

**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 No. BGM/CNTY/CEF/TEI/OT/10/2025-2026**

**TENDER NEGOTIATION No:2106952-2/2025/2026**

**MARCH 2026**

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## INVITATION TO TENDER

**PROCURING ENTITY:** COUNTY GOVERNMENT OF BUNGOMA.

**CONTRACT NAME AND DESCRIPTION:** PROPOSED CONSTRUCTION OF 10No

**BODABODA SHEDS IN TWONSHIP WARD.**

1. The (County Government of Bungoma through Trade Energy and Industrialization invites sealed tenders for **Proposed construction of 10No. Bodaboda sheds in Township Ward.**
  2. Tendering will be conducted under open competitive method (National) as in the tender using a standardized tender document. Tendering is open to all qualified and interested Tenderers.
  3. Qualified and interested tenderers may obtain further information and inspect the Tender Documents during office hours [8.00 am -5.00pm] at **Supply Chain Management office, Trade offices next to County Asembly..**
  4. A complete set of tender documents can be downloaded -electronically from the Website(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. Tenders shall be quoted be in Kenya Shillings and shall include all taxes. Tenders shall remain valid for (120) days from the date of opening of tenders.
  6. All Tenders must be accompanied by a [insert "tender Security" N/A
  7. The Tenderer shall chronologically serialize all pages of the tender documents submitted.
  8. Completed tenders must be delivered to the address below on or before **Wednesday 25<sup>th</sup> March 2026 at 12pm**. Manual Tenders [ **will not**] be permitted.
  9. Tenders will be opened immediately after the deadline date and time specified above or any dead line date and times specified later. Tenders will be publicly opened electronically using unique IFMIS No.
- A. **Address for Submission of Tenders.**  
Tenders will be submitted electronically using the address in the tender Notice.
- B. **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

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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) ~~Throughout this tendering the TDS.~~  
b) ~~Throughout this tendering the TDS.~~  
c) ~~Throughout this tendering the TDS.~~
- 2.0 The term "inwriting" 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 in printed form 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.

#### 2.1 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

2.3 persons or his or her sub-contractors are not debarred from participating in public procurement practices in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and

2.4 criminal and/or civil sanctions may be imposed. To this effect, Tenders shall be required to complete a tenderer's shall permit and shall cause their agents (whether declared or not), subcontractors, sub-consultants, service providers, suppliers, and their personnel, to permit the Procuring Entity to inspect all accounts, records

and other documents relating to any initial selection process, pre-qualification process, tender submission,

2.5 Unfair Competitive Advantage. Fairness and transparency in the tender process require that the firms of their proposal submission, and contract performance (in the case of award), and to have them audited by

2.6 affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. To that end, the Procuring Entity shall indicate in the Data

3.0 Sheet and make available to all the firms together with this tender document all information that would in that

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

3.2 an individual or any combination of such entities in the form of a joint venture (JV) under an existing agreement with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint

3.3 venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to

3.4 conduct all business of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister, Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial interest, during the tendering process and, if awarded, during the execution of the Contract. Members of a JV to be awarded a contract shall also be a subcontractor in a separate tender or be part of another joint venture for the purposes of

3.5 Public officers are also not allowed to participate in any procurement proceedings. A tenderer shall not have a conflict of interest. Any tenderer found to have a conflict of interest shall be

3.6 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 another 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;
  - e) Any of its affiliates participated as a consultant in the preparation of the design or 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;
  - 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 specifications of the Contract, and/or the Tender, evaluation process of such contract or
  - 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 conflict of interest arising from such relationship has been resolved in a manner acceptable to the Procuring Entity
- 3.4 A tenderer shall not be involved in procurement 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 another tender for the purposes of the same Tender. 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 as a contractor in more than one tender. 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,
- 3.6 A Tenderer that has been debarred from participating in public procurement shall be ineligible to tender and may not be a subcontractor on any part of the Contract including related Services.
- 3.7 A firm 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 a legal public entity of Government and/or public
  - 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 able to compete with firms in the private sector on an equal basis.
- 3.8 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 virtue 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 is met 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.
- 3.11 Pursuant to the National Construction Authority Act of Kenya requires that all local and foreign contractors be registered with the National Construction Authority and issued with a Registration Certificate before they 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 with the National Construction Authority 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. Application for exemption from the Competition Authority may be accessed from the website [www.cak.go.ke](http://www.cak.go.ke).
- 3.12 The National Construction Authority Act of Kenya requires that all local and foreign contractors be registered with the National Construction Authority and issued with a Registration Certificate before they 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 with the National Construction Authority 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. Application for exemption from the Competition Authority may be accessed from the website [www.cak.go.ke](http://www.cak.go.ke).
- 3.13 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may be exempted from the provisions 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. Application for exemption from the Competition Authority may be accessed from the website [www.cak.go.ke](http://www.cak.go.ke).
- 4.14 A 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.
- 4.0 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, 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 and any of its personnel or agents will be granted permission by the Procuring Entity to enter upon its premises and lands for the purpose of such visit. The Tenderer shall indemnify the Procuring Entity against 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

60 Sections of Tender Document

61 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

62 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

63 ~~The Procuring Entity is responsible for any and all instructions, forms, terms, and specifications with the Tender document and traditional documents obtained directly from the Procuring Entity shall prevail over the Tender~~

64 ~~and a significant portion of Tender Document, Site Visit, Pre-tender Meeting~~

71 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

72 ~~in the event the Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine and inspect the site of the project identifying its source. If so specified in the TDS, the Procuring Entity shall also promptly provide (s/s) of the required contracts and obtain all information that may be necessary for preparing a tender. The cost of visiting the Site shall be at the Tenderer's own expense. The Procuring Entity shall specify in the TDS of the Tender Documents, the Procuring Entity shall amend the Tender Documents if a pre-tender meeting will be held, when and where. The Tenderer's procedure under ITT 8 and ITT 22.2.~~

73 ~~The Tenderer is invited to raise any questions in writing, to reach the Procuring Entity as late as possible before the pre-tender meeting will be to clarify issues and to answer questions~~

74 ~~Minutes of a pre-arranged site visit and those of the pre-tender meeting, if applicable, including the matter asked by the Tenderer shall be a stage responses given, together with any responses prepared after the meeting,~~

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 minutes of the pre-tender meeting or the Non-attendance at the pre-arranged site visit and tender meeting will not be a cause for disqualification of a Tenderer.
- 7.6 The amendments shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to the Amendment of Tender Documents.
- 8.0
- 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 on the procurement website. In preparing their Tenders, the Procuring Entity should extend the dead line for the submission of Tenders, pursuant to ITT 22.2.
- 8.3

### 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 tendering process.

#### 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 ~~Document~~ ~~translations~~ ~~of the~~ ~~Tender~~ ~~relevant~~ passages into the English Language, in which case, for purposes of
- 11.1 ~~The~~ ~~Tenderer~~ ~~shall~~ ~~the~~ ~~Tenderer~~, ~~such~~ ~~translation~~ ~~shall~~ ~~govern~~ following:

- a) Form of Tender prepared in accordance with ITT 2;
- 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) ~~Alternative~~ Tender, if permissible, in accordance with ITT 13; 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 qualifications to perform the Contract if its Tender is accepted;
- 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, to be paid to agents or any other party relating to this Tender.
2. Alternative Tenders
- 21 Unless otherwise specified in the TDS, alternative Tenders shall not be considered.
- 22 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.
- 23 Except as provided in Part I of the TDS, Tenders 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
- 24 When specified in the TDS, alternative technical solutions for the specified parts of the Works shall be permitted. Only the alternative technical solutions shall be considered by the Procuring Entity.
- 140 Tender Bids shall meet the following requirements.
- 141 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.
- 142 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
- 143 The price to be submitted by the Tenderer shall stand on this basis, that the lowest bid price of the Tender, by itself, shall be the basis for award. If the Tenderer offers discounts, the discounts will be added to the Tender price and the equivalent total cost of the Tender shall be used for price comparison.
- 144 The Tenderer shall quote any discounts and the methodology for their application in the Form of Tender, determined will be used for price comparison.
- 145 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 Tender.
- 146 Where tenders are being invited for individual lots (contracts) or for any combination of lots (packages), the Procuring Entity may require the Tenderer to justify its proposed 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
- 150 ~~the current Tender Price and Payment by the Tenderer.~~
- 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 in the Appendix to Tender the percentage(s) of the Tender Price (excluding Provisional Sums), and 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 Tender and 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.
- 16.0 Tenderers may be required by the Procuring Entity to justify, to the Procuring Entity's satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices of the Tenderer shall furnish a technical proposal including a statement of work methods, equipment, and personnel, and shown in the Schedule of Adjustment Data in the Appendix to Tender are reasonable, in which the Tenderer shall break down of the foreign currency requirements shall be provided by Tenderers.
- 17.0 The adequacy of the Tenderer's proposal to meet the works requirements and the completion time shall be established by 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 eligibility in accordance with ITT 4
- 172 In accordance with Section III, Evaluation and Qualification Criteria, to establish its qualifications to perform the Contract the Tenderer shall provide the information requested in the corresponding information sheets
- 173 If a margin of preference applies as specified in accordance with ITT 33.1, national tenderers, included in Section IV, Tender Forms, 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.
- 174 Tenderers shall be asked to provide, as part of the data for qualification, such information, including the criteria for eligibility specified in accordance with ITT 33.1. 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 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 relating to its ownership and control confidential where it is tendering to undertake public sector work or 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 ownership and control which was provided by the tenderer under ITT 6.4. The obligations to require this information shall continue for the duration of the procurement process and contract performance and after completion of the contract.
- 177 All information provided by the tenderer pursuant to these requirements must be complete, current and accurate and 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, then a tenderer will be rejected if 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 if the procurement process is still ongoing, the tenderer will be disqualified from the procurement process. If a contract has been awarded to that tenderer, the contract award will be set aside depending on the following:
- i) If the Procuring Entity is satisfied that the tenderer has acted in good faith, the contract award will be set aside.
  - ii) If the Procuring Entity is not satisfied that the tenderer has acted in good faith, the contract award will be set aside and 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 to ignorance or inadvertence and is not attributable to the intentional act, negligence or recklessness of the tenderer.
- 18.0 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 with the TDS).
- 18.1 Tenderers 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 with the TDS).
- 182 If a Tenderer requests 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 penalty.
- 190 If a Tenderer grants the request, it shall not be required or permitted to modify its Tender Security.
- 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 specified in the TDS.
- 192 If a Tender Security is requested pursuant to ITT 19, the Tender Security shall be a Security provided by any 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) listed by the Authority as 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 requested.
- 194 If a 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 Security 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.

- 196 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
- 197 ~~The Tender Security may be forfeited or the Tender-Securing Declaration executed if the Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer on the~~
- b) ~~Form of Tender, Tender extension:~~ there to provided by the Tenderer; or
  - i) sign the Contract in accordance with ITT 47;
  - j) Furnish a Performance Security and if required in the TDS, and any other documents required in the TDS.

198 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.

199 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 ~~Annex A~~ shall not issue a tender security to guarantee the letter of intent referred to in ITT 4.1 and ITT 11.2.

200 Format and Signing of Tender

201 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

202 ~~The TDS shall clearly mark "CONFIDENTIAL" in the event of any disclosure which is confidential in the business, this is in a legal and proprietary information, trade secrets, or commercial or financially sensitive~~

203 ~~The 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

204 ~~person signing shall be shown in the Tender and shall be signed by him or her. All pages of the Tender shall be numbered and the number shall be written in the margin of each page. The signature of the person signing shall be written in the margin of each page.~~

205 Any liability authorization, or any other overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

#### D. SUBMISSION AND OPENING OF TENDERS

210 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 the envelope or package or container marked "ORIGINAL" and documents comprising the Tender, as~~
  - b) ~~in a separate sealed 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  
required  
copies of the alternative Tender.

The inner envelopes or packages or containers shall all 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 procedures specified in the TDS.

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

23.0 Lanted Tenderers 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

24.0 ~~Withdrawal, Substitution, and Modification of Tenders~~

24.1 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 shall be prepared and submitted in accordance with ITT 20 and ITT 21 (except that withdrawal notices shall be submitted in accordance with ITT 20 and ITT 21).

Withdrawal, substitution, and modification notices shall be submitted in accordance with ITT 20 and ITT 21. All notices must be

b) "WITHDRAWAL" 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~~

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 if required envelopes marked "WITHDRAWAL" shall be opened and read out and the envelopes if the 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 and this shall be read out at Tender opening.

