

# REPUBLIC OF KENYA



## MINISTRY OF TRANSPORT, INFRASTRUCTURE, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT

### PROPOSED UPGRADING OF 1.4 KM ROAD TO CABRO STARNDARD AT ZIMMERMAN INFORMAL SETTLEMENT - NAIROBI

TENDER NO. MTHUD/HD/SUD/KENSUP/32/2018-2019

#### RESTRICTED TENDER DOCUMENTS

**EMPLOYER**  
PRINCIPAL SECRETARY  
STATE DEPARTMENT HOUSING  
AND URBAN DEVELOPMENT  
P.O. BOX 30450-00100  
NAIROBI

**EXECUTING AGENCY**  
NAIROBI REGIONAL  
WORKS OFFICE  
NAIROBI

**PROJECT MANAGER**  
DIRECTOR,  
SLUM UPGRADING DEPARTMENT  
STATE DEPARTMENT OF HOUSING  
AND URBAN DEVELOPMENT  
P.O. BOX 30119-00100  
NAIROBI

**MAY 2019**

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# SECTION I

## INVITATION FOR TENDERS

# INVITATION FOR TENDERS

DATE: MAY, 2019

Tender Reference No. MTIHU/DH/SUD/KENSUP/32/2018-2019

## PROPOSED UPGRADING OF 1.4 KM ROAD TO CABRO STANDARDS AT ZIMMERMAN INFORMAL SETTLEMENT – NAIROBI.

- 1.1 The **Ministry of Transport, Infrastructure, Public Works, and Housing and Urban Development** invites sealed tenders for the **Proposed Upgrading of 1.4 km Road to Cabro Standards at Zimmerman Informal Settlement – Nairobi**
- 1.2 Interested eligible candidates may obtain further information and inspect tender documents (and additional copies) at **State Department of Housing and Urban Development Headquarters, Ardhi House 6<sup>th</sup> Floor Wing B, MTC Secretariat Room** during normal working hours.
- 1.3 A complete set of tender documents may be obtained by interested candidates from the **Treasury's Advertising Portal Ant the Ministry's Website.**
- 1.4 Prices quoted should be net inclusive of all taxes, must be in Kenya shillings and shall remain valid for **(120)** days from the closing date of tender.
- 1.5 Completed tender documents are to be enclosed in plain sealed envelopes marked with Tender name and reference number and deposited in the Tender Box at **State Department of Housing and Urban Development Headquarters, Ardhi House 6<sup>th</sup> Floor** or to be addressed to the **Principal Secretary, State Department of Housing and Urban Development, P.O BOX 30450-00100 NAIROBI** so as to be received on or before **11<sup>th</sup> June 2019 at 11.00 am.**
- 1.6 Tenders will be opened immediately thereafter in the presence of the candidates or their representatives who choose to attend at

(Address and Appropriate Officer)

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For (Principal Secretary, State Department of Housing and Urban Development)

# SECTION II

## INSTRUCTIONS TO TENDERERS

### SECTION II: INSTRUCTIONS TO TENDERERS

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## INSTRUCTION TO TENDERERS

Note: The tenderer must comply with the following conditions and instructions and failure to do so is liable to result in rejection of the tender.

### GENERAL

#### 1. Definitions

- (a) **“Tenderer”** means any person or persons partnership firm or company submitting a sum or sums in the Bills of Quantities in accordance with the Instructions to Tenderers, Conditions of Contract Parts I and II, Specifications, Drawings and Bills of Quantities for the work contemplated, acting directly or through a legally appointed representative.
- (b) **“Approved tenderer”** means the tenderer who is approved by the Employer.
- (c) Any noun or adjective derived from the word **“tender”** shall be read and construed to mean the corresponding form of the noun or adjective **“bid”**. Any conjugation of the verb “tender” shall be read and construed to mean the corresponding form of the verb “bid.”
- (d) **“Employer”** means **State Department of Housing and Urban Development**.

#### 2. Eligibility and Qualification Requirements

- 2.1 Eligibility and Qualifications Requirements  
This invitation to tender is open to all tenderers who are eligible as stated in the appendix.
- 2.2 The procuring entity’s employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.
- 2.3 To be qualified for award of Contract, the tenderer shall provide evidence satisfactory to the Employer of their eligibility under Sub clause 2.1 above and of their capability and adequacy of resources to effectively carry out the subject Contract. To this end, the tenderer shall be required to update the following information already submitted during prequalification:-
  - (a) Details of experience and past performance of the tenderer on the works of a similar nature within the past five years and details of current work on hand and other contractual commitments.
  - (b) The qualifications and experience of key personnel proposed for administration and execution of the contract, both on and off site.



- (c) Major items of construction plant and equipment proposed for use in carrying out the Contract. Only reliable plant in good working order and suitable for the work required of it shall be shown on this schedule. The tenderer will also indicate on this schedule when each item will be available on the Works. Included also should be a schedule of plant, equipment and material to be imported for the purpose of the Contract, giving details of make, type, origin and CIF value as appropriate.
- (d) Details of subcontractors to whom it is proposed to sublet any portion of the Contract and for whom authority will be requested for such subletting in accordance with clause 4 of the Conditions of Contract.
- (e) A draft Program of Works in the form of a bar chart and Schedule of Payment which shall form part of the Contract if the tender is accepted. Any change in the Program or Schedule shall be subjected to the approval of the Engineer.
- (f) Details of any current litigation or arbitration proceedings in which the Tenderer is involved as one of the parties.

#### **2.4 Joint Ventures**

Tenders submitted by a joint venture of two or more firms as partners shall comply with the following requirements:-

- (a) The tender, and in case of a successful tender, the Form of Agreement, shall be signed so as to be legally binding on all partners.
- (b) One of the partners shall be nominated as being in charge; and this authorization shall be evidenced by submitting a power of attorney signed by legally authorized signatories of all the partners.
- (c) The partner in charge shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture and the entire execution of the Contract including payment shall be done exclusively with the partner in charge.
- (d) All partners of the joint venture shall be liable jointly and severally for the execution of the Contract in accordance with the Contract terms, and a relevant statement to this effect shall be included in the authorization mentioned under (b) above as well as in the Form of Tender and the Form of Agreement (in case of a successful tender).
- (e) A copy of the agreement entered into by the joint venture partners shall be submitted with the tender.

**2.5 To qualify for contract awards, the tenderer shall have the following:**

- (a) Necessary qualifications, capability experience, services, equipment and facilities to provide what is being procured.
- (b) Legal capacity to enter into a contract for procurement
- (c) Shall not be insolvent, in receivership, bankrupt or in the process of being wound up and is not the subject of legal proceedings relating to the foregoing.
- (d) Shall not be debarred from participating in public procurement.

### 3. Cost of Tendering

- 3.1 The tenderer shall bear all costs associated with the preparation and submission of his tender and the Employer will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.
- 3.2 The price to be charged for the tender document shall be **Kshs.1,000/=**
- 3.3 The procuring entity shall allow the tenderer to view the tender document free of charge before purchase.

