under Sub-Clause 6.9 [Contractor's Personnel] accordingly.
- 43.5 The Contractor's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Architect has received prior notice signed by the Contractor's Representative, naming the person to whom the powers, functions and authority are being delegated or revoked.
- 43.6 The Contractor's Representative shall be fluent in the language for communications defined in Sub-Clause 6.9 [Contractor's Personnel].
- 43.7 The Contractor's Representative shall be fluent in the language for communications defined in Sub-Clause 6.9 [Contractor's Personnel].

[Law and Language]. If the Contractor's Representative's delegates are not fluent in the said language, the Contractor shall make competent interpreter available during all working hours in a number defined by the Engineer.

44 Sub-contractors

44.1 The Contractor shall not subcontract the whole of the Works. The contractor may however subcontract the works as provided in Clause 34.2.

44.2 The Contractor shall be responsible for the acts or defaults of any Subcontractor, his agents or employees, as if they were the Contractor's.

The Contractor shall not be held liable for any acts or defaults of any Subcontractor, his agents or employees, as if they were the Contractor's, unless otherwise stipulated in the Special Conditions:

a) the Contractor is not the Procuring Entity; or to a

b) The contractor is not the Procuring Entity; or

c) the Contractor shall give the Procuring Entity not less than 14 days' notice of the intended date of the

d) Each subcontract shall include provisions which would entitle the Procuring Entity to require the subcontract to be assigned to the Procuring Entity under Sub-Clause 4.5 [Assignment of Benefit of Subcontract] (if or when applicable) or in the event of termination under Sub-Clause 15.2 [Termination]

44.3 The Contractor shall ensure that the requirements imposed on the Contractor by Sub-Clause 1.12 [Contract Documents] apply equally to each Subcontractor.

44.4 Where practicable, the Contractor shall give fair and reasonable opportunity for contractors from Kenya to be appointed as Subcontractors.

45 Assignment of Benefit of Subcontract

If a Subcontractor's obligations extend beyond the expiry date of the relevant Defects Notification Period and the Engineer, prior to this date, instructs the Contractor to assign the benefit of such obligations to the Procuring Entity, then the Contractor shall do so. Unless otherwise stated in the assignment, the Contractor shall have no liability to the Procuring Entity for the work carried out by the Subcontractor after the

46 The Contractor shall, as specified in the Contract or as instructed by the Engineer, allow appropriate opportunities for carrying out work to:

a) Personnel of contractors employed by the Procuring Entity;

b) Any other contractors employed by the Procuring Entity;

c) The personnel of any legally constituted public authorities, who may be employed in the execution on or near the Site of any work not included in the Contract.

46.2 Any such instruction shall constitute a Variation if and to the extent that it cause the Contractor to suffer delays and/or incur Unforeseeable Cost. Services for these personnel and other contractors may include the use of Contractor's Equipment, Temporary Works or access arrangements which are the responsibility of the Contractor.

46.3 If, in accordance with the Contract, the Procuring Entity is required to give to the Contractor possession of any structure, plant or means of access in accordance with Contractor's Documents, the Contractor shall submit such documents to the Architect in the time and manner stated in the Specification.

47 Setting Out of the Works

47.1 The Contractor shall set out the Works in relation to original points, lines and levels of reference specified in the Contractor notified by the Engineer. The Contractor shall be responsible for the correct positioning of all

47.2 The Procuring Entity shall be responsible for any the positions, levels, dimensions for alignment of the Works, but the Contractor shall use reasonable efforts to verify their accuracy before they are used.

- 4.73 If the Contractor suffers delay and/or incurs Cost from executing work which was necessitated by an error in these items of reference, and an experienced contractor could not reasonably have discovered such error and avoided this delay and/ or Cost, the Contractor shall give notice to the Architect and shall be entitled to an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 40.1 [Contractor's Claims] to:
- a) Extension of Time for Completion], and
  - b) payment of any such costs accrued, which shall be included in the Contract Price.
- 4.7.4 After receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] determine (i) whether and (if so) to what extent the error could not reasonably have been discovered, and (ii) the matters described in sub-paragraphs (a) and (b) above related to this.
- 4.8 Safety Procedures

The Contractor shall:

- a) Comply with all applicable safety regulations
  - b) Take all necessary precautions for the safety of all persons entitled to be on the Site,
  - c) Use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid
  - d) provide for the lighting, guarding and watching of the Works until completion and taking over under Clause 10 [Procuring Entity's Taking Over], and
  - e) provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of adjacent land.
- 4.9 Quality Assurance
- 4.9.1 The Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Contract. The Architect shall be
- 4.9.2 Details of all procedures and compliance documents shall be submitted to the Architect for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Procuring Entity, the Contractor shall be deemed to have accepted the Contractor's obligations or responsibilities under the Contract.
- 4.10 Site Data
- 4.10.1 The Procuring Entity shall have made available to the Contractor for his information, prior to the Base Date, relevant data in the Procuring Entity's possession on sub-surface and hydrological conditions at the Site, including environmental aspects. The Procuring Entity shall similarly make available to the Contractor all such data which come into the Procuring Entity's possession after the Base Date. The Contractor shall be
- 4.10.2 In the extent which was practicable (taking account of cost and time), the Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Tender or Works. To the same extent, the Contractor shall be deemed to have inspected and examined the Site, its nature and condition, including data and other available information, and to have been satisfied with the conditions, before submitting the Tender as to all relevant matters, including, (without limitation):
- a) the extent and nature of the Work and Goods necessary for the execution and completion of the Works
  - b) the Laws, procedures and customs practices of Kenya,
  - c) the Contractor's requirements for access, accommodation, facilities, personnel, power, transport, water and other services.

#### 4.11 Sufficiency of the Accepted Contract Amount

##### 4.11.1 The Contractor shall be deemed

- a) Have satisfied itself as to the correctness and sufficiency of the Accepted Contract Amount and
- b) Have based the Accepted Contract Amount on the data, interpretations, necessary information, inspections, examinations and satisfaction as to all relevant matters referred to in Sub-Clause 4.10 [Site Data]

4.11.2 Unless otherwise stated in the Contract, the Accepted Contract Amount covers all the Contractor's obligations under the Contract (including those under Provisional Sums, if any) and all things necessary for the proper

##### 4.12 Enforceable Physical Conditions Works and the remedying of any defects.

4.12.1 In this Sub-Clause, "physical conditions" means natural physical conditions and man-made and other physical obstructions and pollutants, which the Contractor encounters at the Site when executing the Works, including

4.12.2 sub-surface and hydrological conditions but excluding climatic conditions. If the Contractor encounters adverse physical conditions which he considers to have been Unforeseeable, the Contractor shall give notice to the Architect as soon as practicable.

4.12.3 This notice shall describe the physical conditions, so that they can be inspected by the Architect and shall set out the reasons why the Contractor considers them to be Unforeseeable. The Contractor shall continue executing the Works, using such proper and reasonable measures as are appropriate for the physical

4.12.4 conditions, and shall comply with any instructions which the Architect may give. If an instruction constitutes a Variation, Clause 13 [Variations and Adjustments] shall apply. If and to the extent that the Contractor encounters physical conditions which are Unforeseeable, gives notice, and suffers delay and/or incurs Cost due to these conditions, the Contractor shall be entitled to receive under Sub-Clause 20.1 [Contractor's Claims]

- to:
- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
  - b) payment of any such Cost, which shall be included in the Contract Price.

4.12.5 Upon receiving such notice and inspecting and/or investigating these physical conditions, the Architect shall in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) whether and (if so) to what extent these physical conditions were Unforeseeable, and (ii) the matters described in sub-paragraphs

4.12.6 (a) and (b) above related to this extent. However, before additional Cost is finally agreed or determined under sub-paragraph (ii), the Architect may also review whether other physical conditions in similar parts of the Works (if any) were more favorable than

~~the reasons only have been unforeseen when the Contractor submitted the Tender. If these conditions, not later than the day (as deductions) in the Contract Price and Payment Certificates. However, the net effect of all favorable conditions were encountered, the Architect may proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) whether and (if so) to what extent these physical conditions were Unforeseeable, and (ii) the matters described in sub-paragraphs (a) and (b) above related to this extent. However, before additional Cost is finally agreed or determined under sub-paragraph (ii), the Architect may also review whether other physical conditions in similar parts of the Works (if any) were more favorable than~~

4.12.7 ~~Encountered in similar parts of the Works, shall not result in a net reduction in the Contract Price.~~ The Architect shall take account of any evidence of the physical conditions foreseen by the Contractor when the Tender, which shall be made available by the Contractor, but shall not be bound by the Contractor's interpretation of any such evidence.

##### 4.13 Rights of Way and Facilities

Unless otherwise specified in the Contract the Procuring Entity shall provide effective access to and possession of the Site including special and/or temporary rights-of-way which are necessary for the Works.

The Contractor shall obtain, at his risk and cost, any additional rights of way or facilities on the Site

which he may require for the purposes of the Works.

#### 4.14 Avoidance of Interference

4.14.1 The Contractor shall not interfere unnecessarily or improperly

with:

- a) The convenience of the public,
- b) The access to and use and occupation of all roads and foot paths, irrespective of whether they are public or in the possession of the Procuring Entity or of others.

4.14.2 The Contractor shall indemnify and hold the Procuring Entity harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper

#### 4.15 Access Route

4.15.1 The Contractor shall be deemed to have been satisfied as to the suitability and availability of access routes to the Site at Base Date. The Contractor shall use reasonable efforts to prevent any road or bridge from being damaged by the Contractor's traffic or by the Contractor's Personnel. These efforts shall include the proper

4.15.2 Except as otherwise stated in these Conditions: The Contractor shall (as between the Parties) be responsible for any maintenance which

- a) may be required for his use of access routes;
- b) the Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the relevant authorities for his use of routes, signs and directions;
- c) the Procuring Entity shall not be responsible for any claims which may arise from the use or otherwise of any access route;
- d) the Procuring Entity does not guarantee the suitability or a vailability of particular access routes and
- e) costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor.

#### 4.16 Transport of Goods

Unless otherwise stated in the Special

Conditions:

- a) the Contractor shall give the Architect not less than 21 days' notice of the date on which any Plant or a
  - b) major item of other Goods will be delivered to the Site;
  - c) the Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works; and
- the Contractor shall indemnify and hold the Procuring Entity harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the transport of Goods and shall

4.17 Contractor's Equipment shall indemnify all claims arising from their transport.

The Contractor shall be responsible for all Contractor's Equipment. When brought on to the Site, Contractor's

Equipment shall be deemed to be exclusively intended for the execution of the Works. The Contractor shall

4.18 not remove from the Site any major items of Contractor's Equipment without the consent of the Procuring Entity of the Environment

However, consent shall not be required for vehicles transporting Goods or Contractor's Personnel off

4.18.1 Site. The contractor shall comply with the applicable environmental laws, regulations and policies.

4.18.2 The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.

4.18.3 The Contractors shall ensure that emissions, surfaced is charges and effluent from the Contractor's activities shall not exceed the values stated in the Specification or prescribed by applicable

Laws.

4.19 Electricity, Water and Gas

4.19.1 The Contractor shall, except as stated below, be responsible for the provision of all power, water and other services he may require for his construction activities and to the extent defined in the Specifications, ~~for the~~

4.19.2 The Contractor shall be entitled to use for the purposes of the Works such supplies of electricity, water, gas and other services as may be available on the Site and of which details and prices are given in the

Specifications. The Contractor shall, at his risk and cost, provide any apparatus necessary for his use ~~The quantities consumed and the amounts due (at these prices) for such services shall be agreed or determined~~

~~by the Architect. The Contractor shall pay these amounts [Procuring Entity's Claims] and Sub-Clause 3.5 [Determinations].~~ The Contractor shall ~~pay these amounts [Procuring Entity's Claims] and Sub-Clause 3.5~~

4.20 Procuring Entity's Equipment and Free-Issue Materials

4.20.1 The Procuring Entity shall make the Procuring Entity's Equipment (if any) available for the use of the

Contractor in the execution of the Works in accordance with the details, arrangements and prices stated in the

Specification. ~~Unless otherwise stated in the Specification:~~

- a) The Procuring Entity shall be responsible for the Procuring Entity's Equipment, except that
- b) the Contractor shall be responsible for each item of Procuring Entity's Equipment whilst any of the Contractor's Personnel is operating it, driving it, directing it or in possession or control of it.

4.20.1 The appropriate quantities and the amounts due (at such stated prices) for the use of Procuring Entity's

Equipment shall be agreed or determined by the Architect in accordance with Sub-Clause 2.5

[Procuring Entity's Claims] and Sub-Clause 3.5 [Determinations]. The Contractor shall pay these amounts

4.20.2 The Procuring Entity shall supply, free of charge, the "free-issue materials" (if any) in accordance with the

details stated in the Specification. The Procuring Entity shall, at his risk and cost, provide these materials at

the time and place specified in the Contract. The Contractor shall then visually inspect them and shall

4.20.3 ~~promptly give notice to the Architect of any shortage, defect or default in these materials. Unless otherwise agreed by both Parties, the Procuring Entity shall immediately rectify the notified shortage, defect or default. The Contractor's obligations of inspection, care, custody and control shall not relieve the~~

4.21 ~~Procuring Entity's~~ Progress Reports of liability for any shortage, defect or default not apparent from a visual inspection.

4.21.1 Unless otherwise stated in the Special Conditions, monthly progress reports shall be prepared by the

Contractor and submitted to the Architect in six copies. The first report shall cover the period up to the

end of the first calendar month following the Commencement Date. Reports shall be submitted

4.21.2 ~~monthly thereafter, each within 7 days after the last day of the period to which it relates.~~ Reporting shall continue until the Contractor has completed all work which is known to be outstanding

at the completion date stated in the Taking-Over Certificate for the Works. Each report shall include:

a) charts and detailed descriptions of progress, including each stage of design (if any),

Contractor's

Documents, procurement, manufacture, delivery to Site, construction, erection and

(~~Discontinued~~ Subcontractors)],

b) including these stages for work by each nominated Subcontractor (as defined in

Clause 5

c) for the manufacture of each main item of Plant and Materials, the name of the

manufacturer,

ii) commencement, percentage progress, and the actual or expected dates of:

ii) manufacture,

iii) Contractor's inspections,

tests, and

- iv) shipment and arrival at the Site;
- d) the details described in Sub-Clause 6.10 [Records of Contractor's Personnel and Equipment];
- e) Copies of quality assurance documents, test results and certificates of Materials;
- f) Notices given under Sub-Clause 2.5 [Procuring Entity's Claims] and notices given under Sub-Clause 20.1 [Contractor's Claims];
- g) Safety statistics, [including details of any hazardous incidents and activities relating to environmental aspects and public relations; and
- h) comparison so far as actual and planned progress, with details of any events or circumstances which may jeopardize the completion in accordance with the Contract, and the measures being (or to be)

4.22 Security of the Site

Unless otherwise stated in the Special

- a) Conditions; The Contractor shall be responsible for keeping unauthorized persons off the Site and
- b) authorized persons shall be limited to the Contractor's Personnel and the Procuring Entity's Personnel; and to any other personnel notified to the Contractor, by the Procuring Entity or the

4.23 Contractor's Operations on Site

4.23.1 The Contractor shall confine his operations to the Site, and to any additional areas which may be obtained by the Contractor and agreed by the Architect as additional working areas. The Contractor shall take all necessary precautions to keep Contractor's Equipment and Contractor's Personnel

4.23.2 within the Site and these additional areas, and to keep them off adjacent and unnecessary obstruction and shall store or dispose of any Contractor's Equipment or surplus materials. The

4.23.3 Contractor shall clear away and remove from the Site any wreckage, rubbish and Temporary Works which are no longer required. After the issue of a Taking-Over Certificate, the Contractor shall clear away and remove, from the Site and Works to which the Taking-Over Certificate refers, all Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works. The Contractor shall leave that part of the Site and

4.24 the Works in a clean and safe condition. However, the Contractor may retain on Site, during the Notification Period, such Goods as are required for the Contractor to fulfil obligations

4.24.1 All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the Procuring Entity.

4.24.2 The Contractor shall take reasonable precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings. The Contractor shall, upon discovery of any such finding, promptly give notice to the Engineer, who shall

issue instructions for dealing with it. If the Contractor suffers delay and/or incurs Cost from complying with

a) the instructions, the Contractor shall give a further notice to the Architect and shall be entitled subject to Sub-Clause 8.4

b) payment for any such delay, if completion is or will be delayed, under Sub-Clause 20.1 [Contractor's Claims] that shall be included in the Contract

After receiving this further notice, the Architect shall proceed in accordance with Sub-Clause 3.6 [Dispute Resolution] to agree or determine these matters.

5. NOMINATED SUBCONTRACTORS

5.1 Definition of "nominated Subcontractor"

In this Contract, "nominated Subcontractor" means a

- a) Subcontractor who is nominated by the Procuring Entity,
- b) Contractor has nominated as a Subcontractor subject to Sub-Clause 5.2 [Objection to Notification].

5.2 Objection to Nomination

The Contractor shall not be under any obligation to employ a nominated Subcontractor against whom the Contractor raises reasonable objection by notice to the Procuring Entity as soon as practicable, with supporting particulars. An objection shall be deemed reasonable if it arises from (among other things) any of the following matters, unless the Procuring Entity agrees in writing to indemnify the Contractor against and from the consequences of the matter:

- c) the nominated Subcontractor does not accept to enter into a subcontract which specifies that, for the subcontracted work (including design, if any), the nominator Subcontractor shall:
  - i) undertake to the Contractor such obligations and liabilities as will enable the Contractor to discharge his obligations and liabilities under the Contract;
  - ii) indemnify the Contractor against and from all obligations and liabilities arising under or in connection with the Contract and from the consequences of any failure by the Subcontractor to perform these obligations or to fulfil these liabilities, and
  - iii) be paid only if and when the Contractor has received from the Procuring Entity payments due under the Subcontract referred to under Sub-Clause 5.3 [Payment to nominated Subcontractors]

5.3 Payments to nominated Subcontractors

The Contractor shall pay to the nominated Subcontractor the amounts shown on the nominated Subcontractor's invoices approved by the Contractor which the Architect certifies to be due in accordance with the subcontract. These amounts plus other charges shall be included in the Contract Price in accordance

5.4 Evidence of Payment (b) of Sub-Clause 13.5 [Provisional Sums], except as stated in Sub-Clause 5.4 [Evidence of Payments]

- 5.4.1 Before issuing a Payment Certificate which includes an amount payable to a nominated Subcontractor, the Architect may request the Contractor to supply reasonable evidence that the nominated Subcontractor has received all amounts due in accordance with previous Payment Certificates, less applicable deductions. The Contractor shall submit this reasonable evidence to the Engineer, or, if so satisfied by the Architect in writing, the Contractor may refuse to submit the evidence described in sub-paragraphs (a) or (b) above. The Contractor shall then repay, to the Procuring Entity, the amount which the nominated Subcontractor was directly paid by the Procuring Entity.
- ii) If the Contractor has provided reasonable evidence that the nominated Subcontractor has been notified of the Contractor's entitlement, then the Procuring Entity may (at his sole discretion) pay, directly to the nominated Subcontractor, part or all of such amounts previously certified (less applicable deductions) as are due to the nominated Subcontractor and for which the Contractor has failed to

6 STAFF AND LABOR

6.1 Engagement of Staff and Labor by the Procuring Entity

Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all staff and labor, local or otherwise, and for their payment, feeding, transport, and, when appropriate, housing. The Contractor is encouraged, to the extent practicable and reasonable, to employ staff with appropriate qualifications and experience from sources within Kenya.

6.2 Rates of Wages and Conditions of Labor

- 6.2.1 The Contractor shall pay rates of wages, and observe conditions of labor, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by Procuring Entity's whose trade or industry is similar

to that of the Contractor.