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 ~~Notice that a modification request envelope shall be opened and read out at Tender opening, including out 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 ~~Of which the Tenderers, alternative Tenders and discounts that are opened and read out at Tender opening and shall be~~ other details as the Procuring Entity may consider appropriate.  
 considered further for evaluation. The Form of Tender and pages of the Bill of Quantities (to be decided on by
- 257 ~~At the Tender Opening, the Procuring Entity shall neither discuss the merits of any Tender nor reject any Tender~~ opening.  
 (except for late Tenders, in accordance with ITT 23.1).
- 258 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~~ Tenderers.
26. Confidentiality
- 261 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 the Contract is transmitted to all Procuring Entity in accordance with ITT 43. The Tenderer 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 to contact the Procuring Entity on any matter related to the tendering process, it shall do so in writing.
- 270 Clarification of Tenders
- 271 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 or additions to its tender by the date and time specified in the Procuring Entity's request for clarification, or any other request, shall be considered.~~  
 be requested for clarification, permitted, except to confirm the correction of arithmetic errors discovered
- 280 ~~By the Procuring Entity in the evaluation of the tenders, in accordance with ITT 31.~~  
 Procuring Entity in the evaluation of the tenders, in accordance with ITT 31.
- 281 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

- requirements specified in the tender document; and
- c) "Omission" is the failure to submit part or all of the information or documentation required in the Tender document.
- 29.0 Determination of Responsiveness
- 29.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the tender, as defined in ITT 11.
- 29.2 A substantially responsive Tender is one that meets the requirements of the Tender document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that, if accepted, affects in any substantial way the scope, quality, or performance of the Works specified in the tender document, or the Procuring Entity's rights or the tenderer's obligations under the proposed contract, if accepted, would unfairly affect the competitive position of other tenders presenting substantially responsive tenders.
- 29.3 The Procuring Entity shall examine the technical aspects of the tender submitted in accordance with ITT 16, to confirm that all requirements of Section VII, Works' Requirements have been met without any material deviation, reservation, or omission.
- 29.4 If a tender is not substantially responsive to the requirements of the tender document, it shall be rejected by the Procuring Entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.
- 30.0 Non-material Non-conformities
- 30.1 Provided that a tender is substantially responsive, the Procuring Entity may waive any non-conformities in the tender.
- 30.2 Provided that a Tender is substantially responsive, the Procuring Entity may request that the tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify non-material non-conformities in the tender related to documentation requirements. Requesting information or documentation does not constitute a tenderer is substantially responsive to the Procuring Entity's requirements.
- 30.3 If a tender is not substantially responsive to the Procuring Entity's requirements, the Procuring Entity may, at its discretion, adjust the Tender Price to comply with the requirements of the Tender. If the Tender Price is adjusted, the Tender Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified in the TDS.
- 31.0 Arithmetical Errors
- 31.1 The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.
- 31.2 Provided that the Tender is substantially responsive, the Procuring Entity shall handle errors on the following:
- a) a clerical error detected if considered a major deviation that affects the substance of the tender, shall lead to the rejection of the tender.
- b) a discrepancy in the bid price, or a discrepancy arising from a miscalculation of unit price, quantity, subtotal and total bid prices shall be considered as a major deviation that affects the substance of the tender and shall lead to the rejection of the tender.
- c) if a discrepancy is a discrepancy between words and figures, the amount in words shall prevail in the qualification of the tender as non-responsive. and
- 31.3 Tenderers shall be notified of any error detected in their bid during the notification of award.
- 32.0 Conversion to Single Currency

For evaluation and comparison purposes, the currency(ies) of the Tender shall be converted in to a single currency as specified in the TDS.

### 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

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

34.0 Not nominated subcontractors group are eligible to tender. No tender shall be reserved to more than one group. If not so stated in the invitation to tender and in the tender documents, the invitation to tender will be elements of

the Works to be executed 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 Entity. The

34.1 Tenderer may propose sub-contracting up to the percentage of total value of contracts or the volume of work nominated

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

34.2 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 as can be met

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

### 35. Evaluation of Tenders

Specialized Subcontractors proposed by the Tenderer may be added to the qualifications of the Tenderer.

35.1 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 criteria

and methodologies the Procuring Entity shall determine the Lowest Evaluated Tender in accordance

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

b) price adjustment to discounts offered in accordance with ITT 31.4;

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

d) price adjustment due to quantifiable non-material non-conformities in accordance with ITT 31.3; 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



### 39.0 Qualifications of the tenderer

391 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

392 The Section 17.1 Evaluation and Qualification Criteria determination of the documentary evidence of the Tenderer's qualifications submitted by 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 other firm(s) different from the Tenderer.

393 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

40.0 lowest evaluated tender similar determination of that Tenderer's qualifications to perform satisfactorily. 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 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, the following information:

a) the name and address of the successful tenderer;

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

c) the Contract price of the successful tenderer;

d) the expiry date of the standstill period;

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

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.
- 45.2 Debriefings of unsuccessful Tenderers may be done in writing or verbally. 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

- 47.0 The successful Tenderer shall 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 a maximum of (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 Forms included in Section X, Contract Forms, or another form acceptable to the Procuring Entity. A failure of the successful Tenderer to submit the above-mentioned Performance Security and in the form specified in the TDS or sign the Contract shall constitute sufficient grounds for the annulment of the award and the Procuring Entity has agreed in writing that a correspondent bank is not required.
- 48.2 For the purpose of signing a bank guarantee shall have a correspondent financial institution located in Kenya, unless specified in the TDS or sign the Contract shall constitute sufficient grounds for the annulment of the award and the Procuring Entity has agreed in writing that a correspondent bank is not required.
- 48.3 Performance security shall not be required for contracts estimated to cost less than the amount specified in the next Best Evaluated Tender 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 name and address of the Procuring Entity and the following information:

- name and reference number of the contract being awarded, a summary of its scope and the selection method used;
  - the name of the successful Tenderer, the final total contract price, the contract duration;
  - dates of signature, commencement and completion of contract; and
  - names of all Tenderers that submitted Tenders, and their Tender prices as read 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.

<b>Reference to ITC Clause</b>	<b>PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS</b>
<b>A. General</b>	
<b>ITT 1.1</b>	<p>The name of the contract is <b>Proposed construction of 10 No. Bodaboda Sheds in Township Ward,</b></p> <p>The reference number of the Contract;</p> <p><b>BGM/CNTY/CEF/TEI/OT/10/2025-26</b></p> <p>The number and identification of lots (contracts) comprising this Tender are <i>[insert number and identification of lots (contracts)]</i></p> <p>NOT APPLICABLE</p>
<b>ITT 2.4</b>	The Information made available on competing firms is as follows: NOT APPLICABLE
<b>ITT 2.4</b>	The firms that provided consulting services for the contract being tendered for are: NOT APPLICABLE
<b>ITT 3.1</b>	Maximum number of members in the Joint Venture (JV) shall be: <i>[insert a number].N/A</i>
<b>B. Contents of Tender Document</b>	
<b>ITT 7.1</b>	<p>The Tenderer will submit any request for clarifications in writing at the Address <u>www.bungoma.go.ke</u></p> <p>to reach the Procuring Entity not later than 4 days to closing/opening____</p> <p>The Procuring Entity shall publish its response at the website <u>www.bungoma.go.ke_</u></p>
<b>ITT 7.2</b>	<p>A pre-arranged pretender site visit <b>“shall not”</b>] take place at the following date, time and place:  Date: _____  Time: _____  Place: _____</p> <p>Pre-Tender meeting [ <b>“shall not”</b>] take place at the following date, time and place:  Date: _____  Time: _____  Place: _____</p>
<b>ITT 7.3</b>	The Tenderer will submit any questions in writing, to reach the Procuring Entity not later than _____ <b>4 days</b> before the meeting.
<b>ITT 7.5</b>	The Procuring Entity’s website where Minutes of the pre-Tender meeting and the pre-arranged pretender will be published is _____ <b>NOT APPLICABLE</b>

**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
	<p>Name of Procuring Entity <b>Trade ,Energy and Industrialization</b></p> <p>Physical address for hand Trade offices next to County Assembly Bungoma.</p> <p>Postal Address -Box 437, BUNGOMA.</p> <p>Insert name, telephone number and e-mail address of the officer to be contacted. Chief ----- officer,Trade,Energy and Industrialization, P.O.Box 437, BUNGOMA.</p>
<b>C. Preparation of Tenders</b>	
ITT 11.1 (h)	The Tenderer shall submit the following additional documents in its Tender: <i>As indicated in the Tender Advert.</i>
ITT 13.1	Alternative Tenders “ <b>shall not be</b> ”] _____ considered. <i>[If alternatives shall be considered, the methodology shall be defined in Section III, Evaluation and Qualification Criteria.]</i>
ITT 13.2	Alternative times for completion “ <b>shall not be</b> ”] _____ permitted. <i>[If alternative times for completion are permitted, the evaluation method will be as specified in Section III, Evaluation and Qualification Criteria.]</i>
ITT 13.4	Alternative technical solutions shall be permitted for the following parts of the Works: _____ <b>Shall not be permitted</b>
ITT 14.5	The prices quoted by the Tenderer shall be: <b>Fixed</b>
ITT 15.2 (a)	Foreign currency requirements <b>not allowed. Only in Kenya shillings.</b>
ITT 18.1	The Tender validity period shall be <b>120</b> ____/days.
ITT 18.3	<p>The Number of days beyond the expiry of the initial tender validity period will be _____ days.</p> <p>The Tender price shall be adjusted by the following percentages of the tender price:</p> <p><i>By % of the local currency portion of the Contract price adjusted to reflect local inflation during the period of extension,</i> <i>and</i></p> <p><i>By_% the foreign currency portion of the Contract price adjusted to reflect the international inflation during the period of extension.</i></p>
ITT 19.1	Tender shall <b>NOT</b> provide a <b>Tender Security.</b>
ITT 20.1	In addition to the original of the Tender, the number of copies is: _____ <i>[insert number of copies]</i> <b>N/A</b>
ITT 20.3	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of <b>THE ONE GIVEN THE POWER OF ARTTONEY</b>

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
<b>D. Submission and Opening of Tenders</b>	
<b>ITT 22.1</b>	<p>For <u>Tender submission purposes</u> only, the Procuring Entity's address is:</p> <p>Name of Procuring Entity <b>Trade ,Energy and Industrialization</b></p> <p>Postal Address Chief Officer, Trade, energy Industrialization P.O.BoX 437, BUNGOMA.</p> <p>Date and time for submission of Tenders... <b>Wednesday 25<sup>th</sup> March 2026</b></p> <p>Tenderers shall <b>submit tenders electronically as indicated in the Advert.</b></p>
<b>ITT 25.1</b>	<p>The Tender opening shall take place at the time and the address for Opening of Tenders provided below:</p> <p>Name of Procuring Entity Trade ,Energy and Industrialization</p> <p>Physical address for the location (Trade Boardroom next to county Assembly)</p> <p>State date and time of tender opening on <b>Wednesday 12noon on 25/3/2026</b></p>
<b>ITT 25.1</b>	<p>If Tenderers are allowed to submit Tenders electronically, they shall follow the electronic tender submission procedures <b>specified below</b> [<i>insert a description of the electronic Tender opening procedures</i>]: <b>www.bungoma.go.ke, www.supplier.go.ke</b></p>
<b>E. Evaluation, and Comparison of Tenders</b>	
<b>ITT 30.3</b>	<p>The adjustment shall be based on the "<i>average</i>" price of the item 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 Procuring Entity shall use its best estimate. NOT APPLICABLE</p>
<b>TT 32.1</b>	<p>The currency that shall be used for Tender evaluation and comparison purposes only to convert at the selling exchange rate all Tender prices expressed in various currencies into a single currency is: _____ [<i>insert name of currency</i>]</p> <p>The source of exchange rate shall be: <b>The Central bank of Kenya</b> (mean rate)</p> <p>The date for the exchange rate shall be: <b>the deadline date for Submission of the Tenders.</b></p> <p><i>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 Tenderer in accordance with ITT 15.1.</i></p> <p><i>In the second step, the Procuring Entity will convert 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.</i></p>

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 33.2	A margin of preference “ <i>shall not</i> ” _____ apply. [If a margin of preference applies, the application methodology shall be defined in <u>Section III – Evaluation and Qualification Criteria.</u> ]
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 group qualifies).NOT APPLICABLE
ITT 34.1	At this time, the Procuring Entity “ <i>does not intend</i> ”] to execute certain specific parts of the Works by subcontractors selected in advance.
ITT 34.2	Contractor’s may propose subcontracting: Maximum percentage of subcontracting permitted is: _____% of the total contract amount. Tenderers planning to subcontract more than 10% of total volume 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 the Tenderer for the purpose of evaluation. N/A
ITT 35.2 (e)	Additional requirements apply. These are detailed in the evaluation criteria in Section III, Evaluation and Qualification Criteria.
ITT 48.1	Other documents required in addition to the Performance Security are <b>AS INDICATED IN THE TENDER ADVERT</b> _____
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="http://www.ppra.go.ke">www.ppra.go.ke</a> or email <a href="mailto:complaints@ppra.go.ke">complaints@ppra.go.ke</a> .  If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to:  For the attention: [insert full name of person receiving complaints]  Title/position: <b>COUNTY SECRETARY</b>  Procuring Entity: [ <b>COUNTY GOVERNMENT, BUNGOMA.</b> ]  Email address: [ <b>www.bungoma.go.ke</b> ]  In summary, a Procurement-related Complaint may challenge any of the following (among others):  the terms of the Tender Documents; and  the Procuring Entity’s decision to award the contract.