### 4. Site Visit

- 4.1 The tenderer is advised to visit and examine the Site and its surroundings and obtain for himself on his own responsibility, all information that may be necessary for preparing the tender and entering into a contract. The costs of visiting the Site shall be the tenderer's own responsibility.
- 4.2 The tenderer and any of his personnel or agents will be granted permission by the Employer to enter upon premises and lands for the purpose of such inspection, but only upon the express condition that the tenderer, his personnel or agents, will release and indemnify the Employer from and against all liability in respect of, and will be responsible for personal injury (whether fatal or otherwise), loss of or damage to property and any other loss, damage, costs and expenses however caused, which but for the exercise of such permission, would not have arisen.
- 4.3 The Employer shall organize a site visit at a date to be notified. A representative of the Employer will be available to meet the intending tenderers at the Site.

Tenderers must provide their own transport. The representative will not be available at any other time for site inspection visits.

Each tenderer shall complete the Certificate of Tenderer's Visit to the Site, whether he in fact visits the Site at the time of the organized site visit or by himself at some other time.

### TENDER DOCUMENTS

## 5. Tender Documents

5.1 The Tender documents comprise the documents listed here below and should be read together with any Addenda issued in accordance with Clause 7 of these instructions to tenderers.

- a. Form of Invitation for Tenders
- b. Instructions to Tenderers
- c. Form of Tender
- d. Appendix to Form of Tender
- e. Form of Tender Surety
- f. Statement of Foreign Currency Requirements
- g. Form of Performance Security
- h. Form of Agreement
- i. Form of Advance payment Bank Guarantee
- j. Schedules of Supplementary Information
- k. General Conditions of Contract – Part I
- l. Conditions of Particular Application – Part II
- m. Specifications
- n. Bills of Quantities
- o. Drawings
- p. Declaration Form

5.2 The tenderer is expected to examine carefully all instructions, conditions, forms, terms, specifications and drawings in the tender documents. Failure to comply with the requirements for tender submission will be at the tenderer's own risk. Pursuant to clause 22 of Instructions to Tenderers, tenders which are not substantially responsive to the requirements of the tender documents will be rejected.

5.3 All recipients of the documents for the proposed Contract for the purpose of submitting a tender (whether they submit a tender or not) shall treat the details of the documents as "private and confidential".

## 6. Inquiries by tenderers

6.1 A tenderer making inquiries relating to the tender documents may notify the Employer in writing or by telex, cable or facsimile at the Employer's mailing address indicated in the Invitation to Tender. The Employer will respond in writing to any request for clarification which he receives earlier than 7 days prior to the deadline for the submission of tenders. Written copies of the Employer's response (including the query but without identifying the source of the inquiry) will be sent to all prospective tenderers who have purchased the tender documents.

6.2 Clarification of tenders shall be requested by the tenderer to be received by the procuring entity not later than 7 days prior to the deadline for submission of tenders.

- 6.3 The procuring entity shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.

## **7. Amendment of Tender Documents**

- 7.1 At any time prior to the deadline for submission of tenders the Employer may, for any reason, whether at his own initiative or in response to a clarification requested by a prospective tenderer, modify the tender documents by issuing Addenda.
- 7.2 Any Addendum will be notified in writing or by cable, telex or facsimile to all prospective tenderers who have purchased the tender documents and will be binding upon them.
- 7.3 In order to allow prospective tenderers reasonable time in which to take the Addendum into account in preparing their tenders, the Employer may, at his discretion, extend the deadline for the submission of tenders.

## **PREPARATION OF TENDERS**

### **8. Language of Tender**

- 8.1 The tender and all correspondence and documents relating to the tender exchanged between the tenderer and the Employer shall be written in the English language. Supporting documents and printed literature furnished by the tenderer with the tender may be in another language provided they are accompanied by an appropriate translation of pertinent passages in the above stated language. For the purpose of interpretation of the tender, the English language shall prevail.

### **9. Documents Comprising the Tender**

- 9.1 The tender to be prepared by the tenderer shall comprise:-
- i. The form of tender and appendix thereto.
  - ii. A tender security.
  - iii. The priced Bill of Quantity and Schedule.
  - iv. The information on eligibility and qualification.
  - v. Any other materials required to be completed and submitted in accordance with the instructions to tenderers.

The Forms, Bills of Quantities and Schedules provided in the tender documents shall be used without exception (subject to extensions of the schedules in the same format and to the provisions of clause 13.2 regarding the alternative forms of Tender Surety).

## 10. Tender Prices

10.1 All the insertions made by the tenderer shall be made in INK and the tenderer shall clearly form the figures. The relevant space in the Form of Tender and Bills of Quantities shall be completed accordingly without interlineations or erasures except those necessary to correct errors made by the tenderer in which case the erasures and interlineations shall be initialed by the person or persons signing the tender.

10.2 A price or rate shall be inserted by the tenderer for every item in the Bills of Quantities whether the quantities are stated or not items against which no rate or price is entered by the tenderer will not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the Bills of Quantities.

The prices and unit rates in the Bills of Quantities are to be the full [all-inclusive] value of the work described under the items, including all costs and expenses which may be necessary and all general risks, liabilities and obligations set forth or implied in the documents on which the tender is based. All duties and taxes and other levies payable by the Contractor under the Contract or for any other cause prior to the deadline for the submission of tenders, shall be included in the rates and prices and the total tender prices submitted by the Tenderer.

Each price or unit rate inserted in the Bills of Quantities should be a realistic estimate for completing the activity or activities described under that particular item and the tenderer is advised against inserting a price or rate against any item contrary to this instruction.

Every rate entered in the Bills of Quantities, whether or not such rate be associated with a quantity, shall form part of the Contract. The Employer shall have the right to call for any item of work contained in the Bills of Quantities, and such items of work to be paid for at the rate entered by the tenderer and it is the intention of the Employer to take full advantage of unbalanced low rates.

10.3 Unless otherwise specified the tenderer must enter the amounts representing 10% of the sub-total of the summary of the Bills of Quantities for Contingencies and Variation of Prices [V.O.P.] payments in the summary sheet and add them to the sub-total to arrive at the tender amount.

10.4 The tenderer shall furnish with his tender written confirmation from his suppliers or manufacturers of unit rates for the supply of items listed in the Conditions of Contract clause 47 where appropriate.

10.5 The rates and prices quoted by the tenderer are subject to adjustment during the performance of the Contract only in accordance with the provisions of the Conditions of Contract. The tenderer shall complete the schedule of basic rates and shall submit with his tender such other

supporting information as required under clause 47 of the Conditions of Contract Part II.

## **11. Currencies of Tender and Payment**

- 11.1 Tenders shall be priced in Kenya Shillings and the tender sum shall be in Kenya Shillings.
- 11.2 Tenderers are required to indicate in the Statement of Foreign Currency Requirements, which forms part of the tender, the foreign currency required by them. Such currency should generally be the currency of the country of the tenderer's main office. However, if a substantial portion of the tenderer's expenditure under the Contract is expected to be in countries other than his country of origin, then he may state a corresponding portion of the contract price in the currency of those other countries. However, the foreign currency element is to be limited to two (2) different currencies and a maximum of 30% (thirty percent) of the Contract Price.
- 11.3 The rate or rates of exchange used for pricing the tender shall be selling rate or rates of the Central Bank ruling on the date thirty (30) days before the final date for the submission of tenders.
- 11.4 Tenderers must enclose with their tenders, a brief justification of the foreign currency requirements stated in their tenders.