- 6.2.2 The Contractor shall inform the Contractor's Personnel about their liability to pay personal income taxes in Kenya in respect of such of their salaries, wages, allowances and any benefits as are subject to tax under the Laws of Kenya for the time being in force, and the Contractor shall perform such duties in regard to such taxes in the Service of Procuring Entity deductions there of as may be imposed on him by such Laws. The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Procuring Entity's Personnel.
- 6.3 Lab or Laws

- 6.4 The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, including Laws relating to their employment, employment of children, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights. The Contractor shall require his employees to comply with all applicable Laws, including those concerning safety at work. No work shall be carried out on the Site on locally recognized days of rest, or outside the normal working hours, other than in the Special Conditions of Contract, unless:
- 6.5 Working Hours
- b) The Architect gives consent, or
  - c) The work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer, provided that work done outside the normal working hours shall be considered and paid for as overtime.
- 6.6 Facilities for Staff working hours shall be considered and paid for as overtime.

- 6.7 Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities on site for the Contractor's Personnel. The Contractor shall also provide facilities for the Procuring Entity's Personnel as stated in the Specifications. The Contractor shall not permit the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures of the Contract or the Plant and the Works.
- 6.7.1 The Contractor shall take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any other locations where the Contractor's Personnel are working.
- 6.7.2 The Contractor shall appoint a qualified person to be responsible for the health and safety of the Contractor's Personnel on site and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Contractor shall provide the details required by the person responsible for health and safety, and shall maintain records and make reports concerning health, safety and welfare of persons, and shall ensure that the Contractor's Personnel are vaccinated against HIV and other sexually transmitted diseases via an approved service provider and shall undertake such other measures taken to reduce the risk of the transfer of these diseases between and among the Contractor's Personnel and the local community, to prevent the spread of such diseases and to assist affected individuals.
- 6.8 The Contractor shall provide all necessary super intendence to plan, arrange, direct, manage, inspect and test the work.
- 6.8.1 Throughout the execution of the Works, and as long thereafter as is necessary to fulfil the Contractor's obligations, the Contractor shall provide all necessary super intendence to plan, arrange, direct, manage, inspect and test the work.

- 6.8.2 Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications (defined in Sub-Clause 1.4 [Law and Language]) and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and
- 6.9 ~~Contractor's~~ Personnel preventing accidents), for the satisfactory and safe execution of the Works.
- 6.9.1 The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Contractor's Key personnel shall be named in the Special Conditions of Contract. The Architect may require the Contractor to remove (or cause to be removed) any person employed on the Site who carries out duties in competently or Works, including the Contractor's Representative if applicable, who:
- a) persists in any misconduct or lack of
  - b) fails to conform with any provisions of the
  - c) fails to conform with any provisions of the
  - d) persists in any conduct which is prejudicial to safety, health, or the protection of the
  - e) environment or, on reasonable evidence, is determined to have engaged in Fraud and Corruption during the execution of the Works.
- 6.9.2 If appropriate, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person.
- 6.10 Records of Contractor's Personnel and Equipment
- The Contractor shall submit, to the Engineer, details showing the number of each class of Contractor's Personnel and of each type of Contractor's Equipment on the Site. Details shall be submitted each calendar month, in a form approved by the Engineer, until the Contractor has completed all work which is
- 6.11 ~~Disorderly~~ Conduct be outstanding at the completion date stated in the Taking-Over Certificate for the Works. The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor's Personnel, and to preserve peace and protection of persons and property on and near the Site.
- 6.12 Foreign Personnel
- 6.12.1 The Contractor shall not employ foreign personnel unless the contractor demonstrates that there are no Kenyans with the required skills.
- 6.12.2 The Contractor shall be responsible for the return of any foreign personnel to the place where they were recruited or to their domicile. In the event of the death in Kenya of any of these personnel or members of their families, the Contractor shall similarly be responsible for making the appropriate arrangements for
- 6.13 ~~Supply of~~ Water or burial. The Contractor shall, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the Contractor's Personnel.
- 6.14 Measures against Insect and Pest Nuisance
- The Contractor shall at all times take the necessary precautions to protect the Contractor's Personnel employed on the Site from insect and pest nuisance, and to reduce the danger to their health. The Contractor shall comply
- 6.15 ~~with the~~ Regulations of the local health authorities, including use of appropriate insecticide.
- The Contractor shall not, otherwise than in accordance with the Laws of Kenya, onsite, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift, barter
- 6.16 ~~Prohibition of~~ Forced or Compulsory Labour.
- The Contractor shall not employ forced labor, which consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty, and includes

involuntary or compulsory labor, such as indentured labor, bonded labor or similar labor-contracting arrangements.

6.17 Prohibition of Harmful Child Labor

The Contractor shall not employ children in a manner that is economically exploitative, or is likely to be hazardous, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. Where the relevant labour laws of Kenya have provisions for

6.18 Employment Records of Workers

The Contractor shall not employ a minor or child in the employment of labour at the Site. The records shall include the names, ages, genders, hours worked and wages paid to all workers. These records shall be

6.19 Workers' Organizations

to be submitted by the Contractor under Sub-Clause 6.10 [Records of Contractor's Personnel and The Contractor shall comply with the relevant labor laws that recognize workers' rights to form and to join workers' organizations of their choosing without interference.

6.20 Non-Discrimination and Equal Opportunity

The Contractor shall base the labour employment on the principle of equal opportunity and fair treatment and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access

7. PLANT, MATERIAL, STANDARD OF WORKMANSHIP

7.1 Manner of Execution

The Contractor shall carry out the manufacture/assemble of plant, the production and manufacture of Materials, and all other execution of the Works:

- a) in the manner (if any) specified in the Contract
- b) in a proper workman like and careful manner, in accordance with recognized good practice and
- c) with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract.

7.2 Samples

The Contractor shall submit the following samples of Materials, and relevant information, to the Architect

for consent prior to using the Material on or for the Works:

- a) manufacturer's standard samples of Materials and samples specified in the Contract, all at the Contractor's cost and
- b) additional samples instructed by the Architect as a Variation.

Each sample shall be labeled as to origin and intended use in the Works.

7.3 Inspection

7.3.1 The Procuring Entity's Personnel shall at all reasonable

- a) times Have full access to all parts of the Site and to all places from which natural Materials are being obtained and
- b) during production, manufacture and construction (at the Site and elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of

7.3.2 The Contractor shall give the Procuring Entity's Personnel full opportunity to carry out these activities,

- including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any obligation or responsibility.
- 733 The Contractor shall give notice to the Architect whenever any work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Architect shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that
- 74 The Architect does not require to do so. If the Contractor fails to give the notice, he shall, if and when required
- 74.1 By this Sub-Clause, shall apply to all tests specified in the Contract.
- 74.2 Except as otherwise specified in the Contract, the Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labor, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The
- 74.3 The Architect shall agree with the Engineer [Year, date, time and place] on the specified testing of ready Plant, Materials and the parts of the Works to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying
- 74.4 The Architect shall give the Contractor not less than 24 hours' notice of the Architect intention to attend the tests. If the Architect does not attend at the time and place agreed, the Contractor may proceed with the tests,
- 74.5 unless otherwise instructed by the Engineer, and the tests shall then be deemed to have been made in the presence of a representative of the Contractor. If the Contractor suffers delay and/ or incurs Cost from complying with these instructions or as a result of a delay for which the Procuring Entity is responsible, the Contractor shall give notice to the Architect and shall be entitled to an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 20.1 [Contractor's Claims] to:
- b) Extension of Time for Completion], and payment of any such Cost-plus profit, which shall be included in the Contract Price.
- 74.6 After receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determination] to determine these matters.
- 74.7 The Contractor shall promptly forward to the Architect duly certified reports of the tests. When the specified tests have been completed, the Architect shall endorse the Contractor's test certificate, or issue a certificate to him, to that effect. If the Architect has not attended the tests, he shall be deemed to have accepted the
- 75 ~~Rejection~~ as accurate.
- 75.1 If, as a result of an examination, inspection, measurement or testing, any Plant, Materials or workmanship is found to be defective or otherwise not in accordance with the Contract, the Architect may reject the Plant, Materials or workmanship by giving notice to the Contractor, with reasons. The Contractor shall be required to promptly make good the defect and ensure that the rejected item complies with the Contract. If the rejection and retesting cause the Procuring Entity to incur additional costs, the Contractor shall be subject to Sub-Clause 2.5 [Procuring Entity's Claims] pay these costs
- 76 ~~Remedial Work~~ Procuring Entity.
- 76.1 Notwithstanding any previous test or certification, the Architect may instruct the Contractor to
- a) remove from the Site and replace any Plant or Materials which is not in accordance with the
  - b) Contract,
  - c) remove and re-execute any other work which is not in accordance with the Contract, and execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseen able event or otherwise.

- 7.62 The Contractor shall comply with the instruction within a reasonable time, which shall be the time (if any) specified in the instruction, or immediately if urgency is specified under sub-paragraph (c).
- 7.63 If the Contractor fails to comply with the instruction, the Procuring Entity shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor shall subject to Sub-Clause 2.5 [Procuring Entity's Claims] pay to the Contractor repeatedly delivers defective work, the Procuring Entity may consider Procuring Entity all costs arising from this failure.
- 7.64 accordance with Clause 15.
- 7.7 Ownership of Plant and Materials

Except as otherwise provided in the Contract, each item of Plant and Materials shall become the property of the Procuring Entity, at whichever is the earlier of the following times, free from liens and other encumbrances:

- a) when the Contractor is paid the corresponding value of the Plant and Materials under Sub-Clause 8.11 [Plant and Materials in Event of Suspension].
- 7.8 Royalties

Unless otherwise stated in the Specification, the Contractor shall pay all royalties, rents and other payments for

- a) Natural materials obtained from outside the Site,
- b) and the disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made), except to the extent that disposal are as within the Site are specified in the Contract.

## 8 COMMENCEMENT, DELAYS AND SUSPENSION

### 8.1 Commencement of Works

- 8.1.1 Except as otherwise specified in the Special Conditions of Contract, the Commencement Date shall be the date at which the following precedent condition shave all been fulfilled and the Architect notification recording the agreement of both Parties on such fulfilment and instructing to commence the Work is received by the Contractor by the Procuring Entity, and if required, approval of the Contract by the Contracting Authorities of Kenya:
- a) except in otherwise specified in the Special Conditions of Contract, effective access to and possession given to the Contractor together with such permission(s) under (a) of Sub-Clause 13.2 [Compliance with Laws] as required for the commencement of the Works;
- b) Receipt by the Contractor of the Advance Payment under Sub-Clause 14.2 [Advance Payment] provided that the corresponding bank guarantee has been delivered by the Contractor.

- 8.1.2 If the said Architect instruction is not received by the Contractor within 180 days from his receipt of the Letter of Acceptance, the Contractor shall be entitled to terminate the Contract under Sub-Clause 16.2.

- 8.1.3 The Contractor shall commence the execution of the Works as soon as is reasonably practicable after the Commencement Date and shall then proceed with the Works with due expedition and without delay for Completion

The Contractor shall complete the whole of the Works, and each Section (if any), within the Time for

- a) Completion for the Works or Section (as the case may be), including:
- b) and completing all work which is stated in the Contract as being required for the Works or Section to be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections].

- 8.3.1 The Contractor shall submit a detailed time programme to the Architect within 4 days after receiving the

notice under Sub-Clause 8.1 [Commencement of Works]. The Contractor shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Contractor's obligations. Each programme shall include:

- a) the order in which the Contractor intends to carry out the Works, including the anticipated timing of each stage of design (if any), Contractor's Documents, procurement, manufacture of Plant, delivery of these stages for work by each nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]) and the sequence and timing of inspections and tests specified in the Contract,
- b) a supporting report which includes:
  - i) a general description of the methods which the Contractor intends to adopt, and of the major stages in the execution of the Works, and
  - ii) details showing the Contractor's reasonable estimate of the number of each class of Contractor's

8.3.2 Unless the Engineer, within 14 days after receiving a programme, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the programme, subject to his other obligations under the Contract. The Procuring Entity's Personnel shall

8.3.3 The Contractor shall promptly give notice to the Architect of specific probable future events or circumstances which may adversely affect the work, increase the Contract Price or delay the execution of the Works.

8.3.4 If, at anytime, the Architect gives notice to the Contractor that a programme fails (to the extent stated) to comply with the Contractor to be consistent with actual progress and the Contractor's stated intentions, the Contractor shall submit a revised programme to the Architect in accordance with this Sub-Clause.

#### 8.4 Extension of Time for Completion

8.4.1 The Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 [Taking Over of the Works and Sections] is or will be delayed by any of the following causes: (Contractor Procedure) or other substantial change in the quantity of an item of work included in the Contract giving an entitlement to extension of time under a Sub-Clause of these Conditions,

- b) exceptionally adverse climatic conditions,
- c) Unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions, or
- d) any delay, impediment or prevention caused by or attributable to the Procuring Entity, the Procuring Entity's Personnel, or the Procuring Entity's other contractors.

8.4.2 If the Contractor considers itself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Architect in accordance with Sub-Clause 20.1 [Contractor's Claims]. When

determining each extension of time under Sub-Clause 20.1, the Architect shall review previous Delays Caused by Authorities and may increase, but shall not decrease, the total extension of time.

8.5 If the following conditions apply,

- a) The Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in Kenya, and
- b) these authorities delay or disrupt the Contractor's work, and
- c) the delay or disruption was Unforeseeable, then this delay or disruption will be considered as a cause of delay under sub-paragraph (b) of Sub-Clause 8.4 [Extension of Time for Completion].

## 8.6 Rate of Progress

### 8.6.1 If, at anytime:

- a) Actual progress is too slow to complete within the Time for Completion,
- b) ~~and/or~~ progress has fallen (or will fall) behind the current programme under Sub-Clause 8.3 [Programme], other than as a result of a cause listed in Sub-Clause 8.4 [Extension of Time for Completion], then the Architect may instruct the Contractor to submit, under Sub-Clause 8.3 [Programme], a revised

8.6.2 Unless the Architect instructs otherwise, the Contractor shall adopt these revised methods, which may propose to increase in the working period and progress and complete of Contract Time for Completion Goods, at the risk and cost of the Contractor. If these revised methods cause the Procuring Entity to incur additional costs, the

8.6.3 ~~Additional shall subject to methods under Sub-Clause 2.5 [Procuring Entity's Claims] pay these costs to the Procuring Entity from additions to delay damages (if any) 8.4 [Extension of Time for Completion] shall be paid~~

8.7 ~~Delay Damages~~ Procuring Entity, without generating, however, any other additional payment benefit to the Contractor.

8.7.1 If the Contractor fails to comply with Sub-Clause 8.2 [Time for Completion], the Contractor shall subject to notice under Sub-Clause 2.5 [Procuring Entity's Claims] pay delay damages to the Procuring Entity for this default. These delay damages shall be the sum stated in the Special Conditions of Contract, which shall be

8.7.2 ~~These~~ delay damages shall be the only damages due from the Contractor for such default, other than taking-Over Certificate. However, the total amount due under this Sub-Clause shall not exceed the maximum termination under Sub-Clause 15.2 [Termination by Procuring Entity] prior to completion of the amount of delay damages (if any) stated in the Special Conditions of Contract.

Works. These damages shall not relieve the Contractor from his obligation to complete the Works,

### 8.8 Suspension of Work

any other duties, obligations or responsibilities which he may have under the Contract.

8.8.1 The Architect may at anytime instruct the Contractor to suspend progress of part or all of the Works. During such suspension, the Contractor shall protect, store and secure such part or the Works against any

8.8.2 ~~The Architect may also damage~~ the cause for the suspension. If and to the extent that the cause is notified and is the responsibility of the Contractor, the following Sub-Clauses 8.9, 8.10 and 8.11 shall not apply.

### 8.9 Consequences of Suspension

8.9.1 If the Contractor suffers delay and/or incurs Cost from complying with the Architect instructions under Sub-Clause 8.8 [Suspension of Work] and/or from resuming the work, the Contractor shall give notice to the Architect and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- b) Extension of Time for Completion], and  
Payment of any such Cost, which shall be included in the Contract Price.

8.9.2 After receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

8.9.3 The Contractor shall not be entitled to an extension of time for, or to payment of the Cost incurred in, making good the consequences of the Contractor's faulty design, workmanship or materials, or of the Contractor's

8.10 ~~Payment for Plant and Materials in Event of Suspension~~ Sub-Clause 8.8 [Suspension of Work].

The Contractor shall be entitled to payment of the value (as at the date of suspension) of Plant and/ or

Materials which have not been delivered to Site,

- f) The work on Plant or delivery of Plant and/ or Materials has been suspended for more than 30 days and
- b) the Contractor has marked the Plant and/or Materials as the Procuring Entity's property in accordance with the Architect instructions.

#### 8.11 Prolonged Suspension

If the suspension under Sub-Clause 8.8 [Suspension of Work] has continued for more than 84 days, the Contractor may request the Architect to permit the Contractor to proceed. If the Architect does not give permission within the time as an omission under Clause 13 [Variations and Adjustments] of the affected part of the Works. If the suspension affects the whole of the Works, the Contractor may give notice of termination under Sub-

#### 8.12 Resumption of Work by Contractor.

After the permission or instruction to proceed is given, the Contractor and the Architect shall jointly examine the Works and the Plant and Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension

#### 9. TESTS ON COMPLETION

##### 9.1 Contractor's Obligations

9.1.1 The Contractor shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 7.4 after providing the documents in accordance with sub-paragraph (d) of Sub-Clause 1.4 [Contractor's General Obligations].

9.1.2 The Contractor shall give to the Architect not less than 21 days' notice of the date after which the Contractor will be ready to carry out each of the Tests on Completion.

9.1.3 In addition to the results of the Tests on Completion, the Contractor shall, at the Architect's request, provide the Architect with the results of any use of the Works by the Procuring Entity on the performance or other characteristics of the Works. As

soon as the Works, or a Section, have passed any Tests on Completion, the Contractor shall submit a ~~Delayed~~ report of the results of these Tests to the Engineer.

9.2.1 If the Tests on Completion are being unduly delayed by the Procuring Entity, Sub-Clause 7.4 [Testing] (fifth paragraph) and/ or Sub-Clause 10.3 [Interference with Tests on Completion] shall be applicable.

9.2.2 If the Tests on Completion are being unduly delayed by the Contractor, the Architect may by notice require the Contractor to carry out the Tests within 21 days after receiving the notice. The Contractor shall carry out

the Tests on such day or days within that period as the Contractor may fix and of which he shall give notice to the Engineer. If the Contractor fails to carry out the Tests on Completion within the period of 21 days, the Procuring Entity

Personnel may proceed with the Test at the risk and cost of the Contractor. The Tests on Completion shall

9.3 ~~Failure~~ then be deemed to have been carried out in the presence of the Contractor and the results of the Tests shall be accepted as accurate.

If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 [Rejection] shall apply, and the Architect or the Contractor may require the failed Tests, and Tests on Completion on any related work, to

9.4 ~~Failed~~ repeated Pass Tests on Completion and conditions.