SECTION III - EVALUATION AND QUALIFICATION CRITERIA

10 GENERAL PROVISIONS

11 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

12 ~~When~~ a Tenderer is required to state a monetary amount, Tenderers should indicate the Kenya Shilling

and shall use the Standard Tender Evaluation Document for Goods and Works for evaluating Tenders. ~~When~~ the rate of exchange determined as follows: 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~~ 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.

13 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

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

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

may be available with clearly described information and lists of documents to be submitted by Tenderers which will be

considered in the evaluation of the Tender or 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

(a) ~~Apply~~ 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

OPTION 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 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

**60 MARGIN OF PREFERENCE** considered by the Procuring Entity.

61 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

62 less than that of fifty one percent (51%) 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

63 Procuring Entity, a particular contract offered by the Procuring Entity, responsive tenders shall be assessed

to ascertain their percentage of shareholding of Kenyan citizens. Responsive tenders shall be

64 divided into two groups: Group A: tenders offered by Kenyan Contractors and other Tenderers where Kenyan citizens hold shares of less than fifty one 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. **Reduction of the evaluated price offered (Item 6.1) 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 with added prices to Group B and the lowest evaluated tender from Group A. If the tender from

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.

1) The Tenderer shall demonstrate that it has access to, or has available, liquid assets, conditional

ii) advance payment sufficient to meet the construction cash flow of Kenya Shillings \_\_\_\_\_ [insert amount],

equivalent recalculated as total certified payments received for contracts in progress and 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, over a broad, that have been satisfactorily and successfully completed by 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 \_\_\_\_\_

v) Contractor's key equipment listed on the table "Contractor's Equipment" below and more specifically \_\_\_\_\_

iv) Other conditions depending on their [specify requirements for each lot as applicable]

seriousness.

a) History of non-performing contracts:

Tenderer and each member of JV in case the Tenderer is a JV, shall demonstrate that Non-performing contracts (specify years) of the Tenderer 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) List of actual litigations by the Tenderer. Tenderer shall provide information on pending litigations in the

\_\_\_\_\_ The Tenderer shall have 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 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	Meets conditions of ITT 3.3	Form of Tender	
4	PPRA Eligibility	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 of Tenderer 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 3.1 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 Sh 500 million (or its equivalent) for the subject contract. (ii) The Tenderers shall also demonstrate to the satisfaction 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		
12	Average Annual Construction Turnover	Financial position and financial statements prospective long-term profitability. insert amount], equivalent calculated as total certified payments received for contracts in progress [insert number of years] years	Form FIN – 3.2	
13	General Construction Experience	Experience under the last [insert number of years] years, divided by time contractor, JV member, sub-contractor, or management contractor for at least the last [insert number of years]	Form EXP – 4.1	
14	Specific Construction & Contract Management Experience	years, starting 1 <sup>st</sup> January [insert year]. A minimum number of [state the number] similar contracts fully completed as a prime contractor, joint venture or subcontractor that have been satisfactorily and successfully managed to completion or submission deadline between . (number) contracts, each of minimum value Kenya [shillings.....equivalent. Under the procurement procedure, the individual number of contracts contracts required for purposes of evaluating qualification The selection of the contracts shall be based in 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	Form EXP 4.2(a)	

characteristics including part of the requirements that may be met by specialized subcontractors, if permitted in accordance with ITT 34.3]

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				
	<b>TOTAL COST LOCAL</b>		<b>XXXXX</b>	
	<b>PERCENTAGE OF CONTRACT PRICE</b>			

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

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

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:	Date of birth:
	Address:	E-mail:
	Professional qualifications:	
	Academic qualifications:	
	Language proficiency: [language and levels of speaking, reading and writing skills]	
Details	Address of Procuring Entity:	
	Telephone:	Contact (manager / personnel officer):
	Fax:	
	Job title:	Years with present Procuring Entity:

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 the 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 that I may be required to perform as 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 of original documents of Articles of Incorporation (or equivalent documents of constitution or association), E-mail and/ or sms:
In case of state-owned enterprise or institution, in accordance with ITT 3.8, documents establishing:
<ul style="list-style-type: none"> <li>• <del>Operation under commercial</del> <b>Legal and financial autonomy</b> <ol style="list-style-type: none"> <li>1. IEAs 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 state-owned enterprise or institution, documents establishing the legal status of the  
operating entity, in accordance with ITT 3.5.

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]	[insert amount]

indicate main reason(s)]

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.

54 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
<b>Statement of Financial Position (Information from Balance Sheet)</b>					
Total Assets (TA)					
Total Liabilities (TL)					
Total Equity/Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
Working Capital (WC)					
<b>Information from Income Statement</b>					
Total Revenue (TR)					
Profits Before Taxes (PBT)					
<b>Cash Flow Information</b>					
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) ~~Qualifications Financial Statements of the Tenderer or its parent company shall reflect the financial statements of the Tenderer or its parent company, and not an affiliate (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.

55 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 contract qualified, full completion certificate has yet to be issued.

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					

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: _____ Brief Description of the Works performed by the Tenderer: _____ Amount of contract: _____ Name of Procuring Entity: _____ Address: _____ Contract name: _____ Brief Description of the Works performed by the Tenderer: _____ Amount of contract: _____ Name of Procuring Entity: _____ Address: _____ Contract name: _____ Brief Description of the Works performed by the Tenderer: _____ 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				
<del>Procuring</del> 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				
<del>Procuring</del> Entity's Name:				
Address:				
Telephone/fax number				
E-mail:				



Specific Construction and Contract Management Experience (cont.)

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

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. ....



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: We declare with full 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) Description of the Works: The 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) Duration 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, along with any of our subcontractors, suppliers, Engineers, 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.] [We are a state-owned enterprise or institution but meet the
- xv) Commissions and 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	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 undertake to disclose our beneficial ownership of Persons Participating in Public Procurement and Asset Disposal, a 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) Documents: We, the 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 collusion 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

\*\* Persons 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 Opening
4	Name of the Tenderer
5	Full Address and Contact Details of the Tenderer.
6	Current Trade License Registration
7	Number and Expiring date Name, country and full address (postal and physical addresses, email, and telephone number) of Description of Business
8	Age of Business
9	Maximum value of business which the
10	State if the Tenderer's Company is listed in stock exchange, give name and full address (postal and physical addresses, email, and telephone number) of stock exchange

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).....  
 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	Tenderer has the same legal representative as another tenderer		
4	Tender 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. Professionals staff of the Procuring Entity who are directly or indirectly involved in the preparation of the		

	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 contract.		Tenderer
8	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 of the such Contract.		
9	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~~ to 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, without limiting the generality of paragraphs (5)(a) or (5)(b) above, there has been no consultation, 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]



FORM SD2

SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE.

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

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of ..... (insert name of the Company) who is a Bidder in respect of Tender No..... for ..... (insert tender title/description) for..... (insert name of the Procuring entity) and duly authorized and competent to make this statement.
2. THAT theafore said Bidder, its servants and/oragents/subcontractorswillnotengageinanycorruptorfraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/or agents of ..... (insert name of the Procuring entity) which is the
3. THAT I and the can'trye.said Bidder, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of ..... (name of the
4. THAT I and o it y)s a id Bidder will not engage /has not engaged in any corrosive practice with other bidpaertsicipating in the subject tender
5. THAT what is deponed to here in above is true to the best of my knowledge information and belief.

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

Bidder's Official Stamp

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.....

.....

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 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 under Kenya's public procurement and asset disposal act (no. 33 of 2015) under Section 66 describes procurement process, selection and contract execution of all contracts, and refrain from Fraud and Corrupt, Coercive, Obstructive, Collusive or Fraudulent 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 flow chart notes below highlight Kenya's policy of no tolerance for such practices and behavior:
- 2.2 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;
    - 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
    - b) If a procurement contract has been entered into, take part in any decision relating to the procurement or contract;
    - 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
  - 6) An employee, agent or other 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
  - 7) In a conflict of interest or the person's integrity 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.



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 caollred" 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~~ not exceeding in total an amount \_\_\_\_\_ ( \_\_\_\_\_ ) upon receipt by us of the ~~of~~ complying demand, supported by the Beneficiary's statement, wh ~~B le are fr it~~ they'd e m a n d 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.~~ on or before that date.

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

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 requested to do so, or (ii) fail or refuse to furnish the Performance Security, in accordance with the instructions to tenders.
3. I/We understand that this Tender Securing Declaration shall expire if we are not the successful Bidder and if we fail to do so, we shall be liable to the Purchaser for the amount of the bid.
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.

The Tender Securing Declaration shall be in the names of all future participants in the contract.

Name: ..... sole proprietor, etc.) ..... 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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PARTII - 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 insufficient detail to distinguish between the different classes of Works, or between Works of the same nature.
3. Bills of Quantities should be divided generally into the following categories:
  - a) Preliminary items
  - b) Permanent items
  - c) Provisional items
  - d) Summary.

### 4. NOTES TO PREPARING PREAMBLES

41. 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 repetition 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 to be used are as follows - The following units of measurement and abbreviations shall be used, unless otherwise specified, and any mandatory national units defined and described. The methods of measurement for re-measurement shall be as described in the Preambles.
42. The units of measurement and abbreviations shall be used, unless otherwise specified, and any mandatory national units defined and described. The methods of measurement for re-measurement shall be as described in the Preambles.

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		

43. The Bills of Quantities shall be read in conjunction with the Instructions to Tenders, General and Special Conditions of Contract, Technical Specifications, and Drawings.
44. 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 Bill of Quantities.

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

45. 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.
  46. 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 rates and prices entered in the Bills of Quantities.
  47. The rates and prices entered in the Bills of Quantities 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.
  - 4.9. Prices 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 3.1.6 of the General Conditions of contract.
  - 4.10. The Contractor must allow in his rates for any costs associated with and complying with the Tender Documents. The Contractor must allow in his rates for any costs associated with and complying with the Tender Documents.
  - 4.11. Where the Contractor has failed to enter a rate or price for 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.
5. NOTES ON PREPARING BILLS OF QUANTITIES

51. 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 or work items in the Bills of Quantities should be grouped into sections to distinguish between those which are primarily part of the Contractor's obligations should be included in the Contractor's rates. 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:
52. Quantities which best represent the nature of the Works, Drawings, etc. and directed to the particular Works.
53. All works should be separate sections in the Bills of Quantities.
54. Quantities should be rounded up 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 the sections of the work items fall in this category, the Bills of Quantities as Provisional Sums for particular items or classes of Work, which may be subject to a change in the Tenderer's Contract separate measurements at a later date during the execution of the works. For example, before such items are measured, it is not possible to measure electrical works before going to tender because detail designs are not 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 the Bills of Quantities a general provision for physical and financial contingencies made as a "Provisional Sum for

- 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
- 56 **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 **Daywork Schedule** should be included if the probability of unforeseen work, outside the items indicated in the Bills of Quantities, is relatively high. Only provisional sums to cover specialized Works by statutory authorities should be included in the Bills of Quantities.
- 57 **Daywork** items in the Bills of Quantities should be priced as follows:
- i) **Daywork rates and prices for various categories of labor** are to be inserted by the tenderer, to get a true picture of the conditions under which the Contractor will be paid for Work executed on a Daywork basis.
  - ii) **A percent to be entered by the tenderer against basic Day work item.**
  - iii) **Subtotal amount for labor, materials and plant representing the Contractor's profit, overheads, provision and other charges.**
- 58 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 known datum like a town and its \_\_\_\_\_ It is approximately \_\_\_\_\_ Kilometers from \_\_\_\_\_, 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 Architect's approval in the site progress. Temporary buildings, site offices, temporary access path, and storage of materials. The Contractor shall also obtain the Architect approval and
4. The drawings regarding the preparation of Bills 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
5. 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 main Contractor will be fully responsible for employing his Sub-Contractors but the Procuring Entity reserves the right to employ its own Sub-Contractors to make such payments direct in the interests of the project where
8. The completion shall be complete and declared by the Engineer in the period inserted in the Form of Tender as this time for completion of the Works from the date for Possession, to be agreed with the Engineer. The Contract Period is presumed to have been calculated making due allowance for seasonal inclement weather conditions.
9. The Contractor shall, upon receiving instructions to proceed with the Works, draw up a Programme and PERT chart setting out the order in which the Works are to be carried out, with the appropriate dates thereof. 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, a Progress Report. The Contractor shall also submit to the Architect on the first day of each week or such longer period as the Architect may direct, a cumulative progress report on all important items of each section or
1. The Contractor shall arrange for photographs of the Site to be taken by a professional photographer approved by the Engineer. The Photographs shall provide a record of the Site and adjacent areas as prior to the commencement of the Works and shall cover such portion of the works in progress and completion as the Architect shall 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 Architect within two weeks of exposure.