## **12. Tender Validity**

- 12.1 The tender shall remain valid and open for acceptance for a period of sixty (120) days from the specified date of tender opening or from the extended date of tender opening (in accordance with clause 7.4 here above) whichever is the later.
- 12.2 In exceptional circumstances prior to expiry of the original tender validity period, the Employer may request the tenderer for a specified extension of the period of validity. The request and the responses thereto shall be made in writing or by cable, telex or facsimile. A tenderer may refuse the request without forfeiting his Tender Surety. A tenderer agreeing to the request will not be required nor permitted to modify his tender, but will be required to extend the validity of his Tender Surety correspondingly.

## **13. Tender Security**

- 13.1 The tenderer shall furnish as part of his tender, a Tender Security in the amount and form stated in the Appendix to Instructions to Tenderers.
- 13.2 The tender security shall not exceed 2 percent of the tender price.
- 13.3 The tender security shall be valid for at least thirty (30) days beyond the tender validity period.

The format of the Surety shall be in accordance with the sample form of Tender Surety included in these tender documents; other formats may be permitted subject to the prior approval of the Employer. The Tender Surety shall be valid for thirty (30) days beyond the tender validity period.

- 13.4 Any tender not accompanied by an acceptable Tender Surety will be rejected by the Employer as non-responsive.
- 13.5 The Tender Sureties of unsuccessful tenderers will be returned as promptly as possible as but not later than fourteen (14) days after concluding the Contract execution and after a Performance Security has been furnished by the successful tenderer. The Tender Surety of the successful tenderer will be returned upon the tenderer executing the Contract and furnishing the required Performance Security.
- 13.6 The Tender Surety may be forfeited:
- (a) If a tenderer withdraws his tender during the period of tender validity; or
  - (b) In the case of a successful tenderer, if he fails
    - (i) to sign the Agreement, or
    - (ii) to furnish the necessary Performance Security
  - (c) If a tenderer does not accept the correction of his tender price pursuant to clause 23.

**14. No Alternative Offers**

- 14.1 The tenderer shall submit an offer which complies fully with the requirements of the tender documents unless otherwise provided for in the appendix.

Only one tender may be submitted by each tenderer either by himself or as partner in a joint venture.

- 14.2 The tenderer shall not attach any conditions of his own to his tender. The tender price must be based on the tender documents. The tenderer is not required to present alternative construction options and he shall use without exception, the Bills of Quantities as provided, with the amendments as notified in tender notices, if any, for the calculation of his tender price.

Any tenderer who fails to comply with this clause will be disqualified.

**15. Pre-Tender Meeting**

- 15.1 If a pre-tender meeting is convened the tenderer's designated representative is invited to attend a pre-tender meeting, which if convened, will take place at the venue and time stated in the Invitation to



Tender. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

- 15.2 The tenderer is requested as far as possible to submit any questions in writing or by cable, to reach the Employer not later than seven days before the meeting. It may not be practicable at the meeting to answer questions received late, but questions and responses will be transmitted in accordance with the following:
- (a) Minutes of the meeting, including the text of the questions raised and the responses given together with any responses prepared after the meeting will be transmitted without delay to all purchasers of the tender documents. Any modification of the tender documents listed in Clause 9 which may become necessary as a result of the pre-tender meeting shall be made by the Employer exclusively through the issue of a tender notice pursuant to Clause 7 and not through the minutes of the pre-tender meeting.
  - (b) Non attendance at the pre-tender meeting will not be cause for disqualification of a bidder.

## **16. Format and Signing of Tenders**

- 16.1 The tenderer shall prepare his tender as outlined in clause 9 above and mark appropriately one set "ORIGINAL" and the other "COPY".
- 16.2 The copy of the tender and Bills of Quantities shall be typed or written in indelible ink and shall be signed by a person or persons duly authorized to sign on behalf of the tenderer. All pages of the tender where amendments have been made shall be initialed by the person or persons signing the tender.
- 16.3 The complete tender shall be without alterations, interlineations or erasures, except as necessary to correct errors made by the tenderer, in which case such corrections shall be initialed by the person or persons signing the tender.

## **SUBMISSION OF TENDERS**

### **17. Sealing and Marking of Tenders**

- 17.1 The tenderer shall seal the original and copy of the tender in separated envelopes, duly marking the envelopes as "ORIGINAL" and "COPY". The envelopes shall then be sealed in an outer envelope.
- 17.2 The inner and outer envelopes shall be addressed to the Employer at the address stated in the Appendix to Instructions to Tenderers and bear the name and identification of the Contract stated in the said Appendix with a warning not to open before the date and time for opening of tenders stated in the said Appendix.



17.3 The inner envelopes shall each indicated the name and address of the tenderer to enable the tender to be returned unopened in case it is declared “late”, while the outer envelope shall bear no mark indicating the identity of the tenderer.

17.4 If the outer envelope is not sealed and marked as instructed above, the Employer will assume no responsibility for the misplacement or premature opening of the tender. A tender opened prematurely for this cause will be rejected by the Employer and returned to the tenderer.

## **18 Deadline for Submission of Tenders**

18.1 Tenders must be received by the Employer at the address specified in clause 17.2 and on the date and time specified in the Letter of Invitation, subject to the provisions of clause 7.4, 18.2 and 18.3

Tenders delivered by hand must be placed in the “tender box” provided in the office of the Employer.

Proof of posting will not be accepted as proof of delivery and any tender delivered after the above stipulated time, from whatever cause arising will not be considered.

18.2 The Employer may, at his discretion, extend the deadline for the submission of tenders through the issue of an Addendum in accordance with clause 7, in which case all rights and obligations of the Employer and the tenderers previously subject to the original deadline shall thereafter be subject to the new deadline as extended.

18.3 Any tender received by the Employer after the prescribed deadline for submission of tender will be returned unopened to the tenderer.

## **19 Modification and Withdrawal of Tenders**

19.1 The tenderer may modify or withdraw his tender after tender submission, provided that written notice of the modification or withdrawal is received by the Employer prior to prescribed deadline for submission of tenders.

19.2 The tenderer’s modification or withdrawal notice shall be prepared, sealed, marked and dispatched in accordance with the provisions for the submission of tenders, with the inner and outer envelopes additionally marked “MODIFICATION” or “WITHDRAWAL” as appropriate.

19.2 No tender may be modified subsequent to the deadline for submission of tenders.

19.3 No tender may be withdrawn in the interval between the deadline for submission of tenders and the period of tender validity specified on the tender form. Withdrawal of a tender during this interval will result in the forfeiture of the Tender Surety.

- 19.4 Subsequent to the expiration of the period of tender validity prescribed by the Employer, and the tenderer having not been notified by the Employer of the award of the Contract or the tenderer does not intend to conform with the request of the Employer to extend the period of tender validity, the tenderer may withdraw his tender without risk of forfeiture of the Tender Surety.

## **TENDER OPENING AND EVALUATION**

### **20 Tender Opening**

- 20.1 The Employer will open the tenders in the presence of the tenderers' representatives who choose to attend at the time and location indicated in the Letter of Invitation to Tender. The tenderers' representatives who are present shall sign a register evidencing their attendance.
- 20.2 Tenders for which an acceptable notice of withdrawal has been submitted, pursuant to clause 19, will not be opened. The Employer will examine the tenders to determine whether they are complete, whether the requisite Tender Sureties have been furnished, whether the documents have been properly signed and whether the tenders are generally in order.
- 20.3 At the tender opening, the Employer will announce the tenderer's names, total tender price, tender price modifications and tender withdrawals, if any, the presence of the requisite Tender Surety and such other details as the Employer, at his discretion, may consider appropriate. No tender shall be rejected at the tender opening except for late tenders.
- 20.4 The Employer shall prepare a tender opening register and minutes of the tender opening including the information disclosed to those present.
- 20.5 Tenders not opened and read out at a tender opening shall not be considered further for evaluation, irrespective of the circumstances.