9.4.1 If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3 [Retesting], the Architect shall be entitled to:

- a) Order further repetition of Tests on Completion under Sub-Clause 9.4 [Failure to Pass Tests on Completion],
- b) If the failure deprives the Procuring Entity of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the Procuring Entity shall have the
10. PROCURING ENTITIES TAKING OVER paragraph (c) of Sub-Clause 1.4 [Failure to Remedy Defects].
- 10.1 Taking Over of the Works and Sections
- 10.1.1 Except as stated in Sub-Clause 9.4 [Failure to Pass Tests on Completion], the Works shall be taken over by the Procuring Entity when (i) the Works have been completed in accordance with the Contract, including the matters described in Sub-Clause 8.2 [Time for Completion] and except as allowed in sub-paragraph (a) below,
- 10.1.2 The Contractor shall apply for a Taking-Over Certificate for the Works or Section to have been issued in its day in before the Works, in the Contractor's opinion, be complete and ready for taking over. If the Works are
- 10.1.3 The Architect shall, within 30 days of receipt of the application for a Taking-Over Certificate for each Section, issue the Taking-Over Certificate to the Contractor, or, stating the date on which the Works or Section were completed in accordance with the Contract, except for any minor outstanding work and defects which
- b) reject the application, affecting the use of the Works or Section for their intended purpose (either Contractor to complete this Work or Section and the defects are discussed in the Certificate); or shall then complete this work before
- 10.1.4 If the Architect fails to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 30 days, and if the Works or Section (as the case may be) are substantially in accordance with
- 10.2 The Contractor, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.
- 10.2.1 The Architect may, at the sole discretion of the Procuring Entity, issue a Taking-Over Certificate for any part of the Permanent Works.
- 10.2.2 The Procuring Entity shall not use any part of the Works (other than as a temporary measure which is either specified in the Contract or agreed by both Parties) unless and until the Architect has issued a Taking-Over Certificate for this part. However, if the Procuring Entity does use any part of the Works before the
- a) The part which is used shall be deemed to have been taken over as from the date on which it is used.
- b) The Contractor shall cease to be liable for the care of such part as from this date, when the Taking-Over Certificate is issued: responsibility shall pass to the Procuring Entity, and
- c) If requested by the Contractor, the Architect shall issue a Taking-Over Certificate for this part.
- 10.2.3 After the Architect has issued a Taking-Over Certificate for a part of the Works, the Contractor shall be given the earliest opportunity to take such steps as may be necessary to carry out any outstanding Tests on Completion. The Contractor shall carry out these Tests on Completion as soon as practicable before the
- 10.2.4 If the Contractor incurs Cost as a result of the Procuring Entity taking over and/or using a part of the Works, other than such use as is specified in the Contract, the Contractor shall
- (i) give notice to the Procuring Entity (if a Taking-Over Certificate has been issued for a part of the Works (other than a Section]) the delay damages shall be reduced proportionally to the extent that the Contractor has completed the Works or Section (as the case may be) as a whole. The Architect shall proceed in accordance with Sub-Clause 3.5 [Delay Damages].
- 10.2.5 If a Taking-Over Certificate has been issued for a part of the Works (other than a Section), the delay damages shall be reduced proportionally to the extent that the Contractor has completed the Works or Section (as the case may be) as a whole. The Architect shall proceed in accordance with Sub-Clause 3.5 [Delay Damages].
- 10.2.6 If a Taking-Over Certificate has been issued for a part of the Works (other than a Section), the delay damages shall be reduced proportionally to the extent that the Contractor has completed the Works or Section (as the case may be) as a whole. The Architect shall proceed in accordance with Sub-Clause 3.5 [Delay Damages].

to the daily rate of delay damages under Sub-Clause 8.7 [Delay Damages] and shall not affect the maximum amount of these damages.

### 103 Interference with Tests on Completion

- 103.1 If the Contractor is prevented, for more than 14 days, from carrying out the Tests on Completion by a cause for which the Procuring Entity is responsible, the Procuring Entity shall be deemed to have taken over the Works or Section (as the case may be) on the date when the Tests on Completion would otherwise have been completed. The Architect shall then issue a Taking-Over Certificate accordingly, and the Contractor shall carry out the Tests on Completion as soon as practicable, before the expiry date of the Defects Notification Period. The Architect shall require the Tests on Completion to be carried out by giving 14 days' notice and in the event the Contractor suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests the relevant provisions of the Contract.
- 103.2 [Completion of the Contract] The Contractor shall give notice to the Architect and shall be entitled subject to Sub-Clause 20.1
- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4
- b) Extension of Time for Completion], and payment of any such accrued costs, which shall be included in the Contract Price.
- 103.3 After receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.
- ### 104 Surfaces Requiring Reinstatement

Except as otherwise stated in a Taking-Over Certificate, a certificate for a Section or part of the Works shall not be deemed to certify completion of any ground or other surfaces requiring reinstatement.

## 11. DEFECTS LIABILITY

### 11.1 Completion of Outstanding Work and Remedying Defects

- 11.1.1 In order that the Works and Contractor's Documents, and each Section, shall be in the condition required by the Contract (fairwear and tear excepted) by the expiry date of the relevant Defects Notification Period or as soon as practicable any work which is outstanding on the date stated in a Taking-Over Certificate, with such reasonable time as is instructed by the Engineer, and execute all work required to remedy defects or damage, as may be notified by (or on behalf of) the Procuring Entity on or before the expiry date of the Defects Notification Period for the Works or Section
- 11.1.2 If a defect or damage occurs, the Contractor shall be notified accordingly by the Engineer.
- ### 11.2 Cost of Remedying Defects
- 11.2.1 All work referred to in sub-paragraph (b) of Sub-Clause 11.1 [Completion of Outstanding Work and Remedying Defects] shall be executed at the risk and cost of the Contractor, if and to the extent that the work design for which the Contractor is attributable:
- b) Plant, Materials or workmanship not being in accordance with the Contract, or
- c) Failure by the Contractor to comply with any other obligation.
- 11.2.2 If and to the extent that such work is attributable to any other cause, the Contractor shall be notified promptly by (or on behalf of) the Procuring Entity, and Sub-Clause 13.3 [Variation Procedure] shall apply.
- ### 11.3 Extension of Defects Notification Period
- 11.3.1 The Procuring Entity shall be entitled subject to Sub-Clause 2.5 [Procuring Entity's Claims] to an extension of the Defects Notification Period for the Works or a Section if and to the extent that the Works, Section or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they

are intended by reason of a defect or by reason of damage attributable to the Contractor. However, a Defects

Notification Period shall not be extended by more than two years.

11.3.2 If delivery and/ or erection of Plant and/ or Materials was suspended under Sub-Clause 8.8 [Suspension of

Work] or Sub-Clause 16.1 [Contractor's Entitlement to Suspend Work], the Contractor's obligations under this

Clause shall not apply to any defect or damage occurring more than two years after the Defects

11.4 Notification Remedies Defects

Period for the Plant and/ or Materials would otherwise have expired.

11.4.1 If the Contractor fails to remedy any defect or damage within a reasonable time, a date may be fixed by the

Engineer, on or by which the defect or damage is to be remedied. The Contractor shall be given

11.4.2 reasonable notice of this date. If the Contractor fails to remedy the defect or damage by this notified date and this remedial work was to be

executed at the cost of the Contractor under Sub-Clause 11.2 [Cost of Remedying Defects], the

(a) Procuring Entity may procure the work itself or by others, in a reasonable manner and at the Contractor's cost, but the Procuring Entity may (at his option):

2.5 In Procuring Entity's Disposal, liability of the Procuring Entity Contractor shall not be incurred Sub-Clause 11.2 in Procuring Entity in remedying the defect or

(b) damage, the Architect to agree or determine a reasonable reduction in the Contract Price in accordance

(c) with Sub-Clause 3.5 [Determinations] if the Procuring Entity of substantially the whole benefit of the Works or any major part of the Works, terminate the Contract as a whole, or in respect of such major part which

cannot be put to the intended use. Without prejudice to any other rights, under the Contractor otherwise,

the Procuring Entity shall then be entitled to recover all sums paid for the Works or for such

11.5 Removal of Defective Work

part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the

Site and damage cannot be remedied expeditiously on the Site and the Procuring Entity gives consent, returning Plant and Materials to the Contractor.

the Contractor may remove from the Site for the purposes of repair such items of Plant as are defective or

damaged. This consent may require the Contractor to increase the amount of the Performance Security

11.6 Further Tests

full replacement cost of these items, or to provide other appropriate security.

11.6.1 If the work of remedying of any defect or damage may affect the performance of the Works, the Architect may

require the repetition of any of the tests described in the Contract. The requirement shall be made by notice

11.6.2 Within 14 days after the defect or damage is remedied the tests shall be carried out under the terms applicable to the previous tests, except that they

shall be carried out at the risk and cost of the Party liable, under Sub-Clause 11.2 [Cost of Remedying Defects],

11.7 Right of Access to the remedial work.

Until the Completion Certificate has been issued, the Contractor shall have such right of access to the Works

as is reasonably required in order to comply with this Clause, except as may be inconsistent with the Procuring

11.8 Entity's security restrictions.

The Contractor shall, if required by the Engineer, search for the cause of any defect on parts of the works that

have already accepted, under the direction of the Engineer. Unless the defect is to be remedied at the cost of

the Contractor under Sub-Clause 11.2 [Cost of Remedying Defects], the Cost of the search plus

profit shall be borne by the Contractor. The Contractor shall be notified by the Architect in accordance with Sub-Clause 3.5 [Determinations] and shall be

11.9.1 notified in the Completion Certificate. The Contractor's obligations shall not be considered to have been completed until the Architect

has issued the Completion Certificate to the Contractor, stating the date on which the Contractor completed

his obligations under the Contract.

- 11.92 The Architect shall issue the Completion Certificate within 30 days after the latest of the expiry dates of the Defects Liability Period, or as soon thereafter as the Contractor has supplied all the Contractor's Documents and completed and tested all the Works, including remedying any defects. A copy of the
- 11.93 ~~Only the~~ Completion Certificate shall be deemed to constitute acceptance of the ~~Works~~ Certificate shall be issued to the Procuring Entity.

#### 11.10 Unfulfilled Obligations

After the Completion Certificate has been issued, each Party shall remain liable for the fulfilment of any obligation which remains unperformed at that time. For the purposes of determining the nature and extent

- 11.11 ~~Of the~~ ~~Contractor's~~ obligations, the Contract shall be deemed to remain in force.

- 11.11.1 Upon receiving the Completion Certificate, the Contractor shall remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site.

- 11.11.2 If all these items have not been removed within 30 days after receipt by the Contractor of the Completion Certificate, the Procuring Entity may sell or otherwise dispose of any remaining items. The Procuring Entity

- 11.11.3 ~~As a balance~~ of the moneys from the sale shall be paid to the Contractor. If these moneys are less than the ~~Procuring Entity's~~ costs, the Contractor shall pay the outstanding balance to the Procuring Entity.

## 12 MEASUREMENT AND DEVALUATION

### 12.1 Works to be Measured

- 12.1.1 The Works shall be measured, and valued for payment, in accordance with this Clause. The ~~Contractor shall~~ application under Sub-Clauses 14.3 [Application for Interim Payment Certificates], [Statement on Completion] and 14.11 [Application for Final Payment Certificate] the quantities ~~particulars~~ detailing the amounts which he considers to be entitled under the Contract.

- 12.1.2 Whenever the Architect requires any part of the Works to be measured, reasonable notice shall be given to ~~the Contractor's Representative and he shall~~ the Contractor's Representative and he shall: a) be a qualified representative to assist the Architect in making the measurement, and

b) supply any particulars requested by the Engineer.

- 12.1.3 If the Contractor fails to attend or send a representative, the measurement made by the Architect shall be accepted as accurate.

- 12.1.4 Except as otherwise stated in the Contract, wherever any Permanent Works are to be measured from records, these shall be prepared by the Engineer. The Contractor shall, as and when requested, attend to examine and

- 12.1.5 ~~if the~~ Contractor examines and disagrees the records, and/ or does not sign them as agreed, ~~the records~~ shall be accepted as accurate. Contractor shall give notice to the Architect of the respects in which the records are asserted to be inaccurate.

After receiving this notice, the Architect shall review the records and either confirm or vary them and certify

- 12.2 ~~Method of measurement~~ of the disputed part. If the Contractor does not so give notice to the Architect within 14 days ~~after being requested to examine the records, they shall be accepted as accurate.~~ measurement shall be made of the net actual quantity of each item of the Permanent

Works, and

b) the method of measurement shall be in accordance with the Bill of Quantities or other applicable

Schedules.

- 12.3 Evaluation
- 12.3.1 Except as otherwise stated in the Contract, the Architect shall proceed in accordance with Sub-Clause 12.1 [Determinations] to agree or determine the value of work one by evaluating each item of work, applying the measurement agreed or determined in accordance with the above Sub-Clauses 12.1 and 12.2 and the appropriate rate or price for the item.
- 12.3.2 For each item of work, the appropriate rate or price for the item shall be the rate or price specified for such item in the Contractor, if there is no such item, specified for similar work.
- 12.3.3 Any item of work included in the Bill of Quantities for which no rate or price was specified shall be considered as included in other rates and prices in the Bill of Quantities and will not be paid for separately.
- 12.3.4 However, for a new item of work, a new rate or price shall be appropriate for such item of work. The work is instructed under Clause 13 [Variations and Adjustments]
- b) no rate or price is specified in the Contract for this item,
  - c) and no specified rate or price is appropriate because the item of work is not of similar character, or is not executed under similar conditions, as any item in the Contract.
- 12.3.5 Each new rate or price shall be derived from any relevant rates or prices in the Contract. If no rates or prices are relevant for the new item of work, it shall be derived from the reasonable Cost of executing such work, provided that the rate or price is agreed by the Contractor and the Architect.
- 12.3.6 Where the contract price is different from the corrected tender price, in order to ensure the contractor is not paid less or more relative to the contract price (which would be the tender price), payment valuation certificates and variation orders on omissions and additions valued based on rates in the Bill of Quantities or schedule of rates in the Tender, will be adjusted by a plus or minus percentage. The percentage already
- 12.4 Omissions
- When the Contractor omits any work from a part of the Contract (or a Variation) the value of which has been priced, and
- a) The Contractor will incur (or has incurred) cost which, if the work had not been omitted, would have been deemed to be covered by a sum forming part of the Accepted Contract
  - b) The omission of the work will result (or has resulted) in this sum not forming part of the Contract Price;
  - c) and this cost is not deemed to be included in the evaluation of any substituted work; then the Contractor shall give notice to the Architect accordingly, with supporting particulars. Upon receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this cost, which shall be included in the Contract Price.
13. VARIATIONS AND ADJUSTMENTS
- 13.1 Right to Vary
- 13.1.1 Variations may be initiated by the Architect at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal. No Variation instructed
- 13.1.2 The Contractor shall extend to the Architect and shall comply with each Variation, in accordance with the Contract, promptly gives notice to the Architect stating (with supporting particulars) that (i) the Contractor cannot readily obtain the Goods required for the Variation, or (ii) such Variation triggers a substantial change in the sequence or
- 13.1.3 Progress of Variation may include:
- a) changes to the quantities of any item of work included in the Contract (however, such changes do not necessarily constitute a Variation)
  - b) changes to the quality and/or characteristics of any item of work
  - c) changes to the levels, positions and/ or dimensions of any part of the Works,

- d) omission of any work unless it is to be carried out by others;
- e) any additional work, Plant, Materials or services necessary for the Permanent Works, including any
- f) associated Tests on Completion, boreholes and other testing and exploratory work, or changes to the sequence or timing of the execution of the Works.

13.1.4 The Contractor shall not make any alteration and/or modification of the Permanent Works, unless and until the Architect instructs after obtaining approval of the Procuring Entity.

132. Variation Order Procedure

132.1 Prior to any Variation Order under Sub-Clause 13.1.4 the Architect shall notify the Contractor of the nature and form of such variation. As soon as possible after having received such notice, the Contractor shall submit a description of work, if any, to be performed and a programme for its

- b) the Contractor's proposals for any necessary modifications to the Programme according to Sub-Clause 13.1.4 to any of the Contractor's obligations under the Contract, and
- c) the Contractor's proposals for adjustment to the Contract Price.

Following the receipt of the Contractor's submission the Architect shall, after due consultation with the Employer and the Contractor, decide as soon as possible whether or not the variation shall be carried out. If

the Architect decides that the variation shall be carried out, he shall issue a Variation Order clearly identifying the variation.

If the Architect and the Contractor are unable to agree the adjustment of the Contract Price, the provisions of Sub-Clause 13.2.2 shall apply.

132.2 Disagreement on Adjustment of the Contract Price

If the Contractor and the Architecture unable to agree on the adjustment of the Contract Price, the adjustment shall be determined in accordance with the rates specified in the Bills of Quantities or Schedule of Daywork Prices. If the rates contained in the Bills of Quantities or Dayworks Prices are not directly applicable to the

specific work in question, suitable rates shall be established by the Architect reflecting the level of pricing in the Bills of Quantities or Dayworks Prices.

Where the rates in the Bills of Quantities or Dayworks Prices are not directly applicable to the specific work in question, suitable rates shall be established by the Architect reflecting the level of pricing in the Bills of Quantities or Dayworks Prices. Where the rates in the Bills of Quantities or Dayworks Prices are not directly applicable to the specific work in question, suitable rates shall be established by the Architect reflecting the level of pricing in the Bills of Quantities or Dayworks Prices. The amount shall be such as to cover the cost of making necessary alterations to Plant already manufactured or in the course of the circumstances reasonable, reflecting a market price. Due account shall be taken of any over- or under-charge of any work done that has to be altered in consequence of such a variation, and any additional costs incurred by the Contractor in consequence of the variation. The Contractor shall be entitled to the net effect of the Contractor's finance costs, including interest, caused by the variation to be carried out in the Programme, and

The Architect shall on this basis determine the rates or prices to enable on-account payment to be included in

certificates of payment.

132.3 Contractor to Proceed

On receipt of a Variation Order, the Contractor shall forth with proceed to carry out the variation and be bound

to these Conditions in so doing as if such variation was stated in the Contract. The work shall not be delayed

pending the granting of an extension of the Time for Completion or an adjustment to the Contract Price.

133. Plant and Engineering

Sub-Clause 31.3.

13.3.1 The Contractor may, at anytime, submit to the Architect written proposal which (in the Contractor's opinion) will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Procuring Entity of executing, maintaining or operating the Works, (iii) improve the efficiency or value to the Procuring Entity of the completed Works, or otherwise be of benefit to the Procuring Entity.

13.3.2 The proposal shall be prepared at the cost of the Contractor and shall include the items listed in Sub-Clause [Variation Procedure].

13.2.3 If a proposal, which is approved by the Engineer, includes a change in the design of part of the Permanent Works, then unless otherwise agreed by both Parties the Contractor shall design this part

b) sub-paragraphs (a) to (d) of Sub-Clause 4.1 [Contractor's General Obligations] shall apply, and

c) if this change results in a reduction in the contract value of this part, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine a fee, which shall be included in the Contract Price. This fee shall be (50%) of the difference between the following amounts:

i) the reduction in contract value, resulting from the change, excluding adjustments under Sub-Clause 3.8 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in the Law]; and

ii) the reduction (if any) in the value to the Procuring Entity of the varied works, taking account of any improvement in quality, anticipated life or operational efficiencies.

13.3.4 However, if the amount established in item 13.2.3 (c) (i) is less than amount established in item 13.2.3 (c) (ii), there shall not be a fee. However, if the amount established in item 13.2.3 (c) (i) is more than amount

13.4 Established Procedure for Value Engineering proposals price variation to the Procuring Entity.

13.4.1 If the Architect requests a proposal, prior to instructing a Variation, the Contractor shall respond in writing as soon as practicable, of the proposed works to be performed and apply (if this is the case) by submitting the Contractor's proposal for any necessary modifications to the programme according to Sub-Clause 8.1 [Programme] and to the Time for Completion,

c) the Contractor's proposal for evaluation of the Variation.

13.4.2 The Architect shall, as soon as practicable after receiving such proposal (under Sub-Clause 13.2 [Value Engineering] or otherwise), respond with approval, disapproval or comments. The Contractor shall not delay

13.4.3 Any instructions to execute a Variation, with any requirements for the recording of Costs, shall be issued by the Architect to the Contractor, who shall acknowledge receipt.