12. Figured dimensions are to be followed in preference to dimensions scaled from the Drawings, but where possible the 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.
13. The Contractor shall be responsible for the accuracy of such dimensions relevant to the 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.
14. The Contractor shall be responsible for the accuracy of such dimensions relevant to the 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.
15. The Contractor shall be responsible for the accuracy of such dimensions relevant to the 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.
16. The Contractor shall be responsible for the accuracy of such dimensions relevant to the 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.
17. All water shall be fresh, clean and pure, free from earthly, 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 costs of such installation.
18. The Contractor shall provide all artificial lighting and power for his own use on the Works, (including works of sub-contractors). He shall also provide temporary storage tanks and tubing, etc., as may be required for the Works, including all temporary connections, wiring, fittings, etc., and clearing away on completion of the Works.
19. The Contractor shall employ a competent and experienced Agent or Representative, 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 followed by the Contractor.
20. The Contractor shall ensure that the safety of his work people and all authorized visitors to the site are protected in accordance with the Conditions of Contract. The Agent shall not be responsible for the safety of the work people. In particular, there shall be the proper provision of guard-rails to scaffolding, protection against falling materials, tools on site, dust, nail and other sharp objects. The site shall be kept tidy and clear of rubbish. The Contractor shall be responsible for the safety of his work people and all authorized visitors to the site are protected in accordance with the Conditions of Contract. The Agent shall not be responsible for the safety of the work people. In particular, there shall be the proper provision of guard-rails to scaffolding, protection against falling materials, tools on site, dust, nail and other sharp objects. The site shall be kept tidy and clear of rubbish.
21. The Contractor shall be responsible for the accuracy of such dimensions relevant to the 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.
22. The Contractor shall be responsible for the accuracy of such dimensions relevant to the 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.
23. The Contractor shall be responsible for the accuracy of such dimensions relevant to the 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.

24. The Contractor shall take such steps and exercise such care and diligence as to minimize nuisance arising from or any other cause to the occupiers of the existing and adjacent property. He must provide such temporary and special screens and tarpaulins or gummy bags, hoarding, barriers, warning signs etc. as he considers necessary and sufficient for the protection of the existing and adjacent property and or
25. The Contractor's attention is drawn to the standards levy order which was amended on 15<sup>th</sup> October 1998 and etc. as directed by Engineer. notice No.154 of 1998. The Contractor is required to pay a monthly level of 0.2% of his factory price of
26. The Contractor shall provide temporary sheds, offices shall allow for this in the bill of materials and other rates. temporary buildings for the use of the contractor and sub-contractors, including lighting furniture equipment
27. The Contractor shall provide/build labor camp sites to be agreed with the Engineer. Labor camps shall be complete with sanitary accommodation and fencing gates.
28. The Contractor must provide the necessary toilet facilities to the requirement and satisfaction of the Health Authorities and maintain the same in a thoroughly clean and sanitary condition and pay all conservancy fees
29. The Contractor shall provide work and storage sheds and comply with standard lighting as necessary to safeguard the Works, Plant and materials against damage and theft.
30. The Contractor shall provide all necessary hoists, tackle, plant, equipment, vehicles, tools and appliances of every description for the due and satisfactory completion of the Works and shall remove the same on completion. All such plant, tools and equipment shall comply with all regulations in force throughout the period of the
31. The Contractor shall maintain all necessary scaffolding, sufficient drainage and effluent for the complete works, including Sub-Contractor Works, provide special scaffolding as required by Sub-Contractors, alter and adopt all scaffolding as and when required during the Works, and remove on completion. No
32. The Contractor shall take all necessary precautions such as temporary fencing, hoarding fans, planked footways, guard-rails gantries screen, etc., for the safe custody of the Works, materials and public protection and adjacent
33. The Contractor shall protect from damage, including damage from inclement weather, all finished work and unfixed materials, including that of Sub-Contractors, etc., to the satisfaction of the Architect until the completion of the
34. The Contractor shall, after completion of the works, at his own expense, remove and clear away all surplus excavated demolition materials, plant, rubbish and unused materials and shall leave the whole of the Site and Works in a clean and tidy state to the satisfaction of the Engineer, sheds, camps, etc. Particular care shall be
35. Concrete test cubes shall be prepared in accordance with the specification and tested in accordance with the relevant standards. The Contractor shall provide a low dump where to pay all high at least four times on each occasion.
36. The Contractor shall furnish at the earliest possible opportunity before work commences, and at his own cost, any samples of materials and workmanship that may be called for by the Architect for the approval or rejection, and any further samples in the case of rejection, until such samples are approved by the Engineer. Such samples, when approved, shall be the minimum standard for the work to which they apply. The procedure for submitting
37. The Contractor's attention is drawn to the Finance Bill of the year 2000/2001 on withholding tax on construction materials for testing or approval and the method of marking for identification shall be as per section 35(7)(i)(ii) which became effective on 1<sup>st</sup> July 2000. A 3% withholding tax will be applicable. The Contractor shall allow in his Tender for such samples and tests, including those in connection with his Sub-Contractors work.

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 explosives. 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
40. The tenderer 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
41. The contractor shall lead and pay for all insurance to cover risks and indemnities required Items 17 and the 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.</p> <p>Services</p> <p><del>to be provided with chairs, desks, a telephone, water, sanitary and electrical supplies and fittings. The office shall be supplied with furniture and equipment that shall include:</del></p> <p>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><del>TOP FLOOR furniture and equipment shall all be to the approval of the Engineer. The Contractor shall provide a house for Engineers site and shall be bed roomed temporary house with a sleeping room, a toilet, bathroom and a kitchen complete with electrical and sanitary installations</del></p>	
3	<p>and provide maintenance and paying of bills of water and electricity up to and including end of the contract period.</p> <p>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>TOTAL CARRIED TO GRAND</p>	
	<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.</p>	



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 with 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			
Total for Daywork (Provisional Sum) (carried forward to 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>i</sup>		
TOTAL TENDER PRICE 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 for materials and workmanship should be drafted to be clear and unambiguous. Specifications for materials and workmanship should be drafted to be clear and unambiguous. Specifications for materials and workmanship should be drafted to be clear and unambiguous.
3. The Procuring Entity should consider the advantages in standardizing General Specifications for repetitive Works in 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. Specifications should be drafted to be clear and unambiguous. Specifications should be drafted to be clear and unambiguous. Specifications should be drafted to be clear and unambiguous.
5. Specifications should be drafted to be clear and unambiguous. Specifications should be drafted to be clear and unambiguous. Specifications should be drafted to be clear and unambiguous.
6. Specifications should be drafted to be clear and unambiguous. Specifications should be drafted to be clear and unambiguous. Specifications should be drafted to be clear and unambiguous.
7. Specifications should be drafted to be clear and unambiguous. Specifications should be drafted to be clear and unambiguous. Specifications should be drafted to be clear and unambiguous.

## 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

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#### 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

“Contract Price” 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 drawings, 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 Contractor's Plant and Equipment. “Contractor's Representative” means the person named by the Contractor in the Contractor appointed from the list of names 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 site, 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.

“Contractor's Representative” means the person named by the Contractor in the Contractor appointed from the list of names 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 site, 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 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 Sub-Clause 14.13 [Completion of Outstanding Work and Remedying 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 amendments 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, and including any or a number 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 [Dispute Resolution] and intention to commence arbitration.

“Special Conditions of Contract” means the pages completed by the Procuring Entity entitled Special Conditions of Contract 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” means the apparatus, machinery and vehicles (if any) made available by the Procuring Entity and including for the construction of the Permanent 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 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 and Architects Act Cap 524. Conditions of 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 any part 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 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 factual and interpretative 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, and places where 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 amendments to 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 by the Contractor, 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 Contract agreed by both Parties or a Variation 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 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 Conditions of Contract. “Works” may also mean the Permanent Works and the Temporary Works, or either of them as appropriate.

## 12 Interpretation

In the Contract, except where the context requires

- a) the words indicating one gender include all genders;
- b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- c) provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing;
- d) “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record.

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

## 13 Communications

13.1 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.

13.2 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

## 14 Law and Language

14.1 The Contract shall be governed by the laws of Kenya.

14.2 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 Materials
- 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

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 assign 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

1.81 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.

1.82 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

1.83 The Contractor shall keep, at all times, a copy of the Contract, publications named in the Specification, the

Contractor's Documents (if any), the Drawings and Variations and other communications given under the

1.84 If the Contractor 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

1.91 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

1.92 If the Contractor is notified, in writing, of a delay or disruption of the Works by the Architect, it shall

drawing or instruction within a time which is reasonable and is specified in the notice with supporting details [Contractor's Claims]:

the Contractor shall give a further notice to the Architect and shall be entitled subject to Sub-Clause 8.4 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 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 ~~indemnify the Procuring Entity's Use extension of time, documents accrued.~~

1.101 As agreed between the Parties, the Contractor shall retain the copyright and other intellectual property rights

1.102 ~~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 the kind which is (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 on the form, operating, or programs, and either adjusting, permitting him to use on his own premises, the Site and other places as envisaged by the Contract, including~~

1.103 ~~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 other than those permitted under Sub-Clause 1.102~~

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 ~~Confidentiality shall not, without the Procuring Entity's consent, be copied, used or communicated to~~

1.121 ~~The Contractor shall not, without the Procuring Entity's consent, be copied, used or communicated to at all times. The~~

confidentiality shall survive termination or completion of the contract. They shall disclose all such

1.122 ~~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

1.13 ~~Contractor shall~~ Works prepared by the other Party without the previous agreement of the other Party. However, the

~~Contractor shall~~ be permitted to disclose any publicly available information, or information otherwise required to establish the Contractor shall, in performing the Contract, comply with applicable Laws. Unless otherwise stated in the Specifications to compete for other projects.

~~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

- 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. If a liability is incurred by the Contractor as a result of any failure to do so, unless the Contractor is impeded by the Contractor's obligations under applicable Laws or its diligence, 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 PERIOD (RISK AND INTERRUPTION) which provides, inter alia, that acts intended to materially impede the
21. Rights 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 with the following conditions (or 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
- 2.1.2 If an amount of time is stated in the Special Conditions of Contract, the Procuring Entity shall give the Contractor the amount of time stated in the Specification. However, the Procuring Entity may withhold any such right of access to, and possession of, the Site within such times as required to enable the Contractor to possession until the Performance Security has been received.
- 2.1.3 If the Contractor suffers delay and with the up Cost as a result of 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 to 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.
- 2.1.4 After receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.
- 2.1.5 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.

22 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 available, and
- b) 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.

23 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

24 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 Contractor 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 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 ~~Howe Procuring Entity shall not be deemed to act for the Procuring Entity, but the Procuring Entity shall require the Architect to provide evidence~~

3.1.5 ~~Except as provided in the Special Conditions:~~

- a) Whenever carrying out duties or exercising authority, specified in or implied by the Contract, the
- b) ~~Architect shall be deemed to act for the Procuring Entity; of any duties, obligations or responsibilities under~~
- c) ~~any Contract, 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~~
- d) ~~from an responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliance; and~~

- 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:
    - i) in an emergency situation as determined by the Engineer;
    - ii) 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 13.3: Approving a proposal for Variation submitted by the Contractor in accordance with
  - d) Sub-Clause 13.4: 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 Procuring Entity, with any such instruction of the Engineer. The Architect shall determine an addition to the Contract Amount in respect of such instruction, in accordance with Clause 13 and shall notify the Contractor accordingly.
- 3.2.1 The Architect may from time to time assign duties and delegate authority to assistants and may also revoke, suspend or terminate any such assignment or delegation. These assistants may include a resident Engineer, and/or inspectors appointed to inspect and/ or test items of Plant and/or Materials. The assignment, delegation or revocation shall be in writing and shall not take effect until copies have been received by both Parties. Any failure to comply with such instructions shall constitute a breach of the Contract.
- 3.2.2 The Architect shall not delegate authority to assistants to issue instructions to the Contractor to the extent defined by the delegation. Any approval, check, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by an assistant, in accordance with the delegation, shall be subject to the approval of the Architect. Howsoever, this shall not prejudice the right of the Architect to reject the work, Plant or Materials.
- 3.3 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.
- 3.3.1 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 whom appropriate authority has been delegated under Clause 3.2.1.
- 3.3.2 The Contractor shall comply with the instructions given by the Architect or delegated assistant, on any related to the Contract. Whenever practicable, their instructions shall be given in writing. If the Architect delegates an instruction, the Contractor shall:
- a) receive a written confirmation of the instruction, from (or on behalf of) the Contractor, within two working days after giving the instruction, and

ø 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).

#### 34 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

35 ~~Details~~ ~~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 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. 3.5.1 ~~With~~ ~~the~~ ~~Architect~~ shall give notice to both Parties of each agreement or determination, with 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].

#### 41 Contractor's General Obligations

4.1.1 The Contractor shall design (to the extent specified in the Contract), execute and complete the Works in accordance with the Contract and with the Architect instructions, and shall remedy any defects in the

4.1.2 The Contractor shall provide the Plant and Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a

4.1.3 temporary or permanent nature, required in and for this design, execution, completion and remedying of defects. All equipment, material, and services to be incorporated in or required for the Works, shall have their origin in any eligible source country.

4.1.4 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 for all Contractor's Documents, Temporary Works, and such design of each item of Plant and

4.1.5 Materials, as is required for the item to be in accordance with the Contract, and (ii) shall not otherwise be responsible for which the Contractor proposes to adopt for the execution of the Works. No significant alteration to 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 these procedures specified in the Contract;
- b) 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
- c) ~~the Contractor shall be responsible for this part and the Architect shall add to the Works completed or in progress~~ ~~of~~ ~~such~~ ~~parts~~ ~~as~~ ~~are~~ ~~specified~~ ~~in~~ ~~the~~ ~~Contract~~; and
- d) ~~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.