### **21 Process to be Confidential**

- 21.1 After the public opening of tenders, information relating to the examination, clarification, evaluation and comparisons of tenders and recommendations concerning the award of Contract shall not be disclosed to tenderers or other persons not officially concerned with such process until the award of Contract is announced.
- 21.2 Any effort by a tenderer to influence the Employer in the process of examination, evaluation and comparison of tenders and decisions concerning award of Contract may result in the rejection of the tenderer's tender.

### **22 Clarification Tenders**

- 22.1 To assist in the examination, evaluation and comparison of tenders, the Employer may ask tenderers individually for clarification of their tenders, including breakdown of unit prices. The request for clarification and the response shall be in writing or by cable, facsimile or telex, but no change

in the price or substance of the tender shall be sought, offered or permitted except as required to confirm the correction of arithmetical errors discovered by the employer during the evaluation of the tenders in accordance with clause 24.

- 22.2 No Tenderer shall contact the Employer on any matter relating to his tender from the time of the tender opening to the time the Contract is awarded. If the tenderer wishes to bring additional information to the notice of the Employer, he shall do so in writing.

## **23 Determination of Responsiveness**

- 23.1 Prior to the detailed evaluation of tenders, the Employer will determine whether each tender is substantially responsive to the requirements of the tender documents.
- 23.2 For the purpose of this clause, a substantially responsive tender is one which conforms to all the terms, conditions and specifications of the tender documents without material deviation or reservation. A material deviation or reservation is one which affects in any substantial way the scope, quality, completion timing or administration of the Works to be undertaken by the tenderer under the Contract, or which limits in any substantial way, inconsistent with the tender documents, the Employer's rights or the tenderers obligations under the Contract and the rectification of which would affect unfairly the competitive position of other tenderers who have presented substantially responsive tenders.
- 23.3 Each price or unit rate inserted in the Bills of Quantities shall be a realistic estimate of the cost of completing the works described under the particular item including allowance for overheads, profits and the like. Should a tender be seriously unbalanced in relation to the Employer's estimate of the works to be performed under any item or groups of items, the tender shall be deemed not responsive.
- 23.4 A tender determined to be not substantially responsive will be rejected by the Employer and may not subsequently be made responsive by the tenderer by correction of the non-conforming deviation or reservation.

## **24 Correction of Errors**

Tenders determined to be substantially responsive shall be checked by the Employer for any arithmetic errors in the computations and summations. Errors will be corrected by the Employer as follows:

- (a) Where there is a discrepancy between the amount in figures and the amount in words, the amount in words will govern.
- (b) Where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will prevail, unless in the opinion of the

Employer, there is an obvious typographical error, in which case adjustment will be made to the entry containing that error.

- (c) The amount stated in the tender will be adjusted in accordance with the above procedure for the correction of errors and, with concurrence of the tenderer, shall be considered as binding upon the tenderer. If the tenderer does not accept the corrected amount, the tender may be rejected and the Tender Security may be forfeited in accordance with clause 13.

## **25 Conversion to Single Currency**

- 25.1 For compensation of tenders, the tender price shall first be broken down into the respective amounts payable in various currencies by using the selling rate or rates of the Central Bank of Kenya ruling on the date twenty one (21) days before the final date for the submission of tenders.
- 25.2 The Employer will convert the amounts in various currencies in which the tender is payable (excluding provisional sums but including Dayworks where priced competitively) to Kenya Shillings at the selling rates stated in clause 25.1.

## **26 Evaluation and Comparison of Tenders**

- 26.1 The Employer will evaluate only tenders determined to be substantially responsive to the requirements of the tender documents in accordance with clause 23.
- 26.2 In evaluating tenders, the Employer will determine for each tender the evaluated tender price by adjusting the tender price as follows:
  - (a) Making any correction for errors pursuant to clause 24.
  - (b) Excluding Provisional Sums and provision, if any, for Contingencies in the Bills of Quantities, but including Day works where priced competitively.
- 26.3 The Employer reserves the right to accept any variation, deviation or alternative offer. Variations, deviations, alternative offers and other factors which are in excess of the requirements of the tender documents or otherwise result in the accrual of unsolicited benefits to the Employer, shall not be taken into account in tender evaluation.
- 26.4 Price adjustment provisions in the Conditions of Contract applied over the period of execution of the Contract shall not be taken into account in tender evaluation.
- 26.5 If the lowest evaluated tender is seriously unbalanced or front loaded in relation to the Employer's estimate of the items of work to be performed under the Contract, the Employer may require the tenderer to produce detailed price analyses for any or all items of the Bills of Quantities, to

demonstrate the relationship between those prices, proposed construction methods and schedules. After evaluation of the price analyses, the Employer may require that the amount of the Performance Security set forth in clause 29 be increased at the expense of the successful tenderer to a level sufficient to protect the Employer against financial loss in the event of subsequent default of the successful tenderer under the Contract.

- 26.6 Firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias provided that they do not sub-contract work valued at more than 50% of the Contract Price excluding Provisional Sums to a non-indigenous sub-contractor.
- 26.7 The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.
- 26.8 Persons not officially involved in the evaluation of tender shall not attempt in any way to influence the evaluation.

27. Preference where allowed in the evaluation of tenders shall not exceed 15%

## **AWARD OF CONTRACT**

### **28 Award criteria**

- 28.1 Subject to clause 27.2, the Employer will award the Contract to the tenderer whose tender is determined to be substantially responsive to the tender documents and who has offered the lowest evaluated tender price subject to possessing the capability and resources to effectively carry out the Contract Works.
- 28.2 The Employer reserves the right to accept or reject any tender, and to annul the tendering process and reject all tenders, at any time prior to award of Contract, without thereby incurring any liability to the affected tenderers or any obligation to inform the affected tenderers of the grounds for the Employer's action.

### **29. Notification of Award and signing of contract**

- 29.1 Prior to the expiration of the period of tender validity prescribed by the Employer, the Employer will notify the successful tenderer by cable, telefax or telex and confirmed in writing by registered letter that his tender has been accepted. This letter (hereinafter and in all Contract documents called "Letter of Acceptance") shall name the sum (hereinafter and in all Contract documents called "the Contract Price") which the Employer will pay to the Contractor in consideration of the execution and completion of the Works as prescribed by the Contract.
- 29.2 Upon the furnishing of a Performance Security by the successful tenderer, the unsuccessful tenderers will promptly be notified that their tenders have been unsuccessful.