13.4.4 Each Variation shall be evaluated in accordance with Clause 12 [Measurement and Evaluation], unless the Architect instructs or approves otherwise in accordance with this Clause.

135 Payment in Applicable Currencies

If the Contract provides for payment of the Contract Price in more than one currency, then whenever an adjustment is agreed, approved or determined as stated above, the amount payable in each of the applicable currencies shall be specified. For this purpose, reference shall be made to the actual or expected currency

136 Provisional Sums Cost of the varied work, and to the proportions of various currencies specified for payment

13.6.1 The Contract Price shall only be used, in whole or in part, in accordance with the Architect instructions, and the Contract Price shall be adjusted accordingly. The total sum paid to the Contractor shall include

a) Work to be executed (including Plant, Materials or services to be supplied) by the Contractor and

shall have instructed. For each Provisional Sum, the Architect May instruct:

b) Plant, Materials or services to be purchased by the Contractor, from a nominated Subcontractor (as

defined in Clause 5 [Nominated Subcontractors]) or otherwise; and for which there shall be

included in the actual amounts paid (or due to be paid) by the Contractor, the Contract Price:

ii) a sum for overhead charges and profit, calculated as a percentage of these actual amounts by

applying the relevant percentage rate (if any) stated in the appropriate Schedule. If there is no such

13.6.2 The Contractor shall, when requested by the Engineer, provide a statement of accounts and receipts in substantiation.



## Price Adjustment Formula

Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the SCC. If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type specified below applies:

$$P = A + B I_m / I_o$$

where:

P is the adjustment factor for the portion of the Contract Price payable.

A and B are coefficients specified in the SCC, representing the non adjustable and adjustable portions, respectively, of the Contract Price payable and

$I_m$  is the index prevailing at the end of the month being invoiced and  $I_o$  is the index prevailing 30 days before Bid opening for inputs payable.

NOTE: The sum of the two coefficients A and B should be 1 (one) in the formula for each currency. Normally, both coefficients shall be the same in the formulae for all currencies, since coefficient A, for the non adjustable portion of the payments, is a very approximate figure (usually 0.15) to take account of fixed cost elements or other nonadjustable components. The sum of the adjustments for each currency are added to the Contract Price.

- 13.94 The cost indices or reference prices stated in the table of adjustment data shall be used. If their source is in doubt, it shall be determined by the Engineer. For this purpose, reference shall be made to the values of the indices at stated dates (quoted in the fourth and fifth columns respectively of the table) for the purposes of classification of the source of the index (and that the source of the index shall be the base cost index in the relevant currency of payment at the selling rate, established by the Central Bank of Kenya, of this currency on the above date for which a table of indices is available, the Agreement shall apply as a provisional index for the issue of Interim Payment Certificates. When a current cost index is available, the adjustment shall be made using either (i) each index or price applicable on the date 49 days prior to the expiry of the Time for Completion of the Works, or (ii) the current index or price, whichever is more favorable to the Employer.
- 13.95 The weightings (coefficients) for each of the factors of cost stated in the table(s) of adjustment data shall be adjusted if they have been rendered unreasonable, unbalanced or inapplicable, as a result of any change in the law or legislation.
- 13.96 If the Contractor fails to complete the Works within the Time for Completion, adjustment of prices there after shall be made using either (i) each index or price applicable on the date 49 days prior to the expiry of the Time for Completion of the Works, or (ii) the current index or price, whichever is more favorable to the Employer.
- 13.97 The weightings (coefficients) for each of the factors of cost stated in the table(s) of adjustment data shall be adjusted if they have been rendered unreasonable, unbalanced or inapplicable, as a result of any change in the law or legislation.
- 13.98 The weightings (coefficients) for each of the factors of cost stated in the table(s) of adjustment data shall be adjusted if they have been rendered unreasonable, unbalanced or inapplicable, as a result of any change in the law or legislation.

## 14. CONTRACT PRICE AND PAYMENT

### 14.1 The Contract Price

#### 14.1.1 Unless otherwise stated in the Special Conditions:

- The value of the payment certificate shall be agreed or determined under Sub-Clause 12.3 [Evaluation]
- the Contractor shall pay all taxes, duties and fees required to be paid by him under the Contract, and the Adjusted Price for Changes shall be adjusted for any of these costs except as stated in Sub-Clause 12.3 [Evaluation]
- The quantities which may be set out in the Bill of Materials or other Schedule are estimated quantities and are not to be taken as the actual and correct quantities:

- i) of the Works which the Contractor is required to execute,
  - ii) ~~for~~ for the purposes of Clause 12 [Measurement and Evaluation];  
and
  - d) the Contractor shall submit to the Engineer, within 30 days after the Commencement Date, a proposed breakdown of each lump sum price in the Schedules. The Architect may take account of the break down
- 14.1.2 Notwithstanding the Provision of sub-paragraph (b), Contractor's Equipment, including essential spare parts there for, imported by the Contractor for the sole purpose of executing the Contract shall not be exempt from
- 14.2 ~~Advance Payment~~ Advance Payment of import duties and taxes upon importation.
- 14.2.1 The Procuring Entity shall make an advance payment, as an interest-free loan for mobilization and cashflow support, when the Contractor submits a guarantee in accordance with this Clause. The total advance payment, the number and timing of instalments (if more than one), and the applicable currencies and proportions, shall
- 14.2.2 Unless and until the Procuring Entity receives this guarantee, or if the total advance payment is not be as stated in the Special Conditions of Contract.
- 14.2.3 The Architect shall deliver to the Procuring Entity and to the Contractor an Interim Payment Certificate for the advance payment or its first instalment after receiving a Statement (under Sub-Clause 14.3 [Application for Interim Payment Certificates]) and after the Procuring Entity receives (i) the Performance Security in accordance with Sub-Clause 4.2 [Performance Security] and (ii) a guarantee in amounts and currencies equal
- 14.2.4 to the advance payment. This guarantee shall be issued by a reputable bank or financial institutions elected by the Contractor and shall be in the form annexed to the Special Conditions or in another form approved by the Procuring Entity. The Contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been repaid, but its amount shall be progressively reduced by the amount repaid by the Contractor as indicated in the Payment Certificates. If the terms of the guarantee specify its expiry date, and the advance payment has not been repaid by the date 30 days prior to the expiry date, the Contractor shall extend the validity of the guarantee until the advance payment has been repaid.
- 14.2.5 Unless stated otherwise in the Special Conditions of Contract, the advance payment shall be repaid by the Contractor in accordance with Sub-Clause 14.2.7 [Provisional Sums] as follows:
- a) Deductions shall commence in the next interim Payment Certificate following that in which the total of all certified interim payments (excluding the advance payment and deductions and repayments of retention) exceeds 30 percent (30%) of the Accepted Contract Amount less Provisional Sums; and
  - b) repayments shall be made at the amortization rate stated in the Special Conditions of Contract and amount of each Interim Payment Certificate (excluding the advance payment and deductions for its repayments as well as deductions for retention money) in the currencies and proportions of the advance payment until such time as the advance payment has been repaid; provided that the advance payment has not been repaid prior to the issue of the Taking-Over Certificate for the Works or prior to termination under Clause 15 [Termination by Procuring Entity], Clause 16 [Suspension and Termination by Contractor] or Clause 19 [Force Majeure] (as the case may be), the whole of the balance then outstanding shall immediately become due and in case of termination under Clause 15 [Termination by Procuring Entity], except for Sub-Clause 14.2.7 [Procuring Entity's Entitlement to Termination for Convenience], payable by the Contractor to the Procuring Entity.
- 14.2.6 If the advance payment has not been repaid prior to the issue of the Taking-Over Certificate for the Works or prior to termination under Clause 15 [Termination by Procuring Entity], Clause 16 [Suspension and Termination by Contractor] or Clause 19 [Force Majeure] (as the case may be), the whole of the balance then outstanding shall immediately become due and in case of termination under Clause 15 [Termination by Procuring Entity], except for Sub-Clause 14.2.7 [Procuring Entity's Entitlement to Termination for Convenience], payable by the Contractor to the Procuring Entity.
- 14.3 Application for Interim Payment Certificates
- 14.3.1 The Contractor shall submit a Statement (in number of copies indicated in the Special Conditions of Contract) to the Architect after the end of each month, in a form approved by the Engineer, showing in detail

the amounts to which the Contractor considers itself to be entitled, together with supporting documents which

shall include there portion the progress during this month in accordance with Sub-Clause 4.21

[Progress

Reports]

14.3.2 The Statement shall include the following items, as applicable, which shall be expressed in the various

currencies in which the Contract Price is payable, in the sequence listed:

- a) the estimated contract value of the Works executed and the Contractor's Documents produced up to the end of the month (including Variations but excluding items described in sub-paragraphs (b) to (g))
- b) any amounts to be added and deducted for changes in legislation and changes in cost, in accordance with Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost];
- c) any amount to be deducted for retention, calculated by applying the percentage of retention stated in the Special Conditions of Contract to the total of the above amounts, until the amount so retained by the Procuring Entity reaches the limit of Retention Money (if any) stated in the Special Conditions of Contract;
- d) any amounts to be added for the advance payment and (if more than one instalment) and to be deducted from the advance payment in accordance with Sub-Clause 14.2 [Advance Payment];
- e) any amounts to be added and deducted for Plant and Materials in accordance with Sub-Clause 14.5 [Plant and Materials intended for the Works];
- f) any other additions or deductions which may have become due under the Contract otherwise, including those under Clause 20 [Claims, Disputes and Arbitration]; and
- g) the deduction of amounts certified in all previous Payment Certificates.

#### 14.4 Schedule of Payments

14.4.1 If the Contract includes a schedule of payments specifying the instalments in which the Contract Price will be paid, then unless otherwise stated in this schedule:

- a) The instalments quoted in this schedule of payments shall be the estimated contract values for the purposes of sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates];
- b) Sub-Clause 14.5 [Plant and Materials intended for the Works] shall not apply;
- c) If these instalments are not defined by reference to the actual progress achieved in executing the Works, and if actual progress is found to be less or more than that on which this schedule of payments was based, then the Architect may proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or

14.4.2 If the Contract does not include a schedule of payments, the Contractor shall submit non-binding estimates of the payments which he expects to become due during each quarterly period. The first estimate shall be submitted within 42 days after the Commencement Date. Revised estimates shall be submitted at intervals, until the Taking-Over Certificate has been issued for the Works.

14.5 Plant and Materials intended for the Works

14.5.1 If this Sub-Clause applies, Interim Payment Certificates shall include, under sub-paragraph (e) of Sub-Clause 14.3 (i) an amount for Plant and Materials which have been sent to the Site for incorporation in the Works and (ii) a reduction when the contract value of such Plant and Materials is included as part of the Permanent Works under sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates].

14.5.2 If the lists referred to in sub-paragraphs (b)(i) or (c)(i) below are not included in the Schedules, this Sub-Clause shall not apply.

14.5.3 The Architect shall determine and certify each addition if the following conditions are satisfied. The Contractor has:

- i) kept satisfactory records (including the orders, receipts, Costs and use of Plant and Materials) available for inspection,
- ii) submitted statement of the Cost of acquiring and delivering the Plant and Materials to the Site, supported by satisfactory evidence; and either:

- b) the relevant Plant and Materials are those listed in the Schedules for payment when
  - i) shipped
  - ii) have been shipped to Kenya, enroute to the Site, in accordance with the Contract;
  - iii) are described in a clean shipped bill of lading or other evidence of shipment, which has been submitted to the Architect together with evidence of payment of freight and insurance, any other documents reasonably required, and a bank guarantee in a form and issued by an entity approved by the Procuring Entity in amounts and currencies equal to the amount due under this Sub-Clause;
- c) the relevant Plant and Materials are those listed in the Schedules for payment when delivered to the Site,
  - i) this guarantee may be in a similar form to the form referred to in Sub-Clause 14.2 [Advance Payment]; and
  - ii) have been delivered to and accepted at the Plant and Material Site, are properly stored, and protected against deterioration and appear in accordance with the Contract.

14.54 The additional amount to be certified shall be the equivalent of eighty percent (80%) of the Architect determination of the cost of the Plant and Materials (including delivery to Site), taking account of the documents mentioned in this Sub-Clause and of the contract value of the Plant and Materials.

14.55 The currencies for this additional amount shall be the same as those in which payment will become due when the contract value is included under sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates]. At that time, the Payment Certificate shall include the applicable reduction which shall be

14.6 Equivalent to Interim Payment Certificates in currencies and proportions as, this additional amount for the relevant Plant and Materials.

14.6.1 No amount will be certified or paid until the Procuring Entity has received and approved the Performance Security. Thereafter, the Architect shall, within 30 days after receiving a Statement and supporting documents, deliver to the Procuring Entity and to the Contractor an Interim Payment Certificate which shall state the amount which the Architect fairly determines to be due, with all supporting particulars for any

14.6.2 However, prior to issuing the Taking-Over Certificate for the Works, the Architect shall not be bound to issue an Interim Payment Certificate in an amount which would (after retention and other deductions) be less than the minimum amount of Interim Payment Certificates (if any) stated in the Special Conditions of Contract.

14.6.3 An Interim Payment Certificate shall not be withheld for any other reason. In this event, the Architect shall give notice to the Contractor accordingly.

- a) although anything supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed;
- b) if the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Engineer, the value of this work or obligation may be withheld until the work or obligation has been performed.

4.6.4 The Architect may in any Payment Certificate make any correction or modification that should properly be made to any previous Payment Certificate. A Payment Certificate shall not be deemed to indicate the Architect's acceptance, approval, consent or satisfaction.

14.7 Payment

14.7.1 The Procuring Entity shall pay to the Contractor:

- a) The advance payment shall be paid within 60 days after signing of the contract by both parties or within 60 days after 14.2 [Advance Payment], which conforms with Sub-Clause 4.2 [Performance Security]; and
- b) The amount certified in each Interim Payment Certificate within 60 days after the Architect Issues the Interim Payment Certificate; and
- c) The final Payment Certificate and Payment Certificate within 60 days after the Procuring Entity Issues the final Interim Payment Certificate; or after determination of any disputed amount shown in the Final Statement

in accordance with Sub-Clause 16.2 [Termination by Contractor].

14.7.2 Payment of the amount due in each currency shall be made into the bank account, nominated by the Contractor, in the payment country (forth is currency) specified in the Contract.

#### 14.8 Delayed Payment

14.8.1 If the Contractor does not receive payment in accordance with Sub-Clause 14.7 [Payment], the Contractor shall be entitled to receive financing charges (simple interest) monthly on the amount unpaid during the period. This period shall be deemed to commence on the date for payment specified in Sub-Clause 14.7, irrespective (in the case of its sub-paragraph (b) of the date on which any Interim Payment Certificate is issued.

14.8.2 These financing charges shall be calculated at the annual rate of three percentage points above the mean rate of the Central Bank in Kenya of the currency of payment, or if not available, the inter bank offered rate, and

14.8.3 shall be paid in such currency. The Contractor shall be entitled to this payment without formal notice and certification, and without prejudice to any other right or remedy.

#### 14.9 Payment of Retention Money

14.9.1 When the Taking-Over Certificate has been issued for the Works, the first half of the Retention Money shall be certified by the Architect for payment to the Contractor. If a Taking-Over Certificate is issued for a Section

or part of the Works, a proportion of the Retention Money shall be certified and paid. This proportion shall

be half (50%) of the proportion calculated by dividing the estimated contract value of the Section or

14.9.2 part by the estimated final Contract Price. Promptly after the latest of the expiry dates of the Defects Liability Periods, the outstanding balance of the

Retention Money shall be certified by the Architect for payment to the Contractor. If a Taking-Over Certificate

was issued for a Section, a proportion of the second half of the Retention Money shall be certified and paid

promptly after the expiry date of the Defects Notification Period for the Section. This proportion shall be half

14.9.3 however, if any work remains to be executed under Clause 11 [Defects Liability], the Architects shall be entitled to withhold certification of the estimated cost of this work until it has been executed. (50%) of the proportion calculated by dividing the estimated contract value of the Section by the estimated final Contract Price.

14.9.4 When calculating these proportions, no account shall be taken of any adjustments under Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost].

14.9.5 Unless otherwise stated in the Special Conditions, when the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment by the Engineer, the Contractor

shall be entitled to substitute a Retention Money Security guarantee, in the form annexed to the Special

Conditions or in another form approved by the Procuring Entity and issued by a reputable bank or

14.9.6 financial institution selected by the Contractor, for the second half of the Retention Money. The Procuring Entity shall return the Retention Money Security guarantee to the Contractor within

14 days after receiving a copy of the Completion Certificate.

#### 14.10 Statement at Completion

14.10.1 Within 84 days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Architect three copies of a Statement at completion with supporting documents, in accordance

with Clause 4.3 [Application for Interim Payment Certificates],

showing the value of all work done in accordance with the Contract up to the date stated in the Taking-Over

a) Certificate for the Works the Contractor considers to be due, and

b) an estimate of any other amounts which the Contractor considers will become due to him under the

Contract. Estimated amounts shall be shown separately in this Statement at completion.

14.102 The Architect shall then certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates].

#### 14.11 Application for Final Payment Certificate

14.11.1 Within 60 days after receiving the Completion Certificate, the Contractor shall submit, to the Engineer, a draft final statement with supporting documents showing in detail in a form approved by the Engineer:

- a) The value of all work done in accordance with the Contract, and
- b) Any further sums which the Contractor considers to be due to him under the Contract otherwise.

14.11.2 If the Architect disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Architect may reasonably require within 30 days from receipt of said draft and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Architect the final statement as agreed. This agreed statement is referred to in these

14.11.3 However, if, following discussions between the Architect and the Contractor and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Architect shall deliver to the Procuring Entity (with a copy to the Contractor) an Interim Payment Certificate for the agreed parts of the draft final statement. Thereafter, if the dispute is finally resolved under Sub-Clause 20.4 [Obtaining

14.12 ~~Discharge~~ Board's Decision] or Sub-Clause 20.5 [Amicable Settlement], the Contractor shall then prepare and submit the Final Statement, the Contractor shall submit a discharge which confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Contractor

under or in connection with the Contract. This discharge may state that it becomes effective when the Contractor has

14.13 ~~Issue of the Performance Security~~ and the out standing balance of this total, in which event the discharge

shall be effective on such date.

14.13.1 Within 30 days after receiving the Final Statement and discharge in accordance with Sub-Clause 14.11 [Application for Final Payment Certificate] and Sub-Clause 14.12 [Discharge], the Architect shall deliver to the Procuring Entity and to the Contractor, the Final Payment Certificate which shall state:

- a) The amount which he fairly determines is finally due,
- b) And After giving credit to the Procuring Entity for all amounts previously paid by the Procuring Entity and for all sums to which the Procuring Entity is entitled, the balance (if any) due from the Procuring Entity

14.13.2 If the Contractor has not applied for a Final Payment Certificate in accordance with Sub-Clause

14.11 [Application for Final Payment Certificate] and Sub-Clause 14.12 [Discharge], the Architect shall request the Contractor to do so. If the Contractor fails to submit an application within a period of 30 days, the

Architect shall issue the Final Payment Certificate for such amount as he fairly determines to be due.

#### 14.14 Cessation of Procuring Entity's Liability

14.14.1 The Procuring Entity shall not be liable to the Contractor for any matter or thing under or in connection with the Contract or execution of the Works, except to the extent that the Contractor shall have included an amount

- a) expressly in the Final Statement and also,
- b) (except for matters or things arising after the issue of the Taking-Over Certificate for the Works) in the Statement at completion described in Sub-Clause 14.10 [Statement at Completion].

14.14.2 However, this Sub-Clause shall not limit the Procuring Entity's liability under his in demerit obligations, or the Procuring Entity's liability in any case of fraud, deliberate default or reckless misconduct by the Procuring Entity.