[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 of staff as determined 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 be liable for the acts or defaults of any Subcontractor, his agents or employees, as if they were the Contractor's.

- b) The Contractor shall be liable for the acts or defaults of any Subcontractor, his agents or employees, as if they were the Contractor's.
- c) the Contractor shall give the Procuring Entity not less than 14 days' notice of the intended date of the commencement of each Subcontractor's work, and of the commencement of such work on the Site; 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

44.3 The Contractor shall ensure that the requirements imposed on the Contractor by Sub-Clause 1.12 [Conditions of Contract] 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

46 shall have no liability to the Procuring Entity for the work carried out by the Subcontractor after the

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

- 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 causes 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

46.3 responsibility of the Contractor, 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 errors in the positions, levels, dimensions or alignments of the Works, but the Contractor shall use reasonable efforts to verify their accuracy before they are used.



411 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 obtained 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 execution of the Works and the remedying of any defects.

412 Execution of the 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 conditions, and shall comply with any instruction which the Architect may give. If an instruction

4.12.4 gives such a notice, and suffers delay and/or incurs Cost due to these conditions, the Contractor shall be entitled to a Variation, Clause 13 [Variations and Adjustments] shall apply. If an instruction gives such a notice, and suffers delay and/or incurs Cost due to these conditions, the Contractor shall be entitled to such a Variation, Clause 13 [Variations and Adjustments] shall apply.

- a) 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 (a) and (b) above related to this extent.

4.12.6 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 those encountered. If the Contractor has submitted a claim for additional Cost due to these conditions, the Architect may (as deductions) in the Contract Price and Payment Certificates. However, the net result of a favorable determination of other physical conditions were encountered, the Architect may proceed in accordance with Sub-Clause 3.5 [Determinations] under sub-paragraph (b) and all these reductions, for all the physical conditions encountered in similar parts of the Works, shall not result in a net reduction in the Contract Price.

4.12.7 The Architect shall take account of any evidence of the physical conditions foreseen by the Contractor in the Tender, which shall be made available by the Contractor, but shall not be bound by the Contractor's interpretation of any such evidence.

413 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 outside the Site.

which he may require for the purposes of the Works.

414 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

415 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

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

- b) required for his use of access routes, 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
- d) The Procuring Entity does not guarantee the suitability or availability of particular access routes and
- e) The Contractor shall be responsible for any claims arising from the use of routes, signs and directions

416 Transport of Goods

Unless otherwise stated in the Special

Conditions the Contractor shall give the Architect not less than 21 days' notice of the date on which any

- a) Plant or a
  - b) major item of other Goods will be delivered to the Site; transporting, receiving, unloading, storing
  - c) and erecting 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

417 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

418 **Protection of the Environment**

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

4.18.1 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

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 of the quantities consumed and the amounts due (at these prices) for such services shall be agreed or determined for measuring the quantities consumed.

4.19.3 [Determination]. The Contractor shall pay these amounts [Procurer's Claims] and Sub-Clause 3.5

420 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, the Procuring Entity shall be responsible for the Procuring Entity's Equipment,

except that 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 Procuring Entity 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. Reporting shall continue until the Contractor has completed all work which is known to be outstanding each within 7 days after the last day of the period to which it relates.

at the completion date stated in the Taking-Over Certificate for the Works. Each report shall include charts and detailed descriptions of progress, including each stage of design (if any),

Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection and [Eliminated Subcontractors]),

b) including photographs showing the status of manufacture and of progress on the site (as defined in Clause 5

c) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacturer, erection, percentage progress, and the actual or expected dates of:

- ii) manufacture,
- iii) Contractor's inspections,

tests, and

- i) 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 liability assurance documents, test results and certificates of compliance;
- f) Materials Licenses given under Sub-Clause 2.5 [Procuring Entity's Claims] and notices given under Sub-Clause 2.0.1 [Contractor's Claims] of any hazardous incidents and activities relating to the Site;
- g) Sub-Clause 2.0.1 [Contractor's Claims] of any hazardous incidents and activities relating to the Site;
- h) environmental aspects and public relations, and with details of any events or circumstances which may jeopardize the completion in accordance with the Contract, and the measures being (or to be) taken to overcome delays.

422 Security of the Site

Unless otherwise stated in the Special Conditions:

- a) The Contractor shall be responsible for keeping unauthorized persons off the Site;
- 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 Contractor.

423 Contractor's Personnel and other Personnel of the Procuring Entity's other contractors on the Site.

423.1 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

423.2 within the Site and, during the execution of the Works, the Contractor shall keep the Site free from all unnecessary obstruction and shall store or dispose of any Contractor's Equipment or surplus materials. The Contractor shall clear away and remove from the Site any wreckage, rubbish and Temporary Works.

423.3 Upon receipt 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 the Works in a clean and safe condition. However, the Contractor may retain on Site, during the

424 Fossils and Defects

424.1 Notification Period, such Goods as are required for the Contractor to fulfil obligations under the Contract, and, if necessary, 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.

424.2 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 the instructions, the Contractor shall give a further notice to the Architect and shall be entitled to an extension of time for any such delay, if the completion is or will be delayed, under Sub-Clause 8.4 [Contractor's Claims] to the Architect.

424.3 Upon receipt of this further notice, the Architect shall proceed in accordance with Sub-Clause 8.4 [Contractor's Claims] to agree or determine these matters.

5. NOMINATED SUBCONTRACTORS

51 Definition of "nominated Subcontractor"

In this Contract, "nominated Subcontractor" means a Subcontractor nominated by the Procuring Entity,

- a) Contractor has nominated as a Subcontractor subject to Sub-Clause 5.2 [Objection to Notification].

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 reasons: (a) there are reasons to believe that the Subcontractor does not have sufficient competence, the force of which is not outweighed by the Subcontractor's qualifications, or (b) the Subcontractor does not accept to indemnify the Contractor against and from any consequences of the matter.

- c) the nominated Subcontractor does not accept to enter into a subcontract which specifies that the 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 and from the consequences of any failure by the Subcontractor to perform these obligations or to fulfil these liabilities, and
  - 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 bound to perform these obligations or to fulfil these liabilities, and

53 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

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

- 54.1 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 if this reasonable evidence to the Engineer, (b) the Contractor is reasonably entitled to withhold or refuse to pay any such amount, 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 submit the evidence described in sub-paragraphs (a) or (b) above. The Contractor shall then

6 STAFF AND LABOR

61 Engagement of Staff and Labor

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

62 Rates of Wages and Conditions of Labor

- 62.1 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 deductions there of as may be imposed on him by such Laws.
- 63 The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Procuring Entity's Personnel.
- 64 Lab or Laws

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.

- 65 Working Hours  
Nowork shall be carried out on the Site on locally recognized days of rest, or outside the normal working hours unless it is a Special Condition of Contract, unless
  - b) The Architect gives consent, or
  - d) 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
- 66 Facilities for staff and labour shall be considered and paid for as overtime.

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

- 67 The Contractor shall not permit the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures
- 67.1 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

- 67.2 The Contractor shall appoint an accident prevention officer for the Site and shall be responsible for the safety of the Site. The Contractor shall ensure that all persons engaged in the execution of the Works are adequately trained and qualified for the work they are to perform and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the

- 67.3 The Contractor shall ensure that all persons engaged in the execution of the Works are adequately trained and qualified for the work they are to perform and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and

- 67.4 The Contractor shall ensure that all persons engaged in the execution of the Works are adequately trained and qualified for the work they are to perform and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and
- 68 The Contractor shall ensure that all persons engaged in the execution of the Works are adequately trained and qualified for the work they are to perform and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and

- 68.1 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.



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

617 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

618 **Employment Records** The Contractor shall follow those laws applicable to the Contractor. Children below

the age of 18 years shall not be employed. The Contractor shall maintain records of 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

619 **Workers' Organizations**

to be submitted by the Contractor under Sub-Clause 6.10 [Records of Contractor's Personnel and Equipment] 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.

620 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, MATERIALS AND WORKMANSHIP** Plant, materials, and workmanship shall be subject to the Contractor's supervision, control, and discipline.

71 Manner of Execution

The Contractor shall carry out the manufacture/assemble of plant, the production and manufacture of

Materials, and all other work, in the manner specified in the Contract.

b) in a prompt, careful workman like and careful manner, in accordance with recognized good

c) with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract.

72 Samples

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

a) for the manufacturer's standard samples of Materials and samples specified in the Contract, all at the

b) Contractor's cost and as instructed by the Architect as a Variation.

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

73 Inspection

73.1 The Procuring Entity's Personnel shall at all reasonable

a) time have full access to all parts of the Site and to all places from which natural Materials are being

b) obtained, 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

73.2 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.

- 73.3 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 the Architect does not require to do so. If the Contractor fails to give the notice, he shall, if and when required
- 74.1 ~~This Sub-Clause shall apply to all works specified in the Contract.~~ This Sub-Clause shall apply to all works specified in the Contract and make good, all at the Contractor's Cost.
- 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 Contractor shall agree with the Engineer in writing the adjustment to the specified testing of ready Plant and Materials and so the in part to the Contractor 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 out the tests shall be borne by the Contractor, not withstanding other provisions of the Contract.
- 74.3 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, unless otherwise instructed by the Engineer, and the tests shall then be deemed to have been made in the Architect presence.
- 74.4 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 extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 20.1 [Contractor's Claims] to:
- 74.5 a) 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 passed, 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 results 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 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 subject to Sub-Clause 2.5 [Procuring Entity's Claims] pay these costs.
- 76.1 Not withstanding any previous test or certification, the Architect may instruct the Contractor to:
- remove from the Site and replace any Plant or Materials which is not in accordance with the Contract,
  - 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 be subject to Sub-Clause 2.5 [Procuring Entity's Claims].
- 7.64 If the Contractor repeatedly delivers defective work, the Procuring Entity may consider the Contractor in default in accordance with Clause 15.
- 77 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 burdens:

- a) When the Contractor is paid the corresponding value of the Plant and Materials under Sub-Clause 8.1 for Plant and Materials in Event of Suspension].

78 Royalties

Unless otherwise stated in the Specification, the Contractor shall pay all royalties, rents and other payments for materials obtained from outside the Site,

- b) taken 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

81 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 conditions have 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:

- a) Signature of the Contract Agreement by both Parties, and if required, approval of the Contract by the Government of Kenya; in the Special Conditions of Contract, effective access to and possession is given to the Contractor together with such permission(s) under (a) of Sub-Clause [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 6.2.

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.

82 Time for Completion

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

83 Programmes and Schedules

8.3.1 The Contractor shall submit a detailed time programme to the Architect within 14 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 order in which the Contractor intends to carry out the Works, including the anticipated obligations. Each programme shall include:

- a) each stage of design (if any), Contractor's Documents, procurement, manufacture of Plant, and delivery of these stages for work by each nominated Subcontractor (as defined in Clause 5.1) for construction, erection and testing,
- b) the subsequent order and timing of inspections and tests specified in the Contract,
- c) and supporting report which
- d) includes:
  - i) a general description of the methods which the Contractor intends to adopt, and of the major stages in the execution of the Work, and
  - ii) details showing the Contractor's reasonable estimate of the number of each class of Contractor's

Personnel and of each type of Contractor's Equipment, required on the Site for each major

83.2 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

83.3 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.

83.4 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.

84 Extension of Time for Completion

84.1 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:

- a) [Contractor's Procedure] or other substantial change in the quantity of an item of work included in the Contract;
- b) an act of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions,
- c) Conditions,
- d) Exceptionally adverse climatic conditions, or epidemic or
- e) 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.

84.2 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

85 ~~Delays caused by Authorities~~

and may increase, but shall not decrease, the total extension of time. If the following conditions apply,

a) namely: The Contractor has diligently followed the procedures laid down by the relevant legally constituted

- b) public authorities in Kenya disrupt the Contractor's work,
- 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].

86 Rate of Progress

86.1 If, at anytime:

- a) Actual progress is too slow to complete within the Time for Completion,
- b) ~~Pr~~ ~~o~~ ~~g~~ ~~r~~ ~~e~~ ~~s~~ ~~s~~ 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

86.2 Unless the Architect notifies in writing, the Contractor shall adopt those revised methods which may be proposed to increase the working productivity and progress and complete the 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

86.3 ~~Additional shall subject to methods under Sub-Clause 2.5 [Procuring Entity's Claims] the Architect shall~~  
~~be paid~~  
~~Delays resulting from causes listed in Sub-Clause 8.4 [Extension of Time for Completion] shall~~

87 ~~Delays~~ ~~Procuring~~ Entity, without generating, however, any other additional payment benefit to the Contractor.

87.1 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

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

88 ~~Suspension of Work~~  
any other duties, obligations or responsibilities which he may have under the Contract.

88.1 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

88.2 ~~The~~ ~~Architect~~, ~~in~~ ~~any~~ ~~or~~ ~~in~~ ~~damaging~~ 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.