- 29.3 At the same time the employer notifies the successful tenderer that his tender has been accepted, the employer shall notify the other tenderers that their tenders have been unsuccessful.
- 29.4 Within fourteen [14] days of receipt of the form of Contract Agreement from the Employer, the successful tenderer shall sign the form and return it to the Employer together with the required Performance Security.
- 29.5 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.
- 29.6 A tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

**30. Performance Guarantee**

- 30.1 Within twenty eight [28] days of receipt of the notification of award from the Employer, the successful tenderer shall furnish the Employer with a Performance Security in an amount stated in the Appendix to Instructions to Tenderers.
- 30.2 The Performance Security to be provided by the successful tenderer shall be an unconditional Bank Guarantee issued at the tenderer's option by an established and a reputable Bank approved by the Employer and located in the Republic of Kenya and shall be divided into two elements namely, a performance security payable in foreign currencies (based upon the exchange rates determined in accordance with clause 35.4 of the Conditions of Contract) and a performance security payable in Kenya Shillings. The value of the two securities shall be in the same proportions of foreign and local currencies as requested in the form of foreign currency requirements.

Failure of the successful tenderer to lodge the required Performance Security shall constitute a breach of Contract and sufficient grounds for the annulment of the award and forfeiture of the Tender Security and any other remedy under the Contract the Employer may award the Contract to the next ranked tenderer.

**31. Corrupt and fraudulent practices.**

The procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contract. A tenderer shall sign a declaration that he has not and will not be involved in corrupt or fraudulent practices.

## APPENDIX TO INSTRUCTIONS TO TENDERERS

### Notes on the appendix to Instructions to tender.

The following appendix to instructions to tenders shall complement or amend the provisions of the instructions to tenderers (Section II). Wherever there is a conflict between the provisions of the instructions to tenderers and the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers.

### CLAUSE

#### 13 Tender Security

Amount of Tender Security is Ksh.200,000 of tender amount

- 16 (i) The name and address of the Employer for the purposes of Submission of tenders is: **The Principal Secretary, State Department of Housing and Urban Development and P.O BOX 30450-00100 NAIROBI.**
- (ii) The name of the proposed Works is **Proposed Upgrading of 1.4 km Road to Cabro Standards at Zimmerman Informal Settlement – Nairobi**
- (iii) The tender opening date and time is **11<sup>th</sup> June 2019 at 11.00 am.**
- (iv)

#### 29. Performance Guarantee

The amount of Performance Security is **10% of the accepted Tender Sum in the form of Bank Guarantee or from approved Insurance Company**



## **TENDER EVALUATION CRITERIA**

After tender opening, the tenders will be evaluated in **4 stages**, namely:

1. Preliminary examination;
2. Technical evaluation;
3. Financial Evaluation; and
4. Recommendation for Award.

### **STAGE 1: 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.

#### **Mandatory/ Statutory requirements**

These conditions shall include the following:

The tenderer must attached the following:

1. Copy of certificate of Registration/Incorporation
2. Copy of Registration with NCA
3. Copy of VAT Certificate
4. Copy of Tax Compliance
5. Duly filled and signed copy of Business questionnaire
6. Valid Business Permit/ Trade License
7. Bid Bond (1% of tender sum)
8. Form of Tender duly filled
9. Self-declaration against fraud
10. Self-declaration not debarred in the matter of public procurement
11. Site Visit report

The tenderer who do not satisfy any of the above requirements shall be considered Non-Responsive and their tenders will not be evaluated further

### **STAGE 2: TECHNICAL EVALUATION**

#### **A) Assessment for eligibility**

The tender document shall be examined based on clause 2.2 of the Instruction to Tenderers which states as follows:

*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) Tender Questionnaire -----	3
(ii) Key personnel -----	20
(iii) Contract Completed in the last Five (5) years -----	10



(iv) Schedules of on-going projects -----	8
(v) Schedules of contractors equipment -----	40
(vi) Audited Financial Report for the last 3 years -----	8
(vii) Evidence of Financial Resources -----	10
(viii) Litigation History -----	2
<b>TOTAL</b>	<b><u>100</u></b>

## B) Assessment for eligibility

The tender document shall be examined based on clause 2.2 of the Instruction to Tenderers which states as follows:

*The award of points for the STANDARD FORMS considered in this section shall be as shown below*

<b>PARAMETER</b>	<b>MAXIMUM POINTS</b>
(ix) Tender Questionnaire -----	3
(x) Key personnel -----	20
(xi) Contract Completed in the last Five (5) years -----	10
(xii) Schedules of on-going projects -----	8
(xiii) Schedules of contractors equipment -----	40
(xiv) Audited Financial Report for the last 3 years -----	8
(xv) Evidence of Financial Resources -----	10
(xvi) Litigation History -----	2
<b>TOTAL</b>	<b><u>100</u></b>

The detailed scoring plan shall be as shown in table 1 below: -

**TABLE 1: Assessment for Eligibility**

Item	Description	Point Scored	Max. Point	
i.	<b>Tender Questionnaire Form</b> <ul style="list-style-type: none"> <li>• Completely filled ----- ---- 5</li> <li>• Not filled ----- --- 0</li> </ul>		5	
ii	<b>Key Personnel (Attach evidence)</b>		20	
	<b>Director of the firm</b> <ul style="list-style-type: none"> <li>• Holder of degree in relevant Engineering field ----- ----- 6</li> <li>• Holder of diploma in relevant Engineering field ----- ----- 5</li> <li>• Holder of certificate in relevant Engineering field----- ----- 3</li> <li>• Holder of trade test certificate in relevant Engineering field ----- -----2</li> <li>• No relevant certificate ----- -- 0</li> </ul>			6
	<b>At least 1No. degree/diploma holder of key personnel in relevant field</b> <ul style="list-style-type: none"> <li>• With over 10 years relevant experience ----- --- 6</li> <li>• With over 5 years relevant experience----- --- 4</li> <li>• With under 5 years relevant experience ----- --- 2</li> </ul>			6
	<b>At least 1No certificate holder of key personnel in relevant field</b> <ul style="list-style-type: none"> <li>• With over 10 years relevant experience----- --- 4</li> <li>• With over 5 years relevant experience ----- --- 3</li> <li>• With under 5 years relevant experience ----- ---1</li> </ul>			4
	<b>At least 1No artisan (trade test certificate in relevant field)</b> <ul style="list-style-type: none"> <li>• Artisan with over 10 years relevant experience ----- ----- 2</li> </ul>			4

	<ul style="list-style-type: none"> <li>• Artisan with under 10 years relevant experience ----- ----- 1</li> <li>• Non skilled worker with over 10 years relevant experience ----- ----- 1</li> </ul>			
iii	<p><b>Contract completed in the last five (5) years (Max of 5No. Projects)- <u>Provide Evidence</u></b></p> <ul style="list-style-type: none"> <li>• Project of similar nature, complexity or magnitude --- ----- 4</li> <li>• Project of similar nature but of lower value than the one in consideration ----- ----- 3</li> <li>• No completed project of similar nature ----- ----0</li> </ul>			20

iv	<b>On-going projects – Provide Evidence</b> <ul style="list-style-type: none"> <li>• No Project of similar nature, complexity and magnitude ----- 8</li> <li>• Three and below Projects of similar, nature complexity and magnitude -----6</li> <li>• Four and above Projects of similar nature, complexity and magnitude ----- 4</li> </ul>		<b>8</b>
v	<b>Schedule of contractors equipment and transport (proof or evidence of ownership/Lease)</b> <b>a)Relevant Transport</b> <ul style="list-style-type: none"> <li>• Means of transport (Vehicle) ----- -- 10</li> <li>• No means of transport ----- --- 0</li> </ul>	10	<b>20</b>
	<b>b)Relevant Equipment (tippers, hoe excavators)</b> <ul style="list-style-type: none"> <li>• Has relevant equipment for work being tendered --- ----- 10</li> <li>• No relevant equipment for work being tendered ---- ----- 0</li> </ul>	10	
vi	<b>Financial report</b> <b>a)Audited financial report (last three (3) years)</b> <ul style="list-style-type: none"> <li>• Average Annual Turn-over equal to or greater than the cost of the project ----- 10</li> <li>• Average Annual Turn-over above 50% but below 100% of the cost of the project ----- 6</li> <li>• Average Annual Turn-over below 50% of the cost of the project ----- 3</li> </ul>		<b>10</b>
	<b>b)Evidence of Financial Resources (cash in hand, lines of credit, over draft facility etc )</b> <ul style="list-style-type: none"> <li>• Has financial resources to finance the projected <b>monthly cash flow*</b> for three months -----10</li> <li>• Has financial resources equal to the projected <b>monthly cash flow*</b>-----5</li> </ul>		<b>15</b>