## 14.15 Currencies of Payment

The Contract Price shall be paid in the currency or currencies named in the Schedule of Payment

Currencies. If more than one currency is so named, payments shall be made as follows:

- a) If the Accepted Contract Amount was expressed in Local Currency only:
  - i) the proportions or amounts of the Local and Foreign Currencies, and the fixed rates of exchange to be used for calculating the payments, shall be as stated in the Schedule of Payment
  - ii) Payments and deductions under Sub-Clause 13.5 [Provisional Sums] and Sub-Clause 13.7 [except as otherwise agreed by both Parties; Adjustments and Changes in Legislation] shall be made in the applicable currencies
  - iii) other payments and deductions under sub-paragraphs (a) to (d) of Sub-Clause 14.3 [Application for Interim Payment Certificates] shall be made in the currencies and proportions specified
- b) payment of the damages specified in the Special Conditions of Contract, shall be made in the currencies and proportions specified in the Schedule of Payment
- c) Other payments to the Procuring Entity by the Contractor shall be made in the currency in which the sum was expended by the Procuring Entity or in such currency as may be agreed by both Parties;
- d) If any amount payable by the Contractor to the Procuring Entity in a particular currency exceeds the sum payable by the Procuring Entity to the Contractor in that currency, the Procuring Entity may recover the difference of exchange as stated in the Schedule of Payment Currencies, they shall be those prevailing on the Base Date and determined by the Central Bank of Kenya.

## 15. TERMINATION BY PROCURING ENTITY

### 15.1 Notice to correct any defects or failures

If the Contractor fails to carry out any obligation under the Contract, the Architect may by notice require the Contractor to make good the failure and to remedy it within 30 days.

### 15.2 Termination by Procuring Entity

#### 15.2.1 The Procuring Entity shall be entitled to terminate the Contract if the Contractor breaches the contract

- a) fails to comply with sub-Clause 4.2 [Performance Security] or with a notice under Sub-Clause 15.1
- b) ~~Notice to Correct~~ abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract,
- c) without reasonable excuse fails: to proceed with the Works in accordance with Clause 8 [Commencement, Delays and Suspension]; or
- ii) to comply with a notice issued under Sub-Clause 7.5 [Rejection] or Sub-Clause 7.6 [Remedial Works] within 30 days after receiving it
- d) subcontracts the major part of whole of the Works or assigns the Contract without the consent of the Procuring Entity;
- e) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager
- f) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or a similar effect to any of the acts or events of:
- i) for doing or for bearing to do any action in relation to the Contract; or
- ii) for showing or for bearing to show favor or disfavor to any person in relation to the Contract; or
- iii) if any of the Contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such induce mentor reward as is described in this sub-paragraph (f)
- g) ~~the contract~~ repeatedly fails to remedy defective work. However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination, or



- 15.7 Corrupt gifts and payments of commission
- 15.7.1 The Contractor shall not;
- a) Offer or give or agree to give to any person in the service of the Procuring Entity any gift or consideration of any kind as an inducement or reward for doing or for bearing to door for having done or for borne to do any act in relation to the obtaining or execution of this or any other Contract
  - b) Enter into this or any other contract with the Procuring Entity in connection with which the Procuring Entity or for showing or for bearing to show favor or disfavor to any person in relation to this or any other contract for the Procuring Entity, if he has been paid or agreed to be paid by him or on his behalf or to his knowledge, unless before the contract is made particulars of any such commission and of the terms and conditions of any agreement for the Procuring Entity or for showing or for bearing to show favor or disfavor to any person in relation to this or any other contract for the Procuring Entity.
- 15.7.2 Any foregone or payment there of have been disclosed in writing to the Procuring Entity. (whether with or without the knowledge of the Contractor) shall be an offence under the provisions of the Public Procurement and Asset Disposal Act (2015) and the Anti-Corruption and Economic Offences Act (2003) of the Laws of Kenya.
16. SUSPENSION AND TERMINATION BY CONTRACTOR
- 16.1 Contractor's Entitlement to Suspend Work
- 16.1.1 If the Architect fails to certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates] or Sub-Clause 14.7 [Payment], or not receiving instructions that would enable the contractor to proceed with the works in accordance with the program, the Contractor may, after giving not less than 30 days' notice to the Procuring Entity, suspend his entitlement to work unless he has received a Payment Certificate, reasonable evidence or payment, as the case may be and as described in the relevant Sub-Clause and in the above notice) before giving a notice of termination, the Contractor shall
- 16.1.2 The Contractor shall not prejudice his entitlement to work unless he has received a Payment Certificate, reasonable evidence or payment, as the case may be and as described in the relevant Sub-Clause and in the above notice) before giving a notice of termination, the Contractor shall
- 16.1.3 If the Contractor subsequently receives such Payment Certificate, evidence or payment (as described in the relevant Sub-Clause and in the above notice) before giving a notice of termination, the Contractor shall
- 16.1.4 If the Contractor suspends work and/or reasonably practicable of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give notice to the Architect and shall be
- a) entitled subject to Sub-Clause 20.1 [Contractor's Claims] if Completion is or will be delayed, under Sub-Clause 8.4
  - b) Extension of Time for Completion], and
- payment of any such Cost-plus profit, which shall be included in the Contract Price.
- 16.2 After receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.
- 16.3 Termination by Contractor
- 16.3.1 The Contractor shall be entitled to terminate the Contract
- a) if the Architect fails, within 60 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate;
  - b) if the Contractor does not receive the amount due under an Interim Payment Certificate within 90 days after the expiry of the time stated in Sub-Clause 14.7 [Payment] within which payment is to be made;
  - c) if the Procuring Entity substantially fails to perform his obligations under the Contract in such manner as for deductions in accordance with Sub-Clause 2.5 [Procuring Entity's Claims]), to materially and adversely affect the economic balance of the Contract and/or the ability of the Contractor to perform the Contract;
  - d) if a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [Prolonged Suspension];
  - e) if the Procuring Entity becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.

- f) the Contractor does not receive the Architect instruction recording the agreement of both Parties on the fulfilment of the conditions for the Commencement of Works under Sub-Clause 8.1 [Commencement of Works]
- 1632 In any of these events or circumstances, the Contractor may, upon giving 14 days' notice to the Procuring Entity, terminate the Contract. However, in the case of sub-paragraph (f) or (g), the Contractor may by notice
- 1633 The Contractor's obligation to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract otherwise.
- 164 Cessation of Work and Removal of Contractor's Equipment

After a notice of termination under Sub-Clause 15.5 [Procuring Entity's Entitlement to Termination for Convenience], Sub-Clause 16.2 [Termination by Contractor] or Sub-Clause 19.6 [Optional Termination, Payment and Release] has taken effect, the Contractor shall promptly:

- b) protection of life or property or for the safety of the Works, hand over Contractor's Documents, Plant, Materials and other work, for which the
- c) Contractor has received payment, and
- 165 Payment of Contractor's Goods from the Site, except as necessary for safety, and leave the Site.

After a notice of termination under Sub-Clause 16.2 [Termination by Contractor] has taken effect, the

Procuring Entity shall promptly:

- a) Return the Performance Security to the Contractor
- b) pay the Contractor in accordance with Sub-Clause 19.6 [Optional Termination, Payment and Release],
- c) pay to the Contractor the amount of any loss or damage sustained by the Contractor as a result of this termination.

## 17. RISK AND RESPONSIBILITY

### 17.1 Indemnities

17.1.1 The Contractor shall indemnify and hold harmless the Procuring Entity, the Procuring Entity's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and) bodily injury, sickness, disease or death, of any person what so ever arising outo for in the course of or

by reason of the Contractor's design (if any), the execution and completion of the Works and the

- b) remedying of any defects, unless attributable to any negligence, willful act or breach of the Contract by the Procuring Entity, the Procuring Entity's Personnel, or any of their respective agents, and the loss arises out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless and to the extent that any such

damage or loss is attributable to any negligence, willful act or breach of the Contract by the

17.1.2 The Procuring Entity shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and) directly employed in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence,

willful act or breach of the Contract by the Procuring Entity, the Procuring Entity's Personnel, or any of their respective agents, and (2) the matters for which liability may be excluded from insurance cover, as described

in sub-paragraphs (d)(i), (ii) and (iii) of Sub-Clause 18.3 [Insurance Against Injury to Persons and

172 Contractor's Care of the Works to Property], unless and to the extent that any such damage or loss is attributable to any negligence,

172.1 willful act or breach of the Contract by the contractor, the contractor's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

- Date until the Taking-Over Certificate is issued (or is deemed to be issued under Sub-Clause 10.1 [Taking Over of the Works and Sections]) for the Works, when responsibility for the care of the Works shall pass to the Procuring Entity. If a Taking-Over Certificate is issued (or is so deemed to be issued) for any Section or part of the Works, responsibility for the care of the Section or part shall then pass to the Procuring Entity for the care of any work which is outstanding on the date stated in a Taking-Over Certificate, until this
- 1722 ~~Section or part of the Works~~ If a Taking-Over Certificate is issued (or is so deemed to be issued) for any Section or part of the Works, responsibility for the care of the Section or part shall then pass to the Procuring Entity for the care of any work which is outstanding on the date stated in a Taking-Over Certificate, until this
- 1723 ~~If a loss or damage happens to the~~ Works, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, from any cause not listed in Sub-Clause 17.3 [Procuring Entity's Risks], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods or Contractor's Documents conform with the Contract.
- 1724 ~~The Contractor shall be liable for any loss or damage caused by any actions performed by the Contractor's Documents conform with the Contract.~~ after a Taking-Over Certificate has been issued. The Contractor shall also be liable for any loss or damage which occurs after a Taking-Over Certificate has been issued and which arose from a previous Procuring Entity's Risks which the Contractor was liable.
- 173 ~~Procuring Entity's Risks~~ The risks referred to in Sub-Clause 17.4 [Consequences of Procuring Entity's Risks] below, in so far as they directly affect the execution of the Works in Kenya, are:
- a) ~~War hostilities (whether war be declared or not)~~
  - b) ~~rebellion, riot, commotion or disorder, terrorism, sabotage by persons other than the Contractor's Personnel,~~
  - c) ~~explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such explosives, radiation or radio-activity,~~
  - d) ~~pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,~~
  - e) ~~use or occupation by the Procuring Entity of any part of the Permanent Works, except as may be specified in the Contract,~~
  - f) ~~designing any part of the Works by the Procuring Entity's Personnel or by others for whom the Contractor is responsible,~~
  - g) ~~any operation of the forces of nature which is Unforeseeable or against which an experienced contractor could not reasonably have been expected to have taken adequate preventive precautions.~~
- 174 Consequences of Procuring Entity's Risks
- 174.1 If and to the extent that any of the risks listed in Sub-Clause 17.3 above results in loss or damage to the Works, Goods or Contractor's Documents, the Contractor shall promptly give notice to the Architect and
- 174.2 ~~If and to the extent that any of the risks listed in Sub-Clause 17.3 above results in loss or damage to the Works, Goods or Contractor's Documents, the Contractor shall promptly give notice to the Architect and~~ If and to the extent that any of the risks listed in Sub-Clause 17.3 above results in loss or damage, the Contractor shall give a further notice to the Architect and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims]
- (a) An extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
  - (b) payment of any such Cost, which shall be included in the Contract Price. In the case of sub-paragraphs (e) and (f) above, the Contractor shall also be entitled to an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- 174.3 ~~(After Sub-Clause 17.3 [Procuring Entity's Risks], the Contractor shall be entitled to an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and~~ (After Sub-Clause 17.3 [Procuring Entity's Risks], the Contractor shall be entitled to an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- 175 Intellectual and Industrial Property Rights
- 175.1 In this Sub-Clause, "infringement" shall refer to an infringement (or alleged infringement) of any patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and "claim" shall refer to a claim (or proceedings pursuing a claim) relating to such an infringement.
- 175.2 ~~Whenever a Party does not give notice to the other Party of any claim within 30 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.~~ Whenever a Party does not give notice to the other Party of any claim within 30 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.

- 17.53 The Procuring Entity shall indemnify and hold the Contractor harmless against and from any claim alleging
- a) infringement which is the result of the Contractor's compliance with the
  - b) Contract, or
- A reference to a purpose or works being used is intended to be inferred from, the
- ii) connection with anything not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.
- 17.54 The Contractor shall indemnify and hold the Procuring Entity harmless against and from any other claim which arises out of or in relation to (i) the manufacture, use, sale or import of any Goods, or (ii) any design
- 17.55 If a Party is the Contractor is responsible under this Sub-Clause, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission which might be prejudicial to the
- 17.56 If the indemnifying Party, maintenance of any plan to equipment installed, the contractor shall grant a non-exclusive and transferable license to the Procuring Entity under the patent, utility models, or other intellectual property rights owned by the contractor or a third party from whom the contract or has received the rights to grant sub-licenses and shall also grant to the Procuring Entity a non-exclusive and non-transferable rights (without the rights to sub-license) to use the know how and other technical information disclosed to the Contractor of Liability
- 17.61 Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any utility model, trademark, design, copy right, know-how or other intellectual rights from the contractor or any third party to the Procuring Entity, for any consequential loss or damage which may be suffered by the other Party in the Contract, other than as specifically provided in Sub-Clause 8.7 [Delay Damages]; Sub-Clause 11.2 [Cost of Remedying Defects]; Sub-Clause 15.4 [Payment after Termination]; Sub-Clause 16.4 [The total liability of the Contractor to the Procuring Entity, under or in connection with the Termination] or Sub-Clause 17.1 [Indemnities]; Sub-Clause 17.4(b) [Consequences of Procuring Entity's Risk] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights].
- 17.62 The total liability of the Contractor to the Procuring Entity, under or in connection with the Termination] or Sub-Clause 17.1 [Indemnities]; Sub-Clause 17.4(b) [Consequences of Procuring Entity's Risk] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights], shall not exceed the sum resulting from the application of a multiplier (less or
- 17.63 The Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.
- 17.7 Use of Procuring Entity's Act (as stated) the Accepted Contract Amount.
- 17.7.1 The Contractor shall take full responsibility for the care of the Procuring Entity provided accommodation and facilities, if any, as detailed in the Specification, from the respective dates of hand-over to the Contractor until cessation of occupation (where hand-over or cessation of occupation may take place after the
- 17.7.2 If any loss or damage happens to any of the above items while the Contractor is responsible for the hand-over (as stated in the Taking-Over Certificate for the Works). arising from any cause whatsoever other than those for which the Procuring Entity is liable, the Contractor
18. INSURANCE
- 18.1 General Requirements for Insurances
- 18.1.1 In this Clause, "insuring Party" means, for each type of insurance, the Party responsible for effecting and the insurance specified in the relevant Sub-Clause

- 18.1.2 Wherever the Contractor is the insuring Party, each insurance shall be effected with insurers and in terms approved by the Procuring Entity. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.
- 18.1.3 Wherever the Procuring Entity is the insuring Party, each insurance shall be effected with insurers and in terms acceptable to the Contractor. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.
- 18.1.4 If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as if a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in this Clause, (i) the Contractor shall act under the policy on behalf of these additional joint insured except that the Procuring Entity shall act for Procuring Entity's benefit.
- 18.1.5 Each policy (ii) shall provide for payment to be made directly to the insured or to the relevant insuring Party; and (iii) the insuring Party shall be required to indemnify the loss or damage payable to the insured, from (iii) the insuring Party, for the benefit of additional joint insured.
- 18.1.6 The relevant insuring Party shall, within the respective periods stated in the Special Conditions of Contract or Schedule, comply with the conditions stipulated in the policy: (calculated from the Commencement Date), submit to the other Party:
- Evidence that the insurances described in this Clause have been affected, and
  - copies of the policies for the insurances described in Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment] and Sub-Clause 18.3 [Insurance against Injury to Persons and Damage to Property].
- 18.1.7 Whenever premium is paid, the insuring Party shall submit evidence of payment to the other Party.
- 18.1.8 Whenever evidence or policies are submitted, the insuring Party shall also give notice to the other Party.
- 18.1.8 Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurers informed of any relevant changes to the execution of the Works and ensure that
- 18.1.9 Neither Party shall make any material alteration to the terms of any insurance without the prior approval of the other Party. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurer shall promptly notify the other Party.
- 18.1.10 If the insuring Party fails to effect and keep in force any of the insurances it is required to effect and maintain under the Contract, and the Contractor fails to provide satisfactory evidence and copies of policies in accordance with this Sub-Clause, the other Party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The insuring Party shall pay the premiums to the other Party, and the Contract Price shall be adjusted accordingly.
- 18.1.11 Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor or the Procuring Entity, under the other terms of the Contract otherwise. Any amounts not insured or not recovered from the Contractor shall be borne by the Contractor.
- 18.1.12 The Contractor shall be held responsible for the obligations, liabilities and responsibilities. However, if the insuring Party fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the Contract, and the other Party neither approves the omission nor effects insurance for the relevant coverage, the Contractor shall be held responsible for the obligations, liabilities and responsibilities.
- 18.1.13 Payments by any Party in default to any Parties shall be subject to the Sub-Clause 2.5 [Dispute Resolution] and Clause 20.1 [Contractor's Claims], as applicable by the insuring Party.
- 18.1.14 The Contractor shall be entitled to place all insurance relating to the Contract (including, but not limited to the insurance referred to Clause 18) with insurers from any eligible source country.



- b) shall be in the joint names of the Parties
  - c) shall be extended to cover liability for all loss and damage to the Procuring Entity's property (except things insured under Sub-Clause 18.2) arising out of the Contractor's performance of the Contract and from the Procuring Entity's right to have the Permanent Works executed on, over, under,
    - ii) in or
    - iii) through any land, and to occupy this land for the Permanent Works, damage which is an unavoidable result of the Contractor's obligations to execute the
    - iv) Works and remedy any defects, and a cause listed in Sub-Clause 17.3 [Procuring Entity's Risks], except to the extent that cover is available at commercially reasonable terms.
- 18.4 Insurance for Contractor's Personnel

- 18.4.1 The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed
- 18.4.2 The Contractor shall cover the Procuring Entity and the Architect against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel, except that this insurance may exclude
- 18.4.3 losses and claims to the extent that they arise from any act or neglect of the Procuring Entity or its Personnel.
19. Force Majeure, but the Contractor shall be responsible for compliance with this Clause.

19.1 Definition of Force Majeure

- 19.1.1 In this Clause, "Force Majeure" means an exceptional event or circumstance beyond a Party's control which, having arisen, such Party could not reasonably have avoided or overcome, and which is not substantially attributable to the other Party.
- 19.1.2 Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below as conditions (a) to (d) above are satisfied:
- a) hostilities (whether war be declared or not), invasion, act of foreign enemies,
  - b) rebellion, terrorism, sabotage by persons other than the Contractor's Personnel, revolution,
  - c) insurrection, civil disorders, strikes, lock-outs or by persons other than the Contractor's Personnel,
  - d) munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as
  - e) may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and

- 19.2 Notice of Force Majeure
- 19.2.1 If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event.
- 19.2.2 The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.
- 19.2.3 Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.
- 19.3 Duty to Minimize Delay

Each Party shall at all times use all reasonable endeavors to minimize any delay in the performance of the Contract as a result of Force Majeure. A Party shall give notice to the other Party when it ceases to be affected

by the Force Majeure.

19.4 Consequences of Force Majeure

19.4.1 If the Contractor is prevented from performing his substantial obligations under the Contract by Force

Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], and

2016 [Cessation of Work and Removal of Contractor's Equipment] to:

a) and/ or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 8.4

b) Extension of Time for Completion], and  
if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 19.2 [Notice of Force Majeure], and, in sub-paragraphs (ii) to (iv), occurs in Kenya, payment of Force Majeure, to the extent they are not indemnified through the insurance policy referred to in Sub-

19.4.2 After Clause 18.2 [Issuance of Work and Contractor's Equipment] in accordance with Sub-Clause 3.5

[Determinations] to agree or determine these matters.