89 Consequences of Suspension

89.1 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~~ ~~Procuring~~ ~~Entity~~ of an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 20.1 [Contractor's Claims] to:

- a) ~~the~~ ~~Procuring~~ ~~Entity~~ 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.

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

89.3 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

810 ~~Payment for~~ ~~Plant~~ ~~and~~ ~~Materials~~ ~~in~~ ~~Event~~ ~~of~~ ~~Suspension~~ ~~under~~ ~~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,

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

811 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 14 days after receiving the Architect's permit, the Contractor may proceed 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-Clause 16.2 [Termination by Contractor].

812 ~~Clause 16.2 [Termination 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  
91 The Contractor shall, in accordance with the Architect's instruction to this effect under Clause 13 [Variations and Adjustments],

91 Contractor's Obligations

9.1.1 The Contractor shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 4.1 [Contractor's General Obligations], after providing the documents in accordance with sub-paragraph (d) of Sub-Clause 4.1 [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. Unless otherwise agreed, Tests on Completion

9.1.3 shall be carried out within 14 days of the Tests on Completion, the day or days shall be the Architect's day, if not that effect 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

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

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

9.3 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

94 be repeated. ~~Failed Tests on Completion 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:



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.
- 103.2 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 accordance with the relevant provisions of the Contract.
- 103.3 If the Contractor suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to the Architect and shall be entitled subject to Sub-Clause 8.4 [Extension of Time for Completion], and payment of any such accrued costs, which shall be included in the Contract Price.
- 103.4 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, the Contractor shall set out any work which is outstanding on the date stated in a Taking-Over Certificate, and as soon as practicable thereafter, the Contractor shall:
- b) 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 in appearance 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 or design for which the Contractor is responsible is attributable to:
- 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 Remedy 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

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

(a) Procuring Entity shall have no responsibility for the Procuring Entity Contractor shall be in full and exclusive charge of the Procuring Entity in remedying the defect or

(b) Procuring Entity shall require the Architect to agree or determine a reasonable reduction in the Contract Price in accordance

(c) With Sub-Clause 3.5 [Determinations] 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 of the defect or damage cannot be remedied expeditiously on the Site and the Procuring Entity gives consent, turning 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 identified. 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 Contractor'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

11.9 be included in the Contract Price determined by the Architect in accordance with Sub-Clause 3.5 [Determinations] and shall be

11.9.1 included in the Contract Price. 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 Completion Certificate shall be deemed to constitute acceptance of the Works.
- 11.93 Only the Completion 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 ~~Completion of Site~~ 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 shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or

- 11.11.3 ~~At its sole discretion~~ of the moneys from the sale shall be paid to the Contractor. If these moneys are less than the Contractor'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 apply under Sub-Clauses 14.3 [Application for Interim Payment Certificates], 14.4 [Application for Final Payment Certificate] and 14.11 [Application for Final Payment Certificate] the quantities and details 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. The Contractor shall send or direct 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 ~~the~~ Contractor examines and disagrees the records, and/ or does not sign them as agreed, ~~then~~ 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~~ 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 Materials or other applicable

Schedules.



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

13.14 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

1321 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 execution to the Engineer and the Contractor's proposals for any necessary modifications to the Programme according to Sub-Clause 8.3.1 and to any of the Contractor's obligations under the Contract, and 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 indicating the Architect and the Contractor are unable to agree the adjustment of the Contract Price, the provisions in accordance with the Contractor's submission or as modified by agreement. Sub-Clause 13.2.2 shall apply.

1322 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. What extension of the Works in the said Prices by 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- of any work done that has to be altered in consequence of such a variation, recovery of direct costs by the Contractor and the Contractor by the variation of the progress of the Works in the net effect of the Contractor's finance costs, including interest, caused by the variation 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.

1323 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

133. Maintenance Engineering  
Sub-Clause 31.3.

133.1 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, otherwise be of benefit to the Procuring Entity.

133.2 The proposal shall be prepared at the cost of the Contractor and shall include the items listed in Sub-Clause 31.3 [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 half (50%) of the difference between the following amounts:
    - i) the reduction in contract value, resulting from the change, excluding adjustments under Sub-Clause 13.8 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in the Law];
    - 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 if the amount established in item 13.2.3 (c) (i) is more than amount

13.4 Variation Procedure for Value Engineering Proposals to Procuring Entity.

13.4.1 If the Architect requests a proposal, prior to instructing a Variation, the Contractor shall respond in writing as

- a) a description of the proposed work to be performed and completed (if this is the case) by the Contractor's proposal for any necessary modifications to the programme according to Sub-Clause 8.4 [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 Project Engineering] or otherwise), respond with approval, disapproval or comments. The Contractor shall not delay

13.4.3 Any work instructions to be issued in connection with 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.

13.5 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

13.6 Proposal to make the Cost of the varied work, and to the proportions of various currencies specified for payment

13.6.1 The Provisional Sum 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

only such amounts, for the work, supplies or service, to which the Provisional Sum relates, as the Architect shall have instructed. For each Provisional Sum, the Architect may instruct:

- a) Work to be executed (including Plant, Materials or services to be supplied) by the Contractor and valued under Sub-Clause 13.3 [Variation Procedure]; and/or
- 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,
  - i) 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 be required to maintain the Financial Conditions of Contract, be audited and accounts or receipts in substantiation.

13.7 Dayworks

- 13.7.1 For work of a minor or incidental nature, the Architect may instruct that a Variation shall be executed on a daywork basis. The work shall then be valued in accordance with the Daywork Schedule included in the Contract, and the following procedure shall apply. If a Daywork Schedule is not included in the Contract, the following procedure shall apply.
- 13.7.2 ~~Before~~ ~~contract~~ ~~ordering~~ Goods for the work, the Contractor shall submit quotations to the Engineer. When ~~supply~~ ~~clause~~ shall not apply. for payment, the Contractor shall submit invoices, vouchers and accounts or receipts for any Goods.
- 13.7.3 Except for any items for which the Daywork Schedule specifies that payment is not due, the Contractor shall deliver each day to the Architect accurate statements induplicate which shall include the following details:
- The names, occupations and time of Contractor's Personnel, the resources, equipment and Temporary Works, and
  - The quantities and types of Plant and Materials used.
- 13.7.4 One copy of each statement will, if correct, or when agreed, be signed by the Architect and returned to the Contractor. The Contractor shall then submit priced statements of these resources to the Engineer, prior to the submission of Interim Payment Certificates.
- 13.8 ~~The~~ ~~Contract~~ ~~Price~~ shall be adjusted to take account of any increase or decrease in Cost resulting from a change in the Laws of Kenya (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws, made after the Base Date, which affect the Contractor in the performance of obligations under the Contract. changes in the Laws or in such interpretations, made after the Base Date, the Contractor shall give notice in writing to the Architect of such delay, if completion is or will be delayed, under Sub-Clause 20.1 [Contractor's Claims] to:
- Extension of Time for Completion], and
- payment of any such Cost, which shall be included in the Contract Price.
- 13.8.3 After receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determination of these matters].
- 13.8.4 Notwithstanding the foregoing, the Contractor shall not be entitled to an extension of time if the relevant delay has already been taken into account in the determination of a previous extension of time and such Cost shall not be separately paid if the same shall already have been taken into account in the indexing of any adjustment to the Contract Price in accordance with the provisions of Sub-Clause 13.8 [Adjustments for Changes in Costs].
- 13.9.1 In this Sub-Clause, "table of adjustment data" means the completed table of adjustment data for local and foreign currencies included in the Schedules. If there is no such table of adjustment data, this Sub-Clause shall not apply.
- 13.9.2 If this Sub-Clause applies, the amounts payable to the Contractor shall be adjusted for rises or falls in the cost of labor, Goods and other inputs to the Works, by the addition or deduction of the amounts determined by the formulae prescribed in this Sub-Clause. To the extent that full compensation for any rise or fall in Costs is not provided by the application of these formulae, the amount payable to the Contractor shall be determined in accordance with the applicable provisions of the Contract. Payment of Interim Certificates, shall be determined for each of the currencies in which the Contract Price is payable. No adjustment is to be applied to work valued on the basis of Cost or current prices. The formulae shall be of the following general type:

## 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 then on 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.

- 13.9.4 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 this clause.
- 13.9.5 The source of the source of the index shall be the relevant currency of payment, established by the Central Bank of Kenya, in the relevant currency of payment at the selling rate, established by the Central Bank of Kenya, of this index.
- 13.9.6 If the current index is not available, there shall be 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 Contractor.
- 13.9.7 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 variations.
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] and be subject to adjustments in accordance with the Contract and the Adjustments of Prices here adjusted for any of these costs except as stated in Sub-Clause 12.3 [Adjustments of Prices].
- 14.1.1.1 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 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 breakdown
- 14.1.2 Notwithstanding the provisions of sub-paragraph (b) of the above, 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 ~~Advances payable~~ 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 stated in the Special Conditions of Contract, this Sub-Clause shall not apply.
- 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 is 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
- 14.2.5 of the guarantee until the advance payment has been repaid. Unless stated otherwise in the Special Conditions of Contract, the advance payment shall be repaid in accordance with Sub-Clause 14.2.7 [Procurer's Entitlement to Repayment of Advance Payment], 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
- b) the 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
- 14.2.6 If the advance payment has not been repaid prior to the issue of the Taking-Over Certificate for the Works, the advance payment shall be completely repaid prior to the time when 90 percent (90%) of the Accepted Contract Amount prior to termination under Clause 15 [Termination by Procuring Entity], Clause 16 [Suspension of Work] or Clause 17 [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 Repayment of Advance Payment]
- 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

- 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 in the Contractor's Documents produced up to the end of the month (including Variations but excluding items described in sub-paragraphs (b) to (g) below):
- 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) below);
  - 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];
  - 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 Contractor reaches the limit of Retention Money (if any) stated in the Special Conditions of Contract;
  - any amounts to be added for the advance payment and (if more than one instalment) and to be deducted for the advance payment in accordance with Sub-Clause 14.2 [Advance Payment];
  - any amounts to be added and deducted for Plant and Materials intended for the Works, in accordance with Sub-Clause 14.4 [Plant and Materials];
  - any additions or deductions which may have become due under the Contractor's Documents, other than those described in sub-paragraphs (a) to (e) above;
  - any reductions or amounts certified in any Interim Payment Certificate.

#### 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:

- 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 Certificate];
- 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

14.4.2 If the Contract does not include a schedule of payments, the Contractor shall submit non-binding estimates or more than that on which the instalments were previously based, quarterly. The first estimate shall be submitted within 42 days after the Commencement Date. Revised estimates shall be submitted at

14.5 Quarterly Materials intended for the Works intervals, until the Taking-Over Certificate has been issued 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

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



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.

148 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 of delay. 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.

149 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 part promptly after the latest of the expiry dates of the Defects Liability Periods, the outstanding balance of the

14.9.2 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 (50%) of the proportion calculated by dividing the estimated contract value of the Section by the estimated final Contract Price.

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.

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

14.9.6 Conditions or in another form approved by the Procuring Entity and issued by a reputable bank or 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.

1410 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 Sub-Clause 4.3 [Application for Interim Payment Certificates],

a) showing the value of all work done in accordance with the Contract up to the date stated in the Taking-Over

b) Certificate for the amount of work which the Contractor considers to be due, and

c) 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].

#### 1411 Application for Final Payment Certificate

14.11.1 Within 60 days after receiving the Completion Certificate, the Contractor shall submit, to the Engineer, copies of 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

Conditions as the "Final Statement" 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

1412 **Discharge** Board's Decision] or Sub-Clause 20.5 [Amicable Settlement], the Contractor shall then prepare and submit with submitting the Final Statement, the Contractor shall submit a discharge which confirms that the Procuring Entity (with a copy to the Engineer) a Final Statement.

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

1413 **Issued the Performance Certificate** and the outstanding balance of this total, in which event the discharge

14.13.1 shall be effective on such date as the Contractor shall determine 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 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

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 require 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.

#### 1414 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 indemnification obligations, or the Procuring Entity's liability in any case of fraud, deliberate default or reckless misconduct by the Procuring Entity.