	<ul style="list-style-type: none"> <li>• Has financial resources less the projected <b>monthly cash flow</b>*----- -----3</li> <li>• Has not indicated sources of financial resources ----- ----- 0</li> </ul>		
vii	<b>Litigation History</b> <ul style="list-style-type: none"> <li>• Duly Filled ----- --- 2</li> <li>• Not filled ----- --- 0</li> </ul>		<b>2</b>
	<b>TOTAL</b>		<b>100</b>

Any bidder who scores 75 points and above shall be considered for further evaluation

$$*Monthly\ Cash\ Flow = Tender\ Sum / Contract\ Period$$

### C) Compliance with Specialist Works Specifications

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.

The tenderer shall also submit relevant technical brochures/catalogues with the tender document, highlighting the catalogue 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 is found not to conform to the stipulated specifications, the tender will be deemed Non-Responsive and will not be evaluated further.

### D) Assessment of deviations

Pursuant to section 64 of the Act, a tender is deemed responsive if it conforms to all the mandatory requirements and it **does not contain major** deviations. Section 23.2 of the instruction to tenderers, defines major deviations as

- a) One that affects in a substantial way the scope, quality, completion timing, administration of works to be undertaken by the tenderer under the contract, inconsistent with the tender document; or
- b) Which limits in any substantial way the rights of the employer or the tenderers obligations; or
- c) Whose rectification would affect unfairly the competitive position of other tenderers presenting substantially responsive tenders.

Where the deviations are minor in the view of the tender evaluation committee, with the concurrence of the procuring entity representative, the committee shall quantify such deviations pursuant to section 64 (3) of the Act which requires that a minor deviation shall:

- a) Be quantified to the extent possible; and
- b) Be taken into account in the evaluation and comparison of tenders.

Where the deviation in the view of the tender committee with the concurrence of the procuring entity representative is major, the tender shall be deemed **non-responsive and will not be evaluated further**

**TABLE 2: Assessment of Deviations**

Item	Does the Deviation Substantively Affect the following:	YES	NO
1	Scope of the Works or Services to be delivered		
2	Quality of the Works or Services to be delivered		
3	Completion Timing		
4	Administration of the Works		
5	Consistency with the tender document		
6	Rights of the Employer in a negative manner		
7	Limit the Tenderer's Obligation		
8	Affect unfairly the competitive position of other tenderers		
	<b>COMMENT</b>		

Any bidder who OBTAINS A YES in the above table shall be considered NON RESPONSIVE and shall not be evaluated further.

**STAGE 3: FINANCIAL EVALUATION**

- i) The financial evaluation will commence with financial ranking of the bids from the lowest to the highest.
- ii) In case of discrepancy between the unit price and the total price, the unit price shall prevail.
- iii) Errors will be calculated and the effect of the error on the overall bid shall be reported. Errors beyond 5% will lead to disqualification.

- iv) Comparison of bids with the estimate will be done and reported. Bids with inconsistent rating (Front, mid, back loading or for major items) will be noted and disqualified.
- v) Comparison of bid rates with the estimate/ market rates will be done and discrepancies reported
- vi) The bidder who meets the all the above conditions, has the lowest evaluated price and has attained the pass mark technical score will be recommended for award of the contract

#### **STAGE4: RECOMMENDATION FOR AWARD**

The successful bidder shall be the tenderer with the lowest evaluated tender price.



**SECTION III**

**CONDITIONS OF CONTRACT**

## **CONDITIONS OF CONTRACT**

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## SECTION III - CONDITIONS OF CONTRACT

### 1. Definitions

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

**“Bills of Quantities”** means the priced and completed Bill of Quantities forming part of the tender[where applicable].

**“Schedule of Rates”** means the priced Schedule of Rates forming part of the tender [where applicable].

**“The Completion Date”** means the date of completion of the Works as certified by the Employer’s Representative.

**“The Contract”** means the agreement entered into by the Employer and the Contractor as recorded in the Agreement Form and signed by the parties.

**“The Contractor”** refers to the person or corporate body whose tender to carry out the Works has been accepted by the Employer.

**“The Contractor’s Tender”** is the completed tendering document submitted by the Contractor to the Employer.

**“The Contract Price”** is the price stated in the Letter of Acceptance.

**“Days”** are calendar days; **“Months”** are calendar months.

**“A Defect”** is any part of the Works not completed in accordance with the Contract.

**“The Defects Liability Certificate”** is the certificate issued by Employer’s Representative upon correction of defects by the Contractor.

**“The Defects Liability Period”** is the period named in the Appendix to Conditions of Contract and calculated from the Completion Date.

**“Drawings”** include calculations and other information provided or approved by the Employer’s Representative for the execution of the Contract.

**“Employer”** Includes Central or Local Government administration, Universities, Public Institutions and Corporations and is the party who employs the Contractor to carry out the Works.

**“Equipment”** is the Contractor’s machinery and vehicles brought temporarily to the Site for the execution of the Works.

**“Site”** means the place or places where the permanent Works are to be carried out including workshops where the same is being prepared.

**“Materials”** are all supplies, including consumables, used by the Contractor for incorporation in the Works.

**“Employer’s Representative”** is the person appointed by the Employer and notified to the Contractor for the purpose of supervision of the Works.

**“Specification”** means the Specification of the Works included in the Contract.

**“Start Date”** is the date when the Contractor shall commence execution of the Works.

**“ A Subcontractor”** is a person or corporate body who has a Contract with the Contractor to carry out a part of the Work in the Contract, which includes Work on the Site.

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

**“ A Variation”** is an instruction given by the Employer’s Representative which varies the Works.

**“The Works”** are what the Contract requires the Contractor to construct, install, and turnover to the Employer.

## **2. Contract Documents**

2.1 The following documents shall constitute the Contract documents and shall be interpreted in the following order of priority;

- (1) Agreement,
- (2) Letter of Acceptance,
- (3) Contractor’s Tender,
- (4) Conditions of Contract,
- (5) Specifications,
- (6) Drawings,
- (7) Bills of Quantities or Schedule of Rates [whichever is applicable]

## **3. Employer’s Representative’s Decisions**

3.1 Except where otherwise specifically stated, the Employer’s Representative will decide contractual matters between the Employer and the Contractor in the role representing the Employer.