19.5 Force Majeure Affecting Subcontractor

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force

majeure on terms additional to or broader than those specified in this Clause, such additional or broader force

majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him

19.6 Optional Termination, Payment and Release

under this Clause.

19.6.1 If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by

reason of Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure],

or for multiple periods which total more than 140 days due to the same notified Force Majeure, then

19.6.2 the Party may give to the other Party a notice of termination of the Contract. In this event, the

Party shall, upon termination, the Architect shall determine the value of the work done and issue a

19.6.2 Certificate which shall include:

a) the amount payable for any work carried out for which a price is stated in the Contract

b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or

c) other Costs or liabilities which in the circumstances were reasonably and necessarily incurred by the Contractor

d) the Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of

e) these items to the Contractor's works in his country (or to any other destination at no greater cost than

19.7 Release from Performance

Works at the date of termination.

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the

Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either

or both Parties to fulfil its or their contractual obligations or which, under the law governing the

Contract, the Parties shall be discharged from further performance, without prejudice to the rights of

a) either Party to be released from further performance of the Contract, then upon notice by either Party of any previous breach of the Contract, and

b) The sum payable by the Procuring Entity to the Contractor shall be the same as would have been payable under Sub-Clause 19.6 [Optional Termination, Payment and Release] if the Contract had

been terminated under Sub-Clause 19.6.

## 20. SETTLEMENT OF CLAIMS AND DISPUTES

### 20.1 Contractor's Claims

- 20.1.1 If the Contractor considers itself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give Notice to the Engineer, describing the event or circumstance giving rise to the claim.
- 20.1.2 ~~If the Contractor fails to give notice in a timely manner, with not less than 30 days, the Contractor shall not be entitled to the Contractor's claim or to any additional payment, and the Procuring Entity shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.~~ The Contractor shall also submit any other notices which are required by the Contract, and the following provisions shall apply.
- 20.1.3 The Contractor shall also submit any other notices which are required by the Contract, and the following provisions shall apply.
- 20.1.4 The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at an other location acceptable to the Engineer. Without admitting the Procuring Entity's liability, the Architect may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/ or
- 20.1.5 ~~Within 42 days after the Contractor has submitted a claim, the Contractor shall pay (or provide security for) the Architect to inspect and test the work and shall (if instructed) submit copies of the claim to the Contractor and approved by the Engineer, the Contractor shall send to the Architect fully detailed claim which includes fully~~ The Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/ or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect, the Contractor shall send a final claim within 30 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.
- 20.1.6 Within 42 days after receiving a Notice of a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Architect and approved by the Contractor, the Architect shall respond with approval, or with disapproval and detailed comments. He may also request any necessary
- 20.1.7 ~~Within 42 days after the Contractor has submitted a claim, the Architect shall, in accordance with the [Dispute Adjudication] to agree or determine (i) the extension (if any) of the Time for Completion (before the end of the period in accordance with Sub-Clause 8.4 [Extension of Time for Completion]), and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.~~ The Architect shall, in accordance with the [Dispute Adjudication] to agree or determine (i) the extension (if any) of the Time for Completion (before the end of the period in accordance with Sub-Clause 8.4 [Extension of Time for Completion]), and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.
- 20.1.8 Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for the part of the claim which has been substantiated.
- 20.1.9 If the Architect does not respond within the time frame defined in this Clause, either Party may refer the claim to the Dispute Adjudication Panel. If the claim is rejected by the Architect and any of the Parties may refer the dispute for amicable settlement in accordance with Clause 20.3.
- 20.1.10 The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/ or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause 20.3.

- 202 Procuring Entity's Claims
- 202.1 If the Procuring Entity considers itself to be entitled to any payment under any Clause of these Conditions or otherwise in connection with the Contract, and/or to any extension of the Defects Notification Period, the Procuring Entity or the Architect and the Contractor shall be bound by the notice of the Procuring Entity.
- 202.2 The Procuring Entity shall be deemed to be aware, or should have become aware, of the event or circumstances giving rise to the claim. A notice relating to the event or circumstances shall be given to the Procuring Entity in accordance with Clause 4.20.
- 202.3 The Procuring Entity shall be entitled to set off against or make any deduction from an amount certified in a Certificate of Settlement otherwise claim against the Contractor, in accordance with this Sub-Clause.
- 202.4 Where a notice of a claim has been given, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a notice of a claim in accordance with Sub-Clause 20.1 above should move to commence arbitration after 60 days from the day on which a notice of a claim was given, even if no attempt at an amicable settlement has been made. Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Works or abandonment of the Works or termination of the Contract by a party:
- a) Whether or not the issue of an instruction by the Architect is empowered by these Conditions.
  - b) Whether or not a certificate has been improperly withheld or is not in accordance with these
  - c) Conditions.
  - e) Any dispute arising in respect risks arising from matters referred to in Clause 17.3 and Clause 19. All other matters shall only be referred to arbitration after the completion or alleged completion of the Works or termination or alleged termination of the Contract, unless the Procuring Entity and the Contractor agree otherwise in writing.
- 205 Arbitration
- 205.1 Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 20.3 shall be finally settled by arbitration.
- 205.2 No arbitration proceedings shall be commenced on any claim or dispute where notice of a claim or dispute has not been given by the applying party within ninety days of the occurrence or discovery of the matter or
- 205.3 Notwithstanding the dispute, a notice as stated above, the arbitration of such a claim or dispute shall not commence unless an attempt has in the first instance been made by the parties to settle such claim or dispute.
- 205.4 The Arbitrator shall, with the assistance of both parties, carry out all such measurements, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.

- 205.5 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision require mentor
- 205.6 The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction or valuation of the Engineer, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Architect from being called as a witness and giving evidence before the arbitrators
- 205.7 Neither Party shall be limited in the proceedings before the arbitrators to the evidence, or to the matters whatsoever relevant to the dispute.
- 205.7 dissatisfaction given in its Notice of Dissatisfaction.
- 205.7 Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, and the Architect shall not be altered by reason of any arbitration being conducted during the progress of the Works
- 205.8 Where terms of there remuneration of each or all the members of Arbitration shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this
- 20.6 Arbitration with National Contractors
- 20.6.1 If the Contract is with national contractors, arbitration proceedings will be conducted in accordance with the Arbitration Laws of Kenya. In case of any claim or dispute, such claim or dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of the Arbitrator shall be binding on the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitration shall be referred to the Arbitrators (Kenya) of the Association of Consulting Engineers of Kenya. The Arbitrator shall be appointed by the Chairman or Vice Chairman of Engineers of any of the following professional institutions;
- 20.6.2 The institution written to first by the aggrieved party shall take precedence over all other institutions.
- 20.7 Arbitration with Foreign Contractors
- 20.7.1 Arbitration with foreign contractors shall be conducted in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration; by
- 20.7.2 The place of arbitration shall be a location specified in the SCC; and the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 [Law and Language].
- 20.8 Alternative Arbitration Proceedings
- Alternatively, the Parties may refer the matter to the Nairobi Centre for International Arbitration (NCIA) which offers a neutral venue for the conduct of national and international arbitration with commitment to
- 20.9 Facilitating Costly Arbitration Support to the Arbitration process.
- 20.9.1 The award of such Arbitrator shall be final and binding up on the parties.
- 20.9.2 In the even tthat a Party fails to comply with a final and binding Arbitrator's decision, then the other Party may, without prejudice to any other rights it may have, refer the matter to a competent court of law.

## 20.10 Contract operations to continue

Notwithstanding any reference to arbitration herein,

- 1.1.1 the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
- 1.1.2 the Procuring Entity shall pay the Contractor any monies due the Contractor.

Section IX - Special Conditions of Contract

The following Special Conditions shall supplement the GCC. Whenever there is a conflict, the provisions here in shall prevail over those in the GCC.

Conditions	Sub-Clause	Data
<b>Part A - Contract Data</b>		
Procuring Entity's name and address	Heading	Trade, Energy and Industrialization
Name and Reference No. of the Contract	Heading and 1.1	Negotiation No.....
Engineers Name and address	Heading and 3.1.1	Insert
Contractor's Representative's name	4.3.1	[insert the name of the Contractor's Representative agreed by the Procuring Entity prior to Contract signature]
Key Personnel names	16.9.1	Signature and name of each Key Personnel agreed by the Procuring Entity prior to Contract signature]
Time for Completion	1.1.	If Sections are to be used, refer to Table: Summary of
Defects Notification Period	1.1	Sections below _____ days
Sections	1.1	If Sections are to be used, refer to Table: Summary of
Electronic transmission systems	1.3	Sections below
Time for the Parties entering into a Contract Agreement	1.6	Within 30 days
Contract Agreement Date	8.1.1	
Time for access to the Site	2.1.1	No later than the Commencement Date, and not later than _____ days after Commencement
Architect Duties and Authority	3.1.6 (b) (ii)	Variations resulting in an increase of the Accepted Contract Amount in excess of ____% shall require
Performance Security	4.2.1	The Procuring Entity in the form of a Performance Bond _____ in the amount(s) of _____ percent of the Accepted Contract Amount and in the same currency(ies) of the Accepted Contract Amount.
Normal working hours	6.5	Specify.
Delay damages for the Works	8.7 & 14.15(b)	_____ % of the Contract Price per day. If Sections are to be used, refer to Table: Summary of
Maximum amount of delay damages	8.7.1	Section 8.7 of the final Contract Price.
Provisional Sums	13.6. (b)(ii)	[If there are Provisional Sums, insert a percentage for adjustment of Provisional Sums]
Adjustments for Changes in Cost	13.9	Period "n" applicable to the adjustment multiplier "Pn": _____ [Insert the period if different from one (1) month; if period "n" is one (1) month, insert not applicable"]

Conditions	Sub- Clause	Data
Total advance payment	14.2.1	___% Percentage of the Accepted Contract payable in the currencies and proportions in which the Accepted Contract Amount is payable [insert applicable]
Repayment amortization rate of	14.2.5 (b)	_____ %
Percentage of Retention	14.3.2 (c)	_____ %
Limit of Retention Money	14.3.2 (c)	_____ % of the Accepted Contract
Plant and Materials	14.5.3(b)(i)	Amount of Subcontractor's payment Free on Board _____ [list].
	14.5.3(c)(i)	Plant and Materials for payment when delivered to _____ [list].
Minimum Amount of Interim Payment Certificates	14.6.2	_____ % of the Accepted Contract
Publishing source of commercial interest rates for financial charges	14.8	Amount. Specify _____ % rate per month of delayed
in case of delayed payment Maximum total liability of the Contractor to the Procuring Entity	17.6.2	Specify one of the two options below as appropriate] The product of _____ [insert a multiplier less or greater than one] times the Accepted Contract Amount, _____ [insert amount of the maximum liability]
Periods for submission of insurance:	18.1.6	[Insert period for submission of evidence of insurance and policy. Period may be from 14 days to _____ days.]
a. evidence of insurance. b. relevant policies		_____ days _____ days
Maximum amount of deductibles for insurance of the Procuring Entity	18.2.4 (d)	[Insert maximum amount of deductibles]
Minimum amount of third-party insurance	18.3.2	[Insert amount of third-party insurance]
The place of arbitration	20.7.2	Insert city and Country

## SECTION X - CONTRACT FORMS

FORM No. 1 - NOTIFICATION OF INTENTION TO  
AWARD

FORM NO. 2 – REQUEST FOR REVIEW

FORM No. 3-LETTER OF  
AWARD

FORM No. 4 - CONTRACT  
AGREEMENT

FORM No. 5 - PERFORMANCE SECURITY [Option 1 - Unconditional Demand Bank  
Guarantee]

FORM No. 6- PERFORMANCE SECURITY [Option 2– Performance  
Bond]

FORM No. 7 - ADVANCE PAYMENT  
SECURITY

FORM No. 8 - RETENTION MONEY  
SECURITY

## FORM No 1: NOTIFICATION OF INTENTION TO AWARD OF CONTRACT

This Notification of Award shall be sent to each Tenderer that submitted a Tender and was not successful. Send this Notification to the Tenderer's Authorized Representative named in the Tender Information Form on the format

### FORMAT

1. For the attention of Tenderer's Authorized

Representative

- i) Name: [insert Authorized Representative's name]
- ii) Address: [insert Authorized Representative's Address]
- iii) Telephone: [insert Authorized Representative's telephone/fax numbers]
- iv) Email Address: [insert Authorized Representative's email address]

[IMPORTANT: insert the date that this Notification is transmitted to Tenderers. The Notification must be sent to all Tenderers simultaneously. This means on the same date and as close to the same time as possible.]

2. Date of transmission: [email] on [date] (local time)

This Notification is sent by (Name and designation) \_\_\_\_\_

3. Notification of Award

- i) Procuring Entity: [insert the name of the ProcuringEntity]
- ii) Project: [insert name of project]
- iii) Contract title: [insert the name of the contract]
- iv) ITT No: [insert ITT reference number from ProcurementPlan]

This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract.

The transmission of this Notification begins the Standstill Period. During the Standstill Period, you

4. Request a debriefing in relation to the evaluation of your tender by submitting a Procurement-related

Complaint in relation to the decision to award the contracts.

- a) The successful tenderers

i) Name of successful Tender \_\_\_\_\_

ii) Address of the successful Tender \_\_\_\_\_

iii) Contract price of the successful Tender Kenya \_\_\_\_\_  
Shillings  
(in words \_\_\_\_\_)

- b) The reasons for your tender being unsuccessful are as follows:

c) Other Tenderers

Names of all Tenderers that submitted a Tender. If the Tender's price was evaluated include the evaluated price as well as the Tender price as read out.

SNo	Name of Tender	Tender Price as read out	Tender's evaluated price (Note a)	One Reason Why Not Evaluated
1				
2				
3				
4				
5				

(Note a) State NE if not evaluated

5. How to request a debriefing

- a) DEADLINE: The dead line to request a debriefing expires at midnight on [insert date] (local time).
- b) You may request a debriefing in relation to the results of the evaluation of your Tender. If you decide to request a debriefing your written request must be made within three (5) Business Days of receipt of this
- c) ~~Notification of Intention to Award~~ ~~Notification of Intention to Award~~ reference number, name of the Tenderer, contact details; and address the request for debriefing as follows:
  - i) Attention: [insert full name of person, if applicable]
  - ii) applicable]
  - iii) Title/position: [insert title/position]
  - iv) Agency: [insert name of Procuring Entity]
 Email address: [insert email address]
- d) If your request for a debriefing is received within the 3 Days deadline, we will provide the debriefing within five (3) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (3) Days after the date that the debriefing is provided.
- e) ~~The debriefing~~ ~~the debriefing~~ may be in writing, by phone, video conference call or in person. We shall promptly ~~advise~~ ~~advise~~ if this happens, we will notify you and confirm the date that the extended Standstill Period will end. you in writing how the debriefing will take place and confirm the date and time.
- f) If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Days from the date of

6. How to challenge the Contract Award Notice.

- a) Period: Procurement-related Complaint challenging the decision to award shall be submitted by midnight, [insert date] (local time).
- b) Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-related Complaint as follows:
  - i) Attention: [insert full name of person, if applicable]
  - ii) applicable]
  - iii) Title/position: [insert title/position]
  - iv) Agency: [insert name of Procuring Entity]
 Email address: [insert email address]
- c) At this point in the procurement process, you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.
- d) ~~For more information:~~ For more information refer to the Public Procurement and Disposals Act 2015 and the Regulations a available from the Website [www.ppra.go.ke](http://www.ppra.go.ke).

You should read these documents before preparing and submitting your complaint.

- e) There are four essential requirements:
  - i) You must be an interested party: In this case, that means a Tenderer who submitted a Tender in this tendering process, and is the recipient of a Notification of Intention to Award.
  - ii) The complaint can only challenge the decision to award the contract.
  - iii) You must submit the complaint within the period stated above.
  - iv) You must include, in your complaint, all of the information required to support your complaint.

7. Standstill Period

- i) **DEADLINE:** The Standstill Period is due to end at midnight on [insert date] (local time).
- ii) The Standstill Period lasts ten (14) Days after the date of transmission of this Notification of Intention to Award.
- iii) The Standstill Period may be extended as stated in paragraph Section 5(d) above.

If you have any questions regarding this Notification please do not hesitate to contact

us. On behalf of the Procuring Entity:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title/position: \_\_\_\_\_

Telephone: \_\_\_\_\_

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FORM NO. 2- REQUEST FOR REVIEW

FORM FOR REVIEW  
(r.203(1))

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW  
BOARD

APPLICATION NO.....OF.....20.....

BETWEEN

.....APP  
LICANT

AND

.....RESPONDENT (Procuring  
Entity)

Request for review of the decision of the..... (Name of the Procuring Entity  
of.....20....dated the day of Tender No.....of .....20.... for .....  
(Tender description).

REQUEST FOR  
REVIEW

I/We.....,the above named Applicant(s), of address: Physical address.....P. O.  
Box No.....

Tel. No.....Email ....., hereby request the Public Procurement Administrative Review Board to  
review the whole/part of  
the above mentioned decision on the following grounds , namely:

2.

By this memorandum, the Applicant requests the Board for an  
order/orders that:

2.

SIGNED .....(Applicant) Dated on.....day of ...../...20.....

FOR OFFICIAL USE ONLY Lodged with the Secretary Public Procurement Administrative Review Board  
on.....20.day.of..

SIGNED

Board Secretary

FORM NO 3: LETTER OF AWARD

letterhead paper of the Procuring  
Entity]  
[date]

To: [name and address of the  
Contractor]

This is to notify you that your Tender dated [date] for execution of the [name of the Contract and  
identification  
number, as given in the Contract Data] for the Accepted Contract Amount [amount in numbers and words]  
[name  
of currency], as corrected and modified in accordance with the Instructions to Tenderers, is here by  
Accepted requested to furnish the Performance Security within in accordance with the Conditions of  
Contract, using.. (name of Procuring Entity).  
for that purpose, one of the Performance Security Forms included in Section VIII, Contract Forms, of the  
Tender

~~Authorized~~

Signature: .....

Name and Title of  
Signatory: .....

Name of Procuring  
Entity: .....

Attachment: Contract  
Agreement: .....

FORM NO 4: CONTRACT AGREEMENT

THIS AGREEMENT made the day of..... 20.....,  
between..... of..... (hereinafter “the  
Procuring Entity”), of the one part, and  
“the Contractor”), of the other  
part:

WHEREAS the Procuring Entity desires that the \_\_\_\_\_ should be  
executed by the Contractor, and has accepted a Tender by the Contractor for the execution and completion  
of these  
Works and the remedying of any defects there in,  
The Procuring Entity and the Contractor agree as  
follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
  - a) the Notification of Award
  - b) the Form of Tender
  - c) the addenda Nos \_\_\_\_\_ (if any)
  - d) the Special Conditions of Contract
  - e) the General Conditions of Contract;
  - f) the Specifications and Drawings; and
  - g) the completed Schedules and any other documents forming part of the contract.
3. In consideration of the payments to be made by the Procuring Entity to the Contractor as specified in this Agreement, the Contractor here by covenants with the Procuring Entity to execute the Works and to remedy
4. The Procuring Entity hereby in all respects with the provisions of the Contract of the execution and completion of the Works and the remedying of defects there in, the Contract Price or such other sum as may become payable  
IN WITNESS whereof the parties hereunto have signed this Agreement and thereunto set their hands and seals in accordance with the Laws of Kenya on the day, month and year specified above.

Signed and sealed by \_\_\_\_\_ (for the Procuring Entity)

Signed and sealed by \_\_\_\_\_ (for the Contractor).