The Contract Price shall be paid in the currency or currencies named in the Schedule of Payment

a) If more than one currency is named, payments shall be made as follows:

- 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 for Changes in Legislation] shall be made in the applicable currencies
  - iii) 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
- 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
- e) If the rates of exchange are stated in the Schedule of Payment Currencies, they shall be those in effect 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) has notified the Contractor or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract, without reasonable excuse
  - c) fails:
    - i) to proceed with the Works in accordance with Clause 8 [Commencement, Delays and
    - ii) Suspension] or a notice issued under Sub-Clause 7.5 [Rejection] or Sub-Clause 7.6 [Remedial Works] within 30 days after receiving the Works or assigns the Contract without the consent of the
  - d) Procuring Entity is 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
  - e) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or
  - f) a similar effect to any of these acts or events, or
  - g) for bearing to do any act or in relation to the Contractor or for bearing to show favor or disfavor to any person in relation to the Contractor or 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-clause
  - h) repeatedly fails to remedy defective work
- However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination, or

- h) based on reasonable evidence, has engaged in Fraud and Corruption as defined in paragraph 2.2 of the Appendix B to these General Conditions, incompetently or in executing the Contract.
- 152.2 In any of these events or circumstances, the Procuring Entity may, upon giving 14 days' notice to the Contractor, terminate the Contract and expel the Contractor from the Site. However, in the case of sub-
- 152.3 ~~The Procuring Entity's election to terminate the Contract shall not prejudice any rights of the Procuring Entity, under the Contract otherwise.~~
- 152.4 The Contractor shall then leave the Site and deliver any required Goods, all Contractor's Documents, and other design documents made by or for him, to the Engineer. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the
- 152.5 ~~As a condition of termination, the Procuring Entity may complete the Works and/ or arrange for any other entity to do so. The Procuring Entity and these entities may then use any Goods, Contractor's Documents and other design documents~~
- 152.6 ~~The Procuring Entity shall be liable for the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the~~
- 153 ~~Valuation of the Contract may be sold by the Procuring Entity in order to recover this payment. Any balance of the Contract shall be paid in accordance with Sub-Clause 15.2 [Termination by Procuring Entity] has taken effect, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the value of the Works, Goods and Contractor's Documents, and any other sums due~~
- 154 ~~Payment after Termination Contractor for work executed in accordance with the Contract. After a notice of termination under Sub-Clause 15.2 [Termination by Procuring Entity] has taken effect, the Procuring Entity shall proceed in accordance with Sub-Clause 2.5 [Procuring Entity's Claims] to pay any further payments to the Contractor until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Procuring Entity are established, and any losses and damages incurred by the Procuring Entity and any extra costs of completion of the Works are determined. After payment of any sums due to the Contractor as stated in Sub-Clause 15.4, the Procuring Entity shall pay any balance to the Contractor.~~
- 155 Procuring Entity's Entitlement to Termination for Convenience
- The Procuring Entity shall be entitled to terminate the Contract, at any time at the Procuring Entity's convenience, by giving notice of such termination to the Contractor. The termination shall take effect 30 days after the later of the dates on which the Contractor receives this notice or the Procuring Entity returns the Performance Security. The Procuring Entity shall not terminate the Contract under this Sub-Clause in order to execute the Works itself or to arrange for the Works to be executed by another contractor or to avoid a
- 156 ~~Termination of the Contract by the Contractor under Clause 16.2 [Termination by Contractor]. After this termination, the Contractor shall proceed with the Works in accordance with Sub-Clause 16.3 [Continuation of Work] and shall be paid in accordance with Sub-Clause 16.4 [Payment on Termination].~~



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

163.2 In any of the 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

163.3 The Contractor's retraction 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], further work, except for such work as may have been instructed by the Architect 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 in accordance with Sub-Clause 19.6 [Optional Termination, Payment and Release],
- b) 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) Bodily injury, sickness, disease or death, of any person what so ever arising out of or in the course of or by reason of:

- a) by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless attributable to any negligence or willful act of each of the Contractor
- b) damage or loss of any property, real or personal (other than the Works), to the extent that such damage or 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

17.1.2 The Procuring Entity shall indemnify and hold harmless with the Contractor, the Contractor's Personnel, and the Procuring Entity's Personnel, their respective agents, against and from all claims, damages, losses and expenses (including legal fees) Bodily injury, sickness, disease or death, of any person what so ever arising out of or in the course of or by reason of:

- a) by reason of the Contractor's design (if any), the execution and completion of the Works and the 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 (2) the matters for which liability may be excluded from insurance cover, as described

17.2 Contractor's Care of the Works to Property], unless and to the extent that any such damage or loss is attributable to any negligence,

17.2.1 willful Contractor shall take full responsibility for the care of the Works and Goods from the Commencement 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 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
- 17.22 ~~Section~~ If a Taking-Over Certificate is issued (or is so deemed to be issued) for any 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
- 17.23 If a Taking-Over Certificate is issued (or is so deemed to be issued) for any 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
- 17.24 ~~Global~~ 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
- 17.3 ~~Procuring~~ Entity's Risks which the Contractor was liable. 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 as
  - War or civil war (whether or not declared) or
  - Rebellion, riot, commotion or disorder, terrorism, sabotage by persons other than the Contractor's
  - Personnel, 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,
  - pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds,
  - use or occupation by the Procuring Entity of any part of the Permanent Works, except as may be
  - specified in the Contract,
  - Procuring Entity's Personnel or by others for whom the Contractor is responsible, or
  - 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.
- 17.4 Consequences of Procuring Entity's Risks
- 17.4.1 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
- 17.4.2 ~~shall~~ If the Contractor suffers delay and the incurs Cost from any of the risks listed in Sub-Clause 17.3 above, the Contractor shall give a further notice to the Architect and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims]
- 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
  - payment of any such Cost, which shall be included in the Contract Price. In the case of sub-paragraphs (e) and
- 17.4.3 ~~After Sub-Clause 17.3 [Procuring Entity's Risks] a Contractor shall be required to agree or determine these matters.~~ (After Sub-Clause 17.3 [Procuring Entity's Risks] a Contractor shall be required to agree or determine these matters.
- 17.5 Intellectual and Industrial Property Rights
- 17.5.1 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)
- 17.5.2 ~~While~~ If a Party does not give notice to the other Party of any claim within 30 days of receiving the ~~infringement~~ notice, 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 an infringement of intellectual property rights of the Contractor's compliance with the Contract, or
- a) A result of any work being used in violation of the Procuring Entity's intellectual property rights;
  - ii) In 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 For Particulars of Conditions of Contract in respect of 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 indemnifying Party.
- 17.56 In order to ensure maintenance of any plant or equipment installed, the contractor shall grant a non-exclusive and non-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 The indemnifying Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any patent, trademark, design, copy right, know-how or other intellectual rights from the contractor or any consequential loss or damage which may be suffered by the other Party in connection with 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 Contract]; Sub-Clause 17.1 [Indemnities]; Sub-Clause 17.4(b) [Consequences of Procuring Entity's Repudiation]; Sub-Clause 4.19 [Electricity, Water and Gas], Sub-Clause 4.20 [Procuring Entity's Right to Use Materials], Sub-Clause 17.1 [Indemnities] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights], shall not exceed the sum resulting from the application of a multiplier (less or greater than one) as specified in Sub-Clause 17.5 [Indemnities].
- 17.62 The indemnifying Party shall not limit liability in any case of fraud, deliberate default or reckless misconduct by it or the Accepted Contract Amount, as stated in the Special Conditions of Contract, or (if the indemnifying Party is the Procuring Entity) the Accepted Contract Amount.
- 17.63 The indemnifying Party shall not limit liability in any case of fraud, deliberate default or reckless misconduct by it or the Accepted Contract Amount, as stated in the Special Conditions of Contract, or (if the indemnifying Party is the Procuring Entity) the Accepted Contract Amount.
- 17.71 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 date of the Taking-Over Certificate for the Works).
- 17.72 If damage happens to any of the above items while the Contractor is responsible for the care of the Procuring Entity arising from any cause whatsoever other than those for which the Procuring Entity is liable, the Contractor shall, at its own cost, rectify the loss or damage to the satisfaction of the Engineer.
18. GENERAL REQUIREMENTS FOR INSURANCES
- 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 paying the insurance specified in the relevant Sub-Clause.





- b) shall be in the joint names of the
- c) shall be extended to cover liability for all loss and damage to the Procuring Entity's property (except
- d) ~~in any way~~ ~~under Sub-Clause 18.2) arising out of the Contractor's performance of the Contract and~~ the Procuring Entity's right to have the Permanent Works executed on, over, under,
  - ii) in or
  - iii) ~~through any land, an~~ ~~unavoidable~~ result of the Contractor's obligations to execute the
- iv) Works and ~~remedies~~ ~~in Sub-Clause 17.3 [Procuring Entity's Risks], except to the extent that~~ cover is

184 Insurance for Contractor's Personnel available at commercially reasonable terms.

184.1 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

184.2 ~~The Contractor shall cover the Procuring Entity's 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~~

184.3 ~~Essential and shall to the extent that it may be effected through the Procuring Entity or its Personnel are~~ ~~Procuring Entity's Personnel~~ the Works. For a Subcontractor's employees, the insurance may be effected by

19. ~~FORCE MAJEURE~~ But the Contractor shall be responsible for compliance with this Clause.

191 Definition of Force Majeure

191.1 In this Clause, "Force Majeure" means an exceptional event or circumstance

- a) which is beyond a Party's
- b) ~~control~~ such Party could not reasonably have provided against before entering into the
- c) Contract,
- d) which, having arisen, such Party could not reasonably have avoided or overcome, and which is not substantially attributable to the other Party.

191.2 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~~

- a) ~~war~~, 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~~ ~~in this order~~, ~~strikes~~ ~~lock outs~~ ~~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

192 Notice of Force Majeure such as earthquake, hurricane, typhoon or volcanic activity.

192.1 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

192.2 ~~be given within 14 days after the Party became aware, or should have become aware, of the relevant event~~ ~~Force prevents it from performing them.~~

192.3 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.

193 Duty to Minimize Delay

Each Party shall at all times use all reasonable endeavors to minimize any delay in the performance of the

122 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.

#### 194 Consequences of Force Majeure

194.1 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

offers Contractor's Claims] 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 8.4, and in the event of Force Majeure, to the extent they are not indemnified through the insurance policy referred to

in Sub-Clause 19.2 [Notice of Force Majeure], and, in sub-paragraphs (ii) to (iv), occurs in Kenya, payment of

194.2 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.

#### 195 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

#### 196 Optional Termination, Payment and Release

under this Clause.

196.1 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

the Contractor shall be entitled to terminate the Contract. In this event, the

196.2 If termination is due to Force Majeure, the Architect shall determine the value of the work done and issue a

certificate of payment to the Contractor within 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub-

Clause 19.6 [Optional Termination, Payment and Release]. The sum payable shall include:

b) the net Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or

of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property

c) of the Contractor, and the Contractor shall be at the risk of the Procuring Entity when paid for by the Procuring Entity; and the

d) cost of removal of temporary Works and Contractor's Equipment from the Site and the return of

e) the cost of repair of the Contractor's Works in his country (or to any other destination at a greater cost) and

#### 197 Release from Performance

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, Parties shall be discharged from further performance, without prejudice to the rights of

entitled 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

201 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 of a claim, with not later than 30 days after the Contractor became aware, completion shall not be extended under the Contract in respect of the event or circumstance giving rise to the claim, and the Contractor shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

20.1.3 The Contractor shall also submit any other notices which are required by the Contract, and particulars for the claim, all as relevant to such event or circumstance.

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 received a copy of the Contractor's claim, the Architect shall inspect all the supporting documents and shall, if instructed, submit a report to the Contractor and approved by the Engineer, the Contractor shall send to the Architect fully detailed claim which

- a) includes a fully detailed claim shall be considered as supporting particulars of the basis of the claim and of the extension of time and/ or additional payment claimed. The Contractor shall send further interim claims at monthly intervals, giving the accumulated amount claimed, and such further particulars as the Architect may reasonably require; and
- c) 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

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 the period defined in the previous clause, the Architect shall, at the request of the Contractor, attempt to agree or determine (i) the extension (if any) of the Time for Completion (before or after the date of the award of the Contract), 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

20.1.9 If the Architect does not respond within the time frame defined in this Clause, either Party may refer the claim to arbitration. If the claim is rejected by the Architect and any of the Parties may refer the dispute for amicable settlement in

20.1.10 The provisions 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 shall give a written notice to the Contractor as soon as practicable after the Procuring Entity becomes 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 before the expiry of the Defects Notification Period. The Architect shall then proceed in accordance with Sub-Clause 3.5 [Determinations] to determine (i) the amount (if any) which the Procuring Entity is entitled to be paid by the Contractor, and (ii) the extension (if any) of the Defects Notification Period in accordance with Sub-Clause 11.3 [Extension of Defects Notification Period].
- 202.2 The Contractor shall be entitled to set off against or make any deduction from an amount certified in a Payment Certificate, or otherwise claim against the Contractor, in accordance with this Sub-Clause.

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 date 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 either party whether or not the issue of an instruction by the Architect is empowered by these Conditions.

- 204 Matters which may be referred to arbitration before the practical completion of the Works or abandonment of the Works or termination of the Contract by either party whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.
- e) Any dispute arising in respect of 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 anything to the contrary, 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, without prejudice to the parties, have the authority to call for and inspect, and direct such measurements, computations, 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 opinion 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 No Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for 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 Arbitration with National Contractors
- 206 Arbitration with National Contractors
- 206.1 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 Architectural Association of Kenya or a institution of Consulting Engineers of Kenya. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed, at the request of the applying party, by the Chairman or Vice Chairman of any of the following professional institutions;
- 206.2 The institution written to first by the aggrieved party shall take precedence over all other institutions.
- 207 Arbitration with Foreign Contractors
- 207.1 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
- 207.2 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].
- 208 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
- 209 Excluding Costly Arbitration with Arbitrator's Decisional Process
- 209.1 The award of such Arbitrator shall be final and binding up on the parties.
- 209.2 In the event that 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.

2010 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.