#### **4. Works, Language and Law of Contract**

- 4.1 The Contractor shall construct and install the Works in accordance with the Contract documents. The Works may commence on the Start Date and shall be carried out in accordance with the Program submitted by the Contractor, as updated with the approval of the Employer's Representative, and complete them by the Intended Completion Date.
- 4.2 The ruling language of the Contract shall be English language and the law governing the Contract shall be the law of the Republic of Kenya.

#### **5. Safety, Temporary works and Discoveries**

- 5.1 The Contractor shall be responsible for design of temporary works and shall obtain approval of third parties to the design of the temporary works where required.
- 5.2 The Contractor shall be responsible for the safety of all activities on the Site.
- 5.3 Any thing of historical or other interest or significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Employer's Representative of such discoveries and carry out the Employer's Representative's instructions for dealing with them.

#### **6 Work Program and Sub-contracting**

- 6.1 Within seven days after Site possession date, the Contractor shall submit to the Employer's Representative for approval a program showing the general methods, arrangements, order and timing for all the activities in the Works.
- 6.2 The Contractor may sub-contract the Works (but only to a maximum of 25 percent of the Contract Price) with the approval of the Employer's Representative. However, he shall not assign the Contract without the approval of the Employer in writing. Sub-contracting shall not alter the Contractor's obligations.

#### **7 The site**

- 7.1 The Employer shall give possession of all parts of the Site to the Contractor.
- 7.2 The Contractor shall allow the Employer's Representative and any other person authorised by the Employer's Representative ,access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

## **8 Instructions**

- 8.1 The Contractor shall carry out all instructions of the Employer's Representative which are in accordance with the Contract.

## **9 Extension of Completion Date**

- 9.1 The Employer's Representative shall extend the Completion Date if an occurrence arises which makes it impossible for completion to be achieved by the Intended Completion Date. The Employer's Representative shall decide whether and by how much to extend the Completion Date.

- 9.2 For the purposes of this clause, the following occurrences shall be valid for consideration;

Delay by:-

- (a) force majeure, or
- (b) reason of any exceptionally adverse weather conditions, or
- (c) reason of civil commotion, strike or lockout affecting any of the trades employed upon the Works or any of the trades engaged in the preparation, manufacture or transportation of any of the goods or materials required for the Works, or
- (d) reason of the Employer's Representative's instructions issued under these Conditions, or
- (e) reason of the contractor not having received in due time necessary instructions, drawings, details or levels from the Employer's Representative for which he specifically applied in writing on a date which having regard to the date for Completion stated in the appendix to these Conditions or to any extension of time then fixed under this clause was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same, or
- (f) delay on the part of artists, tradesmen or others engaged by the Employer in executing work not forming part of this Contract, or
- (g) reason of delay by statutory or other services providers or similar bodies engaged directly by the Employer, or
- (h) reason of opening up for inspection of any Work covered up or of the testing or any of the Work, materials or goods in accordance with these conditions unless the inspection or test showed that the Work, materials or goods were not in accordance with this Contract, or
- (i) reason of delay in appointing a replacement Employer's Representative, or

- (j) reason of delay caused by the late supply of goods or materials or in executing Work for which the Employer or his agents are contractually obliged to supply or to execute as the case may be, or
- (k) delay in receiving possession of or access to the Site.

## **10 Management Meetings**

- 10.1 A Contract management meeting shall be held regularly and attended by the Employer's Representative and the Contractor. Its business shall be to review the plans for the remaining Work. The Employer's Representative shall record the business of management meetings and provide copies of the record to those attending the meeting and the Employer. The responsibility of the parties for actions to be taken shall be decided by the Employer's Representative either at the management meeting or after the management meeting and stated in writing to all who attend the meeting.
- 10.2 Communication between parties shall be effective only when in writing.

## **11 Defects**

- 11.1 The Employer's Representative shall inspect the Contractor's work and notify the Contractor of any defects that are found. Such inspection shall not affect the Contractor's responsibilities. The Employer's Representative may instruct the Contractor to search for a defect and to uncover and test any Work that the Employer's Representative considers may have a defect. Should the defect be found, the cost of uncovering and making good shall be borne by the Contractor. However if there is no defect found, the cost of uncovering and making good shall be treated as a variation and added to the Contract Price.
- 11.2 The Employer's Representative shall give notice to the Contractor of any defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the Appendix to Conditions of Contract.
- 11.3 Every time notice of a defect is given, the Contractor shall correct the notified defect within the length of time specified by the Employer's Representative's notice. If the Contractor has not corrected a defect within the time specified in the Employer's Representative's notice, the Employer's Representative will assess the cost of having the defect corrected by other parties and such cost shall be treated as a variation and be deducted from the Contract Price.

## **12 Bills of Quantities/Schedule of Rates**

- 12.1 The Bills of Quantities/Schedule of Rates shall contain items for the construction, installation, testing and commissioning of the Work to

be done by the Contractor. The Contractor will be paid for the quantity of the Work done at the rates in the Bills of Quantities/Schedule of Rates for each item. Items against which no rate is entered by the Tenderer will not be paid for when executed and shall be deemed covered by the rates for other items in the Bills of Quantities/Schedule of Rates.

- 12.2 Where Bills of Quantities do not form part of the Contract, the Contract Price shall be a lump sum (which shall be deemed to have been based on the rates in the Schedule of Rates forming part of the tender) and shall be subject to re-measurement after each stage.

### **13 Variations**

- 13.1 The Contractor shall provide the Employer's Representative with a quotation for carrying out the variations when requested to do so. The Employer's Representative shall assess the quotation and shall obtain the necessary authority from the Employer before the variation is ordered.
- 13.2 If the Work in the variation corresponds with an item description in the Bill of Quantities/Schedule of Rates, the rate in the Bill of Quantities/Schedule of Rates shall be used to calculate the value of the variation. If the nature of the Work in the variation does not correspond with items in the Bill of Quantities/Schedule of Rates, the quotation by the Contractor shall be in the form of new rates for the relevant items of Work.
- 13.3 If the Contractor's quotation is unreasonable, the Employer's Representative may order the variation and make a change to the Contract Price, which shall be based on the Employer's Representative's own forecast of the effects of the variation on the Contractor's costs.

### **14 Payment Certificates and Final Account**

- 14.1 The Contractor shall be paid after each of the following stages of Work listed herebelow (subject to re-measurement by the Employer's Representative of the Work done in each stage before payment is made). In case of lump-sum Contracts, the valuation for each stage shall be based on the quantities so obtained in the re-measurement and the rates in the Schedule of Rates.

- (i) Advance payment \_\_\_\_\_ (percent of Contract Price, [after Contract execution] to be inserted by the Employer).
- (ii) First stage (define stage) \_\_\_\_\_
- (iii) Second stage (define stage) \_\_\_\_\_
- (iv) Third stage (define stage) \_\_\_\_\_
- (v) After defects liability period .



14.2 Upon deciding that Works included in a particular stage are complete, the Contractor shall submit to the Employer's Representative his application for payment. The Employer's Representative shall check, adjust if necessary and certify the amount to be paid to the Contractor within 21 days of receipt of the Contractor's application. The Employer shall pay the Contractor the amounts so certified within 30 days of the date of issue of each Interim Certificate.