FORM NO. 5 - PERFORMANCE SECURITY

[Option 1 - Unconditional Demand Bank Guarantee]

[Guarantor letterhead]

Beneficiary: [insert name and Address of Procuring Entity]

Date: \_\_\_\_\_ [Insert date of issue]

Guarantor: [Insert name and address of place of issue, unless indicated in the letterhead]

1. We have been informed that \_\_\_\_\_ (hereinafter called "the Contractor") has entered into Contract \_\_\_\_\_ dated \_\_\_\_\_ with (name of No. \_\_\_\_\_ (the Procuring Entity as the Beneficiary), for the execution Procuring Entity) \_\_\_\_\_ (hereinafter called "the Contract").
  2. Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.
  3. At the request of the Contractor, we as Guarantor, here by irrevocably undertake to pay the Beneficiary ~~or sum~~ not exceeding in total an amount \_\_\_\_\_ (in words ),<sup>1</sup> such sum being payable in the types of proportions of currencies in which the Contract ~~and~~ is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand it self or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s)
  4. ~~This guarantee shall expire, the Beneficiary needing to prove by to show grounds for your demand or payment under it must be received by us at the office indicated above on or before that date specified therein.~~
  5. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months] [one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee." .....
- [Name of Authorized Official, signature(s) and seals/stamps]

Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.

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<sup>1</sup>The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency of the Contract or a freely convertible currency acceptable to the Beneficiary of this date for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee twenty (20) days after the expected completion date as described in GC Clause 11.9. The Procuring Entity should make the over to the expiration date established in the guarantee.

FORM No. 6- PERFORMANCE SECURITY

[Option 2- Performance Bond]

[Note: Procuring Entities are advised to use Performance Security – Unconditional Demand Bank Guarantee Performance Bond due to difficulties involved in calling Bond holder to action]

[Guarantor letterhead or SWIFT identifier

code] Beneficiary: [insert name and Address of Procuring Entity

Date: \_\_\_\_\_ [Insert date of issue]

PERFORMANCE BOND No.: \_\_\_\_\_

Guarantor: [Insert name and address of place of issue, unless indicated in the letterhead]

1. By this Bond \_\_\_\_\_ as Principal (hereinafter called “the Contractor”) and \_\_\_\_\_ as Surety (hereinafter called “the Surety”), are held and firmly bound unto \_\_\_\_\_ as Obligee (hereinafter called “the Procuring Entity”) type and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these
2. WHEREAS the Contractor has entered into a written Agreement with the Procuring Entity dated the day of \_\_\_\_\_, 20\_\_\_\_, for \_\_\_\_\_ in accordance with the documents, specifications, and amendments there to, which to the extent here in provided for, are by reference made part here of and are here in after referred to as the Contract.
3. NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Procuring Entity to be, in default under the Contract, the Procuring Entity having performed the Procuring Entity obligations there under, the Surety may promptly remedy the default, or shall promptly:
  - a) Complete the Contract in accordance with its terms and conditions; or
  - b) Obtain a tender or tenders from qualified tenderers for submission to the Procuring Entity and the Surety of the lowest responsive Tenderers, arrange for a Contract between such Tenderer, and Procuring Entity and make a available as work progresses (even though there should be a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion, less the Balance of the Contract Price; but not exceeding the amount of this Bond.
  - c) Pay the Procuring Entity the amount required by Procuring Entity to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.
4. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.
5. Any suit under this Bond must be instituted before the expiration of one year from the date of the total amount payable by Procuring Entity to Contractor under the Contract, less the amount properly paid. Taking Over Certificate. No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Procuring Entity named here in or the heirs, executors, administrators, successors, and assigns of any whereof, the Contractor has here unto set his hand and affixed his seal, and the Surety has these Procuring Entity sealed with his corporate seal duly at tested by the signature of his legal representative, this \_\_\_\_\_ of \_\_\_\_\_ 20\_\_\_\_\_ day \_\_\_\_\_

SIGNED ON \_\_\_\_\_ on behalf of \_\_\_\_\_

By \_\_\_\_\_ in the capacity of \_\_\_\_\_

In the presence of \_\_\_\_\_

SIGNED ON \_\_\_\_\_ on behalf of \_\_\_\_\_

By \_\_\_\_\_ in the capacity of \_\_\_\_\_

In the presence of \_\_\_\_\_

FORM NO. 7 - ADVANCE PAYMENT SECURITY

[Demand Bank Guarantee]  
[Guarantor letterhead]

Beneficiary: \_\_\_\_\_ [Insert name and Address of  
Date: \_\_\_\_\_ [Insert date of Issue]

ADVANCE PAYMENT GUARANTEE No.: [Insert guarantee reference  
number]  
Guarantor: [Insert name and address of place of issue, unless indicated in the  
letterhead]

1. We have been informed that \_\_\_\_\_ (hereinafter called "the Contractor") has entered into  
No. \_\_\_\_\_ dated \_\_\_\_\_ Contract  
(hereinafter called "the \_\_\_\_\_ with the Beneficiary, for the execution of  
Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the  
sum \_\_\_\_\_ (in words \_\_\_\_\_) is to be made against an advance payment
3. At the request of the contractor, we as Guarantor, here by irrevocably undertake to pay the Beneficiary  
any sum \_\_\_\_\_  
receipts of the Beneficiary's account of demand supported by (the Beneficiary's statement,  
whether in the  
demand itself or in a separate signed document accompanying or identifying the demand, stating either  
that the Applicant  
has failed to repay the advance payment in accordance with the Contract conditions,  
specifying the  
amount which the Applicant has failed to repay.
4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a  
certificate from  
the Beneficiary's bank stating that the advance payment referred to above has been credited to the  
Contractor on
5. The maximum amount of this guarantee shall be progressively reduced by the amount of the advance  
payment  
repaid by the Contractor as specified in copies of interim statements or payment certificates which  
shall be  
presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim  
payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums,  
has been repaid.
6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six  
months] [one  
year], in response to the Beneficiary's written request for such extension, such request to be presented  
to the  
Guarantor before the expiry of the guarantee.

\_\_\_\_\_  
[Name of Authorized Official, signature(s) and  
seals/stamps]

Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted  
from the  
final product.

\_\_\_\_\_  
The Guarantor shall insert an amount representing the amount of the advance payment and denominated  
either in the currency of the advance payment as  
specified in the Contract.  
This Contract shall be void from the date of the expiration of this guarantee from the Guarantor  
Such request for extension of writing and completion of  
prior to the expiration date established in the guarantee.

FORM NO. 8 – RETENTION MONEY SECURITY

[Demand Bank Guarantee]

[Guarantor letterhead]

Beneficiary: \_\_\_\_\_ [Insert name and Address of Procuring Entity]

Date: \_\_\_\_\_ [Insert date of issue]

Advance payment guarantee no. [Insert guarantee reference number]

Guarantor: [Insert name and address of place of issue, unless indicated in the letterhead]

1. We have been informed that \_\_\_\_\_ [insert name of Contractor, which in the case of a joint shall be the name of the joint venture] (hereinafter called "the Contractor") has entered into Contract No. \_\_\_\_\_ [insert reference number of the contract] dated \_\_\_\_\_ with the Beneficiary, for execution of the \_\_\_\_\_ [insert name of contract and brief description of Works] called "the Contract"). (hereinafter
2. Furthermore, we understand that, according to the conditions of the Contract, the Beneficiary retains moneys upto the limit set forth in the Contract ("the Retention Money"), and that when the Taking-Over Certificate has been issued under the Contract and the first half of the Retention Money has been certified for
3. ~~At the request~~ of the Contractor, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary ~~payment of [inserting second half of the Retention Money] is to be made against a Retention Money in~~ ~~guarantee.~~ \_\_\_\_\_ )<sup>1</sup> upon receipt by us of the Beneficiary's complying demands ~~up to the~~ Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Contractor is in breach of its obligation(s) under the Contract, without your
4. ~~According to~~ ~~order~~ ~~this~~ ~~guarantee~~ ~~may~~ ~~be~~ ~~presented~~ ~~as~~ ~~of~~ ~~the~~ ~~time~~ ~~specified~~ ~~in~~ ~~the~~ ~~Guarantor~~ ~~of~~ ~~a~~ ~~certified~~ ~~bank~~ ~~of~~ ~~the~~ ~~Beneficiary's~~ ~~bank~~ ~~stating~~ ~~that~~ ~~the~~ ~~second~~ ~~half~~ ~~of~~ ~~the~~ ~~Retention~~ ~~Money~~ ~~as~~ ~~referred~~ ~~to~~ ~~above~~ ~~has~~ ~~been~~ ~~credited~~ ~~to~~ ~~the~~ ~~Contractor~~ ~~on~~ ~~its~~ ~~account~~ \_\_\_\_\_ at \_\_\_\_\_ [insert name and address of Applicant's bank]
5. This guarantee shall expire no later than the.....Day of.....<sup>2</sup>, and any demand for payment under it must be received by us at the office indicated above on or before that date.
6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months] [one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee. \_\_\_\_\_

[Name of Authorized Official, signature(s) and seals/stamps]

Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.

<sup>1</sup>The Guarantor shall insert an amount representing the amount of the second half of the Retention Money. <sup>2</sup>Insert a date that is twenty-eight days after the expiry of retention period after the actual completion date of the contract. ~~The extension facility shall not be available after the completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.~~

FORM NO. 9 BENEFICIAL OWNERSHIP DISCLOSURE FORM  
 (Amended and issued pursuant to PPRA CIRCULAR No. 02/2022)

**INSTRUCTIONS TO TENDERERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE FORM**

This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful tenderer pursuant to Regulation 13 (2A) and 13 (6) of the Companies (Beneficial Ownership Information) Regulations, 2020. In case of joint venture, the tenderer must submit a separate Form for each member. The beneficial ownership information for the purpose of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the legal person (Tenderer) or is an agent or a nominee of a natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person (Tenderer) or arrangement.

Tender Reference No.: \_\_\_\_\_ [insert identification no]

Name of the Tender \_\_\_\_\_ [insert name of the assignment]

Title/Description: \_\_\_\_\_ [insert complete name of Procuring Entity]

In response to the requirement in your notification of award dated \_\_\_\_\_ [insert date of notification of award] to furnish

additional information on beneficial ownership: \_\_\_\_\_ [select one option as applicable and delete options that are not applicable] the

I) We here by provide the following beneficial ownership information.

Details of Beneficial ownership

Details of all Beneficial Owners		% of shares a person holds in the company Directly or indirectly	% of voting rights a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a significant equivalent member of the board of directors of the company	Whether a person directly or indirectly exercises influence or control over the Company (tenderer) (Yes / No)
1.	Full Name	Directly----- Directly%.....% of shares	.....% of voting rights	1. Tenders: right to appoint or remove a majority of the board of directors or an equivalent governing body of the Company: right directly or indirectly?:  Direct..... ... Indirect..... ...	1. Exercises influence or control over the Company (tenderer) Yes ----No----  2. Is this influence or control exercised directly or indirectly?  Direct.....  Indirect..... ...
	National identity card number or Passport number	Indirectly----- ----- % of shares	Indirectly----- % of voting rights		
	Personal Identification Number (where applicable)				
	Nationality				
	Date of birth dd/mm/yyyy				
	Postal address				
	Residential address				
	Telephone number				
Occupation or profession					

Details of all Beneficial Owners		% of shares a person holds in the company Directly or indirectly	% of voting rights a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a significant equivalent member of the board of directors of the company (Yes/No)	Whether a person directly or indirectly exercises (tenderer) (Yes / influence or control over the Company																	
2.	<table border="1"> <tr> <td>Full Name</td> <td></td> </tr> <tr> <td>National identity card number or Passport number</td> <td></td> </tr> <tr> <td>Personal Identification Number (where applicable)</td> <td></td> </tr> <tr> <td>Nationality(ies)</td> <td></td> </tr> <tr> <td>Date of birth</td> <td>dd/mm/yyyy</td> </tr> <tr> <td>Postal address</td> <td></td> </tr> <tr> <td>Residential address</td> <td></td> </tr> <tr> <td>Telephone number</td> <td></td> </tr> <tr> <td>Email address or profession</td> <td></td> </tr> </table>	Full Name		National identity card number or Passport number		Personal Identification Number (where applicable)		Nationality(ies)		Date of birth	dd/mm/yyyy	Postal address		Residential address		Telephone number		Email address or profession		Directly----- Directly%.....% of of shares voting  Indirectly----- Indirectly%of voting ----- % rights of shares	1. Having the right to appoint a majority of the directors or an equivalent governing body of the company 2. Tenderer: right to appoint or remove a director of the company directly or indirectly?: Direct..... ... Indirect..... ...	to 1.Exercises of significant or control over the Company body of the Company (tenderer) Yes -----No----- 2. Is this influence or control exercised directly or indirectly? Direct..... Indirect..... ...
Full Name																						
National identity card number or Passport number																						
Personal Identification Number (where applicable)																						
Nationality(ies)																						
Date of birth	dd/mm/yyyy																					
Postal address																						
Residential address																						
Telephone number																						
Email address or profession																						
3.																						
e.t																						
.c																						

II) Am fully aware that beneficial ownership information above shall be reported to the Public Procurement Regulatory Authority together with other details in relation to contract awards and shall be maintained in the Government Portal, published and made publicly available pursuant to Regulation 13(5) of the Companies (Beneficial Ownership Information) Regulations, 2020. (Notwithstanding this paragraph Personally Identifiable Information in line with the Data Protection Act shall not be published or made public). Note that Personally Identifiable Information (PII) is any information that can be used to distinguish one person from another and can be used to identify a natural person who is a beneficial owner of the company.

III) In determining who meets the threshold of who a beneficial owner is, the Tenderer must consider a natural person who holds at least ten percent of the issued shares in the company either directly or indirectly;

(a) holds at least ten percent of the issued shares in the company either directly or indirectly;

(b) exercises at least ten percent of the voting rights in the company either directly or indirectly;

(c) holds a right, directly or indirectly, to appoint or remove a director of the company; or

(d) exercises significant influence or control, directly or indirectly, over the company.

IV) What is stated to herein above is true to the best of my knowledge, information and belief.

Name of the Tenderer: .....\*[insert complete name of the \_\_\_\_\_  
Tenderer]

Name of the person duly authorized to sign the Tender on behalf of the Tenderer: \*\* [insert complete name of  
person

duly authorized to sign the Tender]

Designation of the person signing the Tender: ..... [insert complete title of the person signing the  
Tender]

Signature of the person named above: ..... [insert signature of person whose name and capacity are  
shown

above]

Date this ..... [insert date of signing] day of..... [Insert month], [insert  
year]

Bidder Official Stamp

**PARTICULAR PRELIMINARIES**

Item	DESCRIPTION	Kshs.	Cts
<p><b>A</b></p>	<p><b>PRICING ITEMS OF PRELIMINARIES</b></p> <p>Prices <b>SHALL BE INSERTED</b> against items of “preliminaries” in the tenderer’s priced Bills of Quantities. The contractor is advised to read and understand all preliminary items.</p>		
<p><b>B</b></p>	<p><b>DESCRIPTION OF THE WORKS</b></p> <p>The works to be carried out under this contract basically involve Substructures, Reinforced Concrete Frame, Roofing, opening, Finishes’</p>		
<p><b>C</b></p>	<p><b>FLOOR AREAS</b></p> <p>The total gross floor areas are approximated as follows: - <b>square Metres</b></p> <p>The overall floor area is given <i>without warranty</i> but for guidance only.</p>		
<p><b>D</b></p>	<p><b>MEASUREMENTS</b></p> <p>In the event of any discrepancies arising between the Bills of Quantities and the actual works, the site measurements shall generally take precedence. However, such discrepancies between any contract documents shall immediately be referred to the PROJECT MANAGER in accordance with Clause 22 of the Conditions of Contract. The discrepancies shall then be treated as a variation and be dealt with in accordance with Clause 22 of the said Conditions.</p>		
<p><b>E</b></p>	<p><b>LOCATION OF SITE</b></p> <p>The site of the proposed works is within Bungoma County. The Contractor is advised to visit the site to familiarize with the nature and position of the site. No claims arising from the Contractor’s failure to do so will be entertained.</p>		
	<p align="center"><b>Carried to Collection</b></p>		

Item	DESCRIPTION	Kshs.	Cts
A	<p><b>CLEARING AWAY</b></p> <p>The Contractor shall remove all temporary works, rubbish, debris and surplus materials from the site as they accumulate and upon completion of the works, remove and clear away all plant, equipment, rubbish, unused works and stains and leave in a clean and tidy state to the reasonable satisfaction of the Project Manager.</p> <p>The whole of the works shall be delivered up clean, complete and in perfect condition in every respect to the satisfaction of the Project Manager.</p>		
B	<p><b>CLAIMS</b></p> <p>It shall be a condition of this contract that upon it becoming reasonably apparent to the Contractor that he has incurred losses and/or expenses due to any of the contract conditions, or by any other reason whatsoever, he shall present such claim or intent to claim notice to the PROJECT MANAGER within the contract period. No claims shall be entertained Upon the expiry of the said contract period.</p>		
C	<p><b>PAYMENTS</b></p> <p>The tenderer's attention is drawn to the fact that the GOVERNMENT DOES NOT MAKE ADVANCE PAYMENTS but pays for work done and materials delivered to site: all in accordance with Clause 23 of the Conditions of Contract Agreement. In order to facilitate this, a list of the general component elements for the works is given at the summary page of these specifications and the tenderer is requested to break down his tender sum commensurate to the said elements.</p>		
D	<p><b>PREVENTION OF ACCIDENT, DAMAGE OR LOSS</b></p> <p>The Contractor is notified that these works are to be carried out on a restricted site where the client is going on with other normal activities. The Contractor is instructed to take reasonable care in the execution of the works as to prevent accidents, damage or loss and disruption of normal activities being carried out by the Client. The Contractor shall allow in his rates any expense he deems necessary by taking such care within the site.</p>		
	<b>Carried to Collection</b>		

Item	DESCRIPTION	Kshs.	Cts
A	<p><b>WORKING CONDITIONS</b></p> <p>The Contractor shall allow in his rates for any interference that he may encounter in the course of execution of the works for the Client may in some cases ask the Contractor not to proceed with the works until some activities within the site are completed, as the College will be operating as usual during the course of the contract.</p>		
B	<p><b>SIGNBOARD</b></p> <p>Allow for providing, erecting, maintaining throughout the course of the Contract and afterwards clearing away a signboard as designed, specified and approved by the Project Manager.</p>		
C	<p><b>LABOUR CAMPS</b></p> <p>The Contractor shall not be allowed to house labour on site. Allow for transporting workers to and from the site during the tenure of the contract.</p>		
D	<p><b>MATERIALS FROM DEMOLITIONS</b></p> <p>Any materials arising from demolitions and not re-used shall become the Property of the government. The Contractor shall allow in his rates the cost of transporting the demolished materials to the County Works Office, BUNGOMA</p>		
E	<p><b>PRICING RATES</b></p> <p>The tenderer shall include for all costs in executing the whole of the works, including transport, replacing damaged items, fixing, all to comply with the Said Conditions of Contract.</p>		
F	<p><b>TENDER VALIDITY</b></p> <p>Tenders shall remain valid for a period of One Hundred and Fifty (150) days from the date of Tender Opening, and not Ninety (90) days. All Tenderer are advised to note this amendment when filling the Form of Tender.</p>		
	<b>Carried to Collection</b>		