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	<b>COUNTY GOVERNMENT OF BUNGOMA</b>
Name and Reference No. of the Contract	Heading and 1.1	<b>BGM/CNTY/CEF/TEI/0T/10/2025-2026</b>
Engineers Name and address	Heading and 3.1.1	<i>Insert NOT APPLICABLE</i>
Contractor's Representative's name	4.3.1	<i>[insert the name of the Contractor's Representative agreed by the Procuring Entity prior to Contract signature] NOT APPLICABLE</i>
Key Personnel names	16.9.1	<i>[insert the name of each Key Personnel agreed by the Procuring Entity prior to Contract signature] NOT APPLICABLE</i>
Time for Completion	1.1.	<u>24 weeks</u>
Defects Notification Period	1.1	<b><u>3months from practical completion</u></b>
Sections	1.1	
Electronic transmission systems	1.3	Website: www.bungoma.go.ke
Time for the Parties entering into a Contract Agreement	1.6	Within 30days
Commencement Date	8.1.1	<b>To be agreed with project manager</b>
Time for access to the Site	2.1.1	No later than the Commencement Date, and not later than 14days after Commencement Date
Architect Duties and Authority	3.1.6 (b) (ii)	Variations resulting in an increase of the Accepted Contract Amount in excess of <u>  </u> % shall require approval of the Procuring Entity.
Performance Security	4.2.1	The performance security will be in the form of a <u>  </u> Performance Bond <u>  </u> in the amount(s) of percent of the Accepted Contract Amount and in the same currency(ies) of the Accepted Contract Amount. N/A
Normal working hours	6.5	8am-5pm
Delay damages for the Works	8.7 & 14.15(b)	<u>  </u> 1 % of the Contract Price per day. <i>If Sections are to be used, refer to Table: Summary of Sections below</i>
Maximum amount of delay damages	8.7.1	<u>  </u> 10 % of the final Contract Price.
Provisional Sums	13.6. (b)(ii)	<i>[If there are Provisional Sums, insert a percentage for adjustment of Provisional Sums]</i> 5 %
Adjustments for Changes in Cost	13.9	Period "n" applicable to the adjustment multiplier "Pn": <u>  </u> <i>[Insert the period if different from one (1) month; if period "n" is one (1) month, insert "not applicable"]</i>

Conditions	Sub-Clause	Data
Total advance payment	14.2.1	___% Percentage of the Accepted Contract Amount payable in the currencies and proportions in which the Accepted Contract Amount is payable <i>NOT APPLICABLE</i>
Repayment amortization rate of advance payment	14.2.5 (b)	_____ % NOT APPLICABLE
Percentage of Retention	14.3.2 (c)	%
Limit of Retention Money	14.3.2 (c)	10 % of the Accepted Contract
Plant and Materials	14.5.3(b)(i)	Amount If Sub-Clause 14.5 applies: Plant and Materials for payment Free on Board <i>NOT APPLICABLE</i>
	14.5.3(c)(i)	Plant and Materials for payment when delivered to the Site NOT APPLICABLE
Minimum Amount of Interim Payment Certificates	14.6.2	_____ % of the Accepted Contract Amount. As per the works done.
Publishing source of commercial interest rates for financial charges in case of delayed payment	14.8	Specify _____ % rate per month of delayed payment.
Maximum total liability of the Contractor to the Procuring Entity	17.6.2	<i>[Select one of the two options below as appropriate]</i> The product of _____ <i>[insert a multiplier less or greater than one]</i> times the Accepted Contract Amount, <i>or</i> _____ <i>[insert amount of the maximum total liability]</i> NOT APPLICABLE
Periods for submission of insurance: a. evidence of insurance. b. relevant policies	18.1.6	<i>[Insert period for submission of evidence of insurance and policy. Period may be from 14 days to 30days.]</i> ____ days ____ days
Maximum amount of deductibles for insurance of the Procuring Entity's risks	18.2.4 (d)	<i>[Insert maximum amount of deductibles]</i>
Minimum amount of third-party insurance	18.3.2	<i>[Insert amount of third-party insurance]</i>
The place of arbitration	20.7.2	<i>Kenya</i>



## 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 able to reach 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 Procuring Entity]
- ii) Project: [insert name of project]
- iii) Contract title: [insert the name of the contract]
- iv) ITT No: [insert ITT reference number from Procurement Plan]

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 may request a debriefing in relation to the evaluation of your tender by submitting a Procurement-related

4. 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 \_\_\_\_\_)

- 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) Provide the following information: 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) Title/position: [insert title/position]
  - iii) Agency: [insert name of agency]
  - iv) 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 may be in writing, by phone, video conference call or in person. We shall promptly advise you 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. Publication of 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) Title/position: [insert title/position]
  - iii) Agency: [insert name of agency]
  - iv) 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 further information refer to the Public Procurement and Disposals Act 2015 Regulations 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: In this case, that means a Tenderer who submitted a Tender in this tendering process and is challenging the decision of the Procuring Entity to award the contract. You must be an interested party. In this case, that means a Tenderer who submitted a Tender in this tendering process and is challenging the decision of the Procuring Entity to award the contract. You must be an interested party.
- i) You must be an interested party.
- ii) Tendering process and is challenging the decision of the Procuring Entity 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: \_\_\_\_\_

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 on 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.....

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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”), on the one part, and \_\_\_\_\_ of \_\_\_\_\_ (hereinafter “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;
    - g) the Drawings; and
    - h) 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 for its part in all respects with the provisions of consideration 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 here to have caused this Agreement to be signed by the Contractor and 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 ~~any 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 ~~part~~ 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. ~~The Guarantor shall without the Beneficiary needing to provide grounds for, your demand or payment under it must be received by us at the office indicated above on or before that 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 the guarantee twenty-five (25) days before the expected completion date as described in GC Clause 11.9. The maximum amount shall not be more than the pro-rata amount of 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 Guarantor 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 Obligees (hereinafter called “the Procuring Entity”) in the 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 presents
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's obligations there under, the Surety may promptly remedy the default, or shall promptly:
  - a) Complete the Contract in accordance with its terms and conditions, and upon determination by 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 default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph)
  - b) 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.
  - c) Pay the Procuring Entity other costs and damages for which the Surety may be liable hereunder, the amount set forth in 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 by Procuring Entity to Contractor, or by Procuring Entity to Contractor, or corporation other than the Procuring Entity named here in or the heirs, executors, administrators, successors, and assigns in and by whereof, the Contractor has here unto set his hand and affixed his seal, and the Surety has hereunto set his hand and affixed his seal duly at tested by the signature of his legal representative, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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: \_\_\_\_\_ [Procuring Entity]

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 Contract") with the Beneficiary, for the execution of \_\_\_\_\_
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 \_\_\_\_\_<sup>1</sup> ~~on receipt by us of a demand in the form of a promissory note or bill of exchange drawn on the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that it has used the advance payment for purposes other than the costs of mobilization in respect of the Applicant or that it 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 \_\_\_\_\_ ~~in the name of the Guarantor'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 \_\_\_\_\_<sup>2</sup> ~~presented to us. This guarantee shall expire, at any time, upon our receipt of a copy of the certificate.~~
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 advance payment and denominated either in the currency of the advance payment as specified in the Contract.

<sup>2</sup>The Contractor, the Procuring Entity, or the Tenderer shall provide the Procuring Entity with the certificate of extension of the guarantee in writing for most part of the period 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 reported on this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the tenderer or a person acting through one or more legal persons, 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 governing body of the Company	Whether a person directly or indirectly exercises (tenderer) influence or control over the Company (Yes/No)
1.	Full Name	Directly _____ % of shares	_____ % of voting rights	1. Exercises influence or control over the Company (Yes/No) _____ 2. Is this influence or control exercised directly? _____ Indirectly? _____	Yes/No _____ Directly? _____ Indirectly? _____
	National identity card number or passport number	Indirectly _____ % of shares	_____ % 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	Whether a person directly or indirectly exercises significant influence or control over the Company																										
2.	<table border="1"> <tr> <td>Full Name</td> <td></td> <td>Directly-----</td> <td rowspan="2">..... % of voting rights</td> <td rowspan="2">1. Having the right to appoint a majority of the directors or an equivalent governing body of the Company</td> <td rowspan="2">1. Exercises significant influence or control over the Company body of the Company (tenderer) Yes ----No----</td> </tr> <tr> <td>National identity card number or Passport number Identification Number (where applicable) Nationality(ies)</td> <td></td> <td>Indirectly-----</td> </tr> <tr> <td>Date of birth</td> <td></td> <td>----- % of shares</td> <td rowspan="5">           Indirectly-----            rights            2. Tenderer: right holds directly or indirectly?:            Direct.....            ...            Indirect.....            ...         </td> <td rowspan="5">           2. Is this influence or control exercised directly or indirectly?            Direct.....            Indirect.....            ...         </td> </tr> <tr> <td>Postal address</td> <td></td> <td></td> </tr> <tr> <td>Residential address</td> <td></td> <td></td> </tr> <tr> <td>Telephone number</td> <td></td> <td></td> </tr> <tr> <td>Occupation or profession</td> <td></td> <td></td> </tr> </table>	Full Name		Directly-----	..... % of voting rights	1. Having the right to appoint a majority of the directors or an equivalent governing body of the Company	1. Exercises significant influence or control over the Company body of the Company (tenderer) Yes ----No----	National identity card number or Passport number Identification Number (where applicable) Nationality(ies)		Indirectly-----	Date of birth		----- % of shares	Indirectly----- rights 2. Tenderer: right holds directly or indirectly?: Direct..... ... Indirect..... ...	2. Is this influence or control exercised directly or indirectly? Direct..... Indirect..... ...	Postal address			Residential address			Telephone number			Occupation or profession						
Full Name		Directly-----	..... % of voting rights	1. Having the right to appoint a majority of the directors or an equivalent governing body of the Company				1. Exercises significant influence or control over the Company body of the Company (tenderer) Yes ----No----																							
National identity card number or Passport number Identification Number (where applicable) Nationality(ies)		Indirectly-----																													
Date of birth		----- % of shares	Indirectly----- rights 2. Tenderer: right holds directly or indirectly?: Direct..... ... Indirect..... ...	2. Is this influence or control exercised directly or indirectly? Direct..... Indirect..... ...																											
Postal address																															
Residential address																															
Telephone number																															
Occupation 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 determining who meets the threshold of who a beneficial owner is, the Tenderer must consider a natural or legal person information that can be used to distinguish one person from another and can be used to identify a person to the company, percent of the issued shares in the company either directly or previously, in an anonymous data. This information includes National identity card number or Passport number, Personal Identification Number, Date of birth, Residential address, email address and Telephone number.

(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
A	<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>		
B	<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>		
C	<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>		
D	<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>		
E	<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><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><u>NB:</u></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> 16 Weeks 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 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="321 178 695 220"><b><u>BILL NO 1 SUMMARY</u></b></p> <p data-bbox="321 373 873 415">General Preliminaries From Page GP/12</p> <p data-bbox="321 674 857 716">Particular Preliminaries from Page PP/7</p>		
	<p data-bbox="402 1703 1117 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>
	<b>CARRIED TO GRAND SUMMARY</b>				

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:

<b><u>PARAMETER</u></b>	<b><u>MAXIMUM POINTS</u></b>
(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 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 holder of degree or diploma in relevant Engineering field ----- <b>Key Personnel (Attach evidence)</b> o Holder of certificate in relevant Engineering field ----- 5 o Holder of trade test certificate in relevant Engineering field ----- 3 o No relevant certificate ----- 2 -0	5	20
	<b>At least 1 No. degree/diploma holder of key personnel in relevant Engineering field</b> o With over 10 years relevant experience ----- 5 -5 o With over 5 years relevant experience ----- 3	5	
	<b>At least 2 No certificate holder of key personnel in relevant Engineering field</b> o With over 10 years relevant experience ----- 3 o With over 5 years relevant experience ----- 3 o 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) or 10 years relevant experience.</b> -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 evidence of project of similar nature, complexity and magnitude -----</b> ----- o Project of similar nature but of lower value than the one in consideration----- o No.2 completed project of similar nature----- 0		<b>15</b>	
vi	<b>On-going projects (A max of 5 No. Projects) (attach evidence of project of similar nature, complexity and magnitude -----</b> ----- o Project of similar nature but of lower value than the one in consideration----- o No.1 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 For each specific equipment required in the installation of the 0 (Max being No. of feed equipment to be considered – 3 No.)		4	<b>10</b>
			6	
viii	<b>Financial report</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		<b>10</b>	

Item	Description	Point	Max. Point
------	-------------	-------	------------

		Scored	
ix	<b>Evidence of Financial Resources (cash in hand, lines of credit, overdraft facility, etc.) equal or above the cost of the project-----</b> 10 o Has financial resources below the cost of the project ---- ----- 5 o Has not indicated sources of financial resources -- -0		<b>10</b>
x	<b>Name, Address and Telephone of Banks (Contractor to provide)</b> o Provided ----- 5 o Not provided -----		<b>5</b>
xi	<b>Litigation History</b> o Filled ----- o Not filled ----- -0		<b>2</b>
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		<b>5</b>
	<b>TOTAL</b>		<b>100</b>

**Any bidder who scores 80 points and above shall be considered for further 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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