14.3 The Contractor shall supply the Employer's Representative with a detailed final account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Employer's Representative shall issue a Defect Liability Certificate and certify any final payment that is due to the Contractor within 30 days of receiving the Contractor's account if it is correct and complete. If it is not, the Employer's Representative shall issue within 21 days a schedule that states the scope of the corrections or additions that are necessary. If the final account is still unsatisfactory after it has been resubmitted, the Employer's Representative shall decide on the amount payable to the Contractor and issue a Final Payment Certificate. The Employer shall pay the Contractor the amount so certified within 60 days of the issue of the Final Payment Certificate.

14.4 If the period laid down for payment to the Contractor upon each of the Employer's Representative's Certificate by the Employer has been exceeded, the Contractor shall be entitled to claim simple interest calculated pro-rata on the basis of the number of days delayed at the

Central Bank of Kenya's average base lending rate prevailing on the first day the payment becomes overdue. The Contractor will be required to notify the Employer within 15 days of receipt of delayed payments of his intentions to claim interest.

## **15. Insurance**

15.1 The Contractor shall be responsible for and shall take out appropriate cover against, among other risks, personal injury; loss of or damage to the Works, materials and plant; and loss of or damage to property.

## **16. Liquidated Damages**

16.1 The Contractor shall pay liquidated damages to the Employer at the rate 0.001 per cent of the Contract price per day for each day that the actual Completion Date is later than the Intended Completion Date except in the case of any of the occurrences listed under clause 9.2. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

## **17. Completion and Taking Over**

17.1 Upon deciding that the Work is complete the Contractor shall request the Employer's Representative to issue a Certificate of Completion of the Works, upon deciding that the Work is completed.

The Employer shall take over the Site and the Works within seven days of the Employer's Representative issuing a Certificate of Completion.

## **18. Termination**

18.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract. These fundamental breaches of Contract shall include, but shall not be limited to, the following;

- (a) the Contractor stops Work for 30 days continuously without reasonable cause or authority from the Employer's Representative;
- (b) the Contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- (c) a payment certified by the Employer's Representative is not paid by the Employer to the Contractor within 30 days after the expiry of the payment periods stated in sub clauses 14.2 and 14.3 hereinabove.
- (d) the Employer's Representative gives notice that failure to correct a particular defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time.

18.2 If the Contract is terminated, the Contractor shall stop Work immediately, and leave the Site as soon as reasonably possible. The Employer's Representative shall immediately thereafter arrange for a meeting for the purpose of taking record of the Works executed and materials, goods, equipment and temporary buildings on Site.

## **19. Payment Upon Termination**

19.1 The Employer may employ and pay other persons to carry out and complete the Works and to rectify any defects and may enter upon the Works and use all materials on Site, plant, equipment and temporary works.

19.2 The Contractor shall, during the execution or after the completion of the Works under this clause, remove from the Site as and when required within such reasonable time as the Employer's Representative may in writing specify, any temporary buildings, plant,

machinery, appliances, goods or materials belonging to him, and in default thereof, the Employer may (without being responsible for any loss or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor.

- 19.3 Until after completion of the Works under this clause, the Employer shall not be bound by any other provision of this Contract to make any payment to the Contractor, but upon such completion as aforesaid and the verification within a reasonable time of the accounts therefor the Employer's Representative shall certify the amount of expenses properly incurred by the Employer and, if such amount added to the money paid to the Contractor before such determination exceeds the total amount which would have been payable on due completion in accordance with this Contract, the difference shall be a debt payable to the Employer by the Contractor; and if the said amount added to the said money be less than the said total amount, the difference shall be a debt payable by the Employer to the Contractor.

## **20. Corrupt Gifts and Payments of Commission**

20.1 The Contractor shall not;

- (a) Offer or give or agree to give to any person in the service of the Employer any gifts or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other contract with the Employer or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract with the Employer.
- (b) Any breach of this Condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) shall be an offence under the Laws of Kenya.

## **21. Settlement of Disputes**

- 21.1 Any dispute arising out of the Contract which cannot be amicably settled between the parties shall be referred by either party to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the chairman of the Chartered Institute of Arbitrators, Kenya branch, on the request of the applying party.

**SECTION V  
APPENDIX TO CONDITIONS OF CONTRACT**

THE EMPLOYER IS

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Name of Employer's Representative: \_\_\_\_\_

Title; \_\_\_\_\_

Telephone: \_\_\_\_\_

The name (and identification number) of the Contract is \_\_\_\_\_

The Works consist of \_\_\_\_\_

\_\_\_\_\_

The Start Date shall be \_\_\_\_\_

The Intended Completion Date for the whole of the Works shall be \_\_\_\_\_

\_\_\_\_\_

The following documents also form part of the Contract:

\_\_\_\_\_

\_\_\_\_\_

The Site Possession Date shall be \_\_\_\_\_

The Site is located at \_\_\_\_\_ and is defined in drawings nos.

\_\_\_\_\_

The Defects Liability Period is \_\_\_\_\_ days.

Amount of Tender Security is Kshs.....(Note: This amount should be between one (1) percent and three (3) percent of the value of the Works)

The name and Address of the Employer for the purposes of submission of tenders is.....

.....

---

**Proposed Upgrading of 1.4 km Road to Cabro Standard at Zimmerman  
Informal Settlement – Nairobi**

The tender opening date and time is.....(*insert tender opening time*)  
on ..... day of .....(*insert date of tender opening*)

The amount of performance security is Kshs.....(Note: the Employer must select the form of performance security to be accepted. A bank guarantee of between five (5) and ten (10) percent is acceptable. A performance bond on the other hand from an insurance company may be of up to thirty (30) percent of the Contract Price).

**SECTION V**

**SPECIFICATION**

## SECTION V: SPECIFICATIONS

### Notes for preparing Specifications

- 1.0 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 employer and ensure responsiveness of tenders. The Specifications should require that all materials, plant, and other supplies to be incorporated in the Works be new, unused, of the most recent or current models and incorporating all recent improvements in design and materials unless provided otherwise in the Contract. Where the Contractor is responsible for the design of any part of the permanent Works, the extent of his obligations must be stated.
- 2.0 Specifications from previous similar projects are useful and it may not be necessary to re-write specifications for every works contract for universal application.
- 3.0 There are Considerable advantages in standardizing **General Specifications** for repetitive Works in recognized public sectors, such as highways urban housing, irrigation and water supply. The General Specifications should cover all classes of workmanship, materials and equipment commonly involved in constructions, although not necessarily to be used in a particular works contract. Deletions or addenda should then adapt the General Specifications to the particular Works.
- 4.0 Care must be taken in drafting Specifications to ensure they are not restrictive. In the specifications of standards for materials, plant and workmanship, existing Kenya Standards should be used as much as possible, otherwise recognized international standards be used.
- 5.0 The Employer should decide whether technical solutions to specified parts of the Works are to be permitted. Alternatives are appropriate in cases where obvious (and potentially less costly) alternatives are possible to the technical solutions indicated in tender documents for certain elements of the Works, taking into consideration the comparative specialized advantage of potential tenderers.

The Employer should provide a description of the selected parts of the works with appropriate reference to Drawings, Specifications, Bills of Quantities, and Design or Performance criteria, stating that the alternative solutions shall be at least structurally and functionally equivalent to the basic design parameters and specifications.

Such alternative solutions shall be accompanied by all information necessary for a complete evaluation by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, proposed construction methodology, and other relevant details. Technical alternatives permitted in this manner shall be