Item	DESCRIPTION	Kshs.	Cts
A	<p><b>SECURITY</b></p> <p>The Contractor shall allow for providing adequate security for the works and the workers in the course of execution of this contract. No claim will be entertained from the Contractor for not maintaining adequate security for both the works and workers.</p>		
B	<p><b>URGENCY OF THE WORKS</b></p> <p>The Contractor is notified that these “works are urgent” and should be completed within the period stated in these Particular Preliminaries.</p> <p>The Contractor shall allow in his rates for any costs he deems that he/she may incur by having to complete the works within the stipulated contract Period.</p>		
C	<p><b>PAYMENT FOR MATERIALS ON SITE</b></p> <p>All materials for incorporation in the works must be stored on site before payment is effected, unless specifically exempted by the Project Manager. This is to include materials of the Contractor, nominated sub-Contractors and nominated suppliers.</p>		
D	<p><b>EXISTING SERVICES</b></p> <p>Prior to the commencement of any work, the Contractor is to ascertain from the relevant authority the exact position, depth and level of all existing services in the area and he/she shall make whatever provisions may be required by the authorities concerned for the support, maintenance and protection of such services.</p>		
E	<p><b>TENDER SECURITY</b></p> <p>Bid Bond/Tender Security, which must be from an established Bank or Insurance company, shall remain valid for a period of One Hundred and Fifty (150) days from the date of Tender Opening</p>		
	<b>Carried to Collection</b>		

Item	DESCRIPTION	Kshs.	Cts
A	<p><b>PERFORMANCE BOND</b></p> <p>A bond of 5% of the contract sum will be required in accordance with clause 6.00 on award of contract of the Instructions to Tenderer's. No payment on account for the works executed will be made to the contractor until he has submitted the Performance Bond to the Project Manager duly signed, sealed and stamped from an approved Bank.</p>		
B	<p><b>TENDER DOCUMENTS</b></p> <p>Tender documents are as listed in Clause 2.1 of the Instruction to Tenderer's Page STD/8</p>		
C	<p><b>DELIVERY OF TENDER</b></p> <p>Tenders and all documents in connection therewith, as specified above must be delivered in the addressed envelope which should be properly sealed and deposited at the offices as specified in the letter accompanying these documents or as indicated in the advertisement.</p> <p>Tenders will be opened at the time specified in the letter accompanying these Tender Documents or as indicated in the advertisement. Tenders Delivered/received later than the above time will not be opened.</p>		
D	<p><b>VALUE ADDED TAX</b></p> <p>The Contractor's attention is drawn to the Legal Notice in the Finance Act part 3 Section 21(b) operative from 1<sup>st</sup> September, 1993 which requires payment of VAT on all contracts. The Contractor should therefore include allowance for VAT as indicated in the Main Summary. Any other Government taxes currently in force should be included in the tenderer's rates.</p> <p>The tenderer is advised that in accordance with Government public notice No. 35 &amp; 36 Dated 11<sup>th</sup> September 2003 operational from <b>1<sup>st</sup> October 2003</b>, withholding VAT will be levied against the contract sum by the Employer and <b>remitted</b> to the Commissioner of VAT through all interim certificates. It should however be noted that this is not additional tax but a new mode of payment for VAT, any excess payment will be refundable once the Contractor has submitted monthly returns to the Commissioner of VAT who will do the refunds when satisfied that the VAT regulations have been complied with.</p> <p><b>NB:</b> This item <b>SHALL</b> be priced at the Bill Summary page.</p>		
	<b>Carried to Collection</b>		

Item	DESCRIPTION	Kshs.	Cts
<b><u>PARTICULARS OF INSERTIONS TO BE MADE IN APPENDIX TO CONTRACT AGREEMENT</u></b>			
The following are the insertions to be made in the appendix to the Contract Agreement: -			
<b>A</b>	<b>Period of Final Measurement</b>	3 Months From Practical completion	
<b>B</b>	<b>Defects Liability Period</b>	6 Months from practical completion	
<b>C</b>	<b>Date for Possession</b>	To be agreed with the Project Manager	
<b>D</b>	<b>Date for Completion</b>	<b>16 Weeks</b> from date of Possession	
<b>E</b>	<b>Liquidated and Ascertained</b>	At the rate of Kshs 5,000.00 per week or part thereof	
<b>F</b>	<b>Prime cost sums for which the The Contractor desires to tender</b>	..... ..... .....	
<b>G</b>	<b>Period of Interim Certificates</b>	Monthly	
<b>H</b>	<b>Period of Honouring Certificates</b>	30 days	
<b>I</b>	<b>Percentage of Certified Value Retained</b>	10%	
<b>J</b>	<b>Limit of Retention Fund</b>	10%	
<b>K</b>	Allow provisional sum of Kenya shillings Fifty Thousand (Kshs 50,000.00)only for project management	50,000	
<b>Carried to Collection</b>		<b>50,000</b>	

Item	DESCRIPTION	Kshs.	Cts
	<p><b><u>COLLECTION</u></b></p> <p>Brought forward from page PP/1</p> <p>Brought forward from page PP/2</p> <p>Brought forward from page PP/3</p> <p>Brought forward from page PP/4</p> <p>Brought forward from page PP/5</p> <p>Brought forward from page PP/6</p>		
	<p><b>PARTICULAR PRELIMINARIES CARRIED TO BILL NO. 1 SUMMARY</b></p>		

Item	DESCRIPTION	Kshs.	Cts
	<p data-bbox="321 178 695 214"><b><u>BILL NO 1 SUMMARY</u></b></p> <p data-bbox="321 373 876 409">General Preliminaries From Page GP/12</p> <p data-bbox="321 672 860 707">Particular Preliminaries from Page PP/7</p>		
	<p data-bbox="397 1705 1112 1780"><b>TOTAL BILL NO. 1 SUMMARY CARRIED TO GRAND SUMMARY</b></p>		

**PROPOSED PROPOSED CONSTRUCTION OF BODABODA  
SHED IN TOWNSHIP WARD- BUNGOMA COUNTY**

ITE	DESCRIPTION	QTY	UNIT	RATE	KSHS
<b>M</b>					
A	Excavate pit for steel columns starting from ground level n.e 1500mm deep and backfill after.	11	NO		
B	75mm diameter posts overall size 3800mm long,one end mortised into concrete other end bracketed for roof structure.	6	NO		
C	Ditto but overall height 1050mm do	5	NO		
D	50 x 25 x 3mm thick SHS horizontal rails screwed onto steel posts(m.s)	40	LM		
E	Ditto to form wall plate do.	10	LM		
F	30G IT5 sheets screwed to horizontal rails top and bottom overal height 1800mm	18	SM		
G	50 x 25 x 3mm SHS screwed, to wall plate at 2400mm centers as rafters	9	Lm		
H	50 x 25x 3mm angle line purlins screwed to rafters.	17	LM		
I	30G IT5 sheets fixed to purlins with J-bolts and cut to profile of roof.	17	SM		
J	M.s plate gauge 18 welded to 50 x 25mmx 3mm thick(m.s) welded onto 75mm thick pipe columns(m.s) using to form seating area overall 600mm deep.	10	Lm		
K	Allow for signage " <b>COUNTY GOVERNMENT BUNGOMA</b> "	1	NO		
L	Gloss oil paint to surfaces of metal 75mm diameter	28	LM		
	<b>Total for 1No. Bodaboda shed</b>				
					X10
	<b>Total for 10No. Bodaboda sheds carried to grand summary</b>				

ITE	DESCRIPTION	QTY	UNIT	RATE	KSHS
<b>M</b>	<b><u>PROVISIONAL SUMS</u></b>				
A	Allow a provisional Sum of Kshs. 80,000.00(Kenya Shillings Eighty thousand) only for contingencies.				80,000
B	Allow a provisional sum of kshs 50,000.00 {kshs thousand} only for Project Administration cost				50,000
	<b>TOTAL FOR P.C AND PROVISIONAL SUMS</b>				<b>130,000</b>

**CARRIED TO GRAND SUMMARY**

ITE	DESCRIPTION	For official	For Tenderer's use
<b>M</b>			
A	Bill No. 1 Preliminaries		
B	Bill No. 2 Building Works		
C	Bill No. 3 Prime Cost & Provisional Sums		
<b>SUB-TOTAL</b>  Add 16% V.A.T to be paid to commissioner of V.A.T as per Legal Notice No. 35 & 36 dated 11th September, 2003			
<b>TOTAL CARRIED TO FORM OF TENDER: KSHS</b>			

Amount in words : Kenya

Shillings.....

...

.....

Tenderer's

Signature.....

Address.....

.....

.....

.....

Date.....

Witness

Signature.....

Date.....

.....

## **TENDER EVALUATION CRITERIA**

After tender opening, the tenders will be evaluated in 3 stages, namely:

1. Determination of Responsiveness
2. Detailed Technical Examination
3. Financial Evaluation.

### **STAGE 1- DETERMINATION OF RESPONSIVENESS**

#### **A) PRELIMINARY EXAMINATION**

This stage of evaluation shall involve examination of the pre-qualification conditions as set out in the Tender Advertisement Notice or Letter of Invitation to Tender and any other conditions stated in the bid document.

These conditions may include the following:

- i) Category of Registration with National Construction Authority 8 in BUILDING .
- ii) Valid Single business permit with Bungoma county government authorities
- iii) Valid Tax compliance certificate issued by Kenya Revenue Authority.
- iv) Company certificate of incorporation / certificate of registration.
- vi) Dully filled, signed and stamped Form of Tender.
- x Valid AGPO certifiacte for YOUTH
- xii Certified copy of CR12 and I.D.s
- Xiii Certified Renewed copy of practicing license with NCA 8 .

Xv Pin Certificate

The employer may seek further clarification/confirmation if necessary to confirm authenticity/compliance of any condition of the tender.

**The tenderers who do not satisfy any of the above requirements shall be considered Non-Responsive and their tenders will not be evaluated further.**

#### **B) COMPLETENESS OF TENDER DOCUMENT**

The tender document shall be examined based on the Instruction to Tenderers which states as follows:

In accordance to Instructions to Tenderers, the tenderers will be required to provide evidence for eligibility of the award of the tender by satisfying the employer of their eligibility and adequacy of resources to effectively carry out the subject contract. The tenderers shall be required to fill the Standards Forms provided for the purposes of providing the required information. The tenderers may also attach the required information if they so desire.

The award of points for the **STANDARD FORMS** considered in this section shall be as shown below:

<u>PARAMETER</u>	<u>MAXIMUM POINTS</u>
(i) Statement of Compliance -----	3
(ii) Tender Questionnaire - -----	5
(iii) Confidential business questionnaire-----	5
(iv) Key personnel - -----	20
(v) Contract Completed in the last Five (5) years - -----	15
(vi) Schedules of on-going projects -----	10
(vii) Schedules of contractors equipment -----	10
(viii) Audited Financial Report for the last 3 years-----	10
(ix) Evidence of Financial Resources -----	10
(x) Name, Address and Telephone of Banks (Contractor to provide) ----	5
(xi) Litigation History-----	2
(xii) Sanctity of the tender document as in accordance with clause	5
Of instruction to tenderer -----	5
<b>TOTAL</b>	<b><u>100</u></b>

The detailed scoring plan shall be as shown in table 1 below: -

Item	Description	Point Scored	Max. Point
i	<b>Statement of Compliance</b> Filled signed and stamped----- 3 Signed but not stamped or vice versa ----- 2		3
ii	Not signed nor stamped ----- - 0 <b>Tender Questionnaire Form</b> Partially filled ----- 3		5
iii	Not filled ----- -0 <b>Confidential Business Questionnaire Form.</b> Completely filled ----- 5		5
iv	Partially filled ----- <b>Director of the firm</b> Not filled Holder of degree or diploma in relevant Engineering field ----- <b>Key Personnel (Attach evidence)</b> Holder of certificate in relevant Engineering field ----- Holder of trade test certificate in relevant Engineering field ----- No relevant certificate ----- -0	5	20
	<b>At least 1 No. degree/diploma holder of key personnel in relevant Engineering field</b> With over 10 years relevant experience ----- -5 With over 5 years relevant experience ----- 3	5	
	<b>At least 2 No certificate holder of key personnel in relevant Engineering field</b> With under 5 years relevant experience ----- 1 With over 5 years relevant experience ----- 3 With under 5 years relevant experience ----- 2 -1	6	
Item	Description	Point Scored	Max. Point
	<b>At least 2 No artisan (trade test certificate in relevant Engineering field)</b> Artisan with over 10 years relevant experience. ----- 2 Artisan with under 10 years relevant experience ----- 1 Non skilled worker with over 10 years relevant experience -----		4

	----- 1			
v	<b>Contract completed in the last five (5) years (A max of 5 No. Projects) (attach proof or evidence)</b> o Project of similar nature, complexity and magnitude ----- ----- o Project of similar nature but of lower value than the one in consideration----- o No completed project of similar nature ----- 0		<b>15</b>	
vi	<b>On-going projects (A max of 5 No. Projects) (attach proof or evidence)</b> o Project of similar nature, complexity and magnitude --- ----- o Project of similar nature but of lower value than the one in consideration ----- o No ongoing project of similar nature - -----0		<b>10</b>	
vii	<b>Schedules of contractors equipment and transport (attach proof or evidence of ownership)</b> o Means of transport (Vehicle) ----- 4 o No means of transport ----- 0		4	<b>10</b>
	For each specific equipment required in the installation of the (Max being 10 of equipment to be considered – 3 No.)		6	
viii	<b>Financial report</b>		<b>10</b>	
	<b>Audited financial report (last three (3) years)</b> o Annual turnover greater or equal to 5 times the cost of the project ----- 10 o Annual turnover greater or equal to 3 times the cost of the project----- 6 o Annual turnover greater or equal to the cost of the project ----- 4 o Turnover below the cost of the project ----- 2			

Item	Description	Point	Max. Point
------	-------------	-------	------------

		Scored	
ix	<b>Evidence of Financial Resources (cash in hand, lines of credit, overdraft facility, etc.)</b> Has financial resources equal or above the cost of the project----- 10 o Has financial resources below the cost of the project ---- --- ----- 5 o Has not indicated sources of financial resources -- -0		10
x	<b>Name, Address and Telephone of Banks (Contractor to provide)</b> o Provided ----- 5		5
xi	o Not provided ----- 0 <b>Litigation History</b> o Filled ----- 2 o Not filled ----- -0		2
xii	<b>Sanctity of the tender document</b> o Having the document intact (not tampered with in any way) ----- -5 o Having mutilated or modified the tender document----- --- ----- 0		5
	<b>TOTAL</b>		<b>100</b>

**Any bidder who scores 80 points and above shall be considered for further evaluation**

**STAGE 2 - TECHNICAL EVALUATION**

**A) COMPLIANCE WITH TECHNICAL SPECIFICATIONS**

**(For equipment)**

In this section, the bid will be analyzed to determine compliance with General and Particular technical specifications for the works as indicated in the tender document.

The tenderer shall fill in the Technical Schedule as specified in the tender document for Equipment and Items indicating the Country of Origin, Model/Make/Manufacturer of the Item/Equipment they propose to supply.

Where the Equipment proposed by the tenderer differs with the models specified in the tender document, it is mandatory that the brochures/catalogues of the same be submitted with the tender document highlighting the catalogues Numbers of the proposed items. Such brochures/catalogues should indicate comprehensive relevant data of the proposed equipment/items which should include but not limited to the following:

- a) Standards of manufacture
- b) Performance ratings/characteristics
- c) Material of manufacture
- d) Electrical power ratings and
- e) Any other necessary requirements (Specify)

**Following the above analyses, where the proposed equipment are found not to satisfy the specifications, the tender will be deemed Non – Responsive and will not be evaluated further.**

**B) DETAILED TECHNICAL EXAMINATION**

**(For Builders work only tenders' rates shall apply)**

In this section, the information provided in Schedule of Unit Rates and Technical Schedule will be analyzed and points awarded as shown below.

	<b>PARAMETER</b>	<b>MAXIMUM POINTS</b>
(i)	Tender rates-----	30
(ii)	Technical Schedule - -----	<u>40</u>
	<b>TOTAL</b>	<b><u>70</u></b>

The detailed scoring plan shall be as shown in table 2 below:

**TABLE 2**

Item	Description	Score	Max. score
<b>i</b>	<p><b>Tender rates</b> (The average of tender sums of the bidders less PCs Sums and contingency shall be worked out. The deviation of bidders tender Sum from the average shall then be worked out as a percentage of the average and score allocated as follow:- )</p> <ul style="list-style-type: none"> <li>o Deviation of between 0% to 5% ----- 30</li> <li>o Deviation of between 5% to 10% ----- 25</li> <li>o Deviation of between 10% to 15% -----20</li> <li>o Deviation of between 15% to 20% -----15</li> <li>o Deviation of between 20% to 25% ----- 10</li> <li>o Deviation of between 25% to 30% ----- 5</li> <li>o Deviation of above 30% ----- 2</li> </ul>		<b>30</b>
<b>ii</b>	<p><b>Technical schedule</b></p> <ul style="list-style-type: none"> <li>o Relevant Manufacturer Brochures for items in the technical schedule with equipments to be supplied highlighted and meets specification (Where alternative are to supplied-----=----- 40 or</li> <li>o Completely filled Technical Schedule indicating Brand, Model/ Country of origin as per specification in the tender----- ----- 40</li> <li>o Relevant Manufacturer Brochures for items in the technical schedule with equipments to be supplied not highlighted but within range of those specified and meets specifications ----- ----- 30 or</li> <li>o Completely filled Technical Schedule indicating items as specified in the tender but with about 75% of technical data left out -----30</li> <li>o Relevant Manufacturer Brochures for less than 50% of items in the technical schedule with equipments to be supplied highlighted and meets specifications----- 20 or</li> <li>o About 50% of Technical Schedule filled indicating Brand, Model/Country of origin for the items considered as specified in the tender -----20</li> </ul> <p>No technical data provided, either in form of brochures or filling of Technical Schedule. ----- 0</p>		<b>40</b>
<b>TOTAL</b>			<b>70</b>

For a bidder to be deemed technically responsive they must score 40 points and above based on the above scoring plan. For bidders in building and civil works they will be deemed technically responsive if they score 15 points out of 30 points. Any tenderer whose tender figure is deemed to be unreasonably too high or unreasonably too low shall not be included during the tabulation of the averages of the tender sum.

**STAGE 3 - FINANCIAL EVALUATION**

The evaluation shall be in two sections

1. Preliminary examinations and
2. Tender sum Comparisons

## **1. PRELIMINARY EXAMINATIONS**

The preliminary examination in the Financial Evaluation shall be in accordance with Instruction to Tenderers.

The parameter to be considered under this section includes the following:

- a) Arithmetic errors

The bid shall be checked for arithmetic errors based on the rates and the total sums indicated in the bills of quantities.

- b) Confirmation shall be sought in writing from the tenderers whose tender sums will be determined to have a significant arithmetic error to their disadvantage, to confirm whether they stand by their tender sums. The error shall be treated as per **the Instructions to Tenderers**.

Non compliance with the above shall lead to **automatic disqualification from further evaluation**.

Discount if any shall be treated as an error in pursuant to the Instructions to Tenderers

## **2. TENDER SUM COMPARISONS**

The evaluation team shall compare the prices offered by the tenderers and the financial scores (Fs) will be determined using the formulae bellow. The financial score will be allocated a maximum of 30%.

$$F_s = 30 \times F_m/F$$

Where  $F_s$  is the financial score,  $F_m$  is the lowest priced responsive financial bid and  $F$  is the price of the bid under consideration

## **CONCLUSION**

### **COMBINATION OF TECHNICAL AND FINANCIAL SCORE**

The evaluation team shall combine Technical and Financial Score as below:

$$\text{Technical score (Ts) + Financial score (Fs) = 70% + 30\%}$$

## **RECOMMENDATION**

The combined technical and financial score shall be determined and the employer shall recommend for award of the **Tender** to the firm achieving the highest combined technical and financial scores.

**NOTE: The technical score will range between 70 and 80 while that one for the financial will be between 20 and 30 depending on the project, to be decided by the client. But the combined total will remain at 100 points.**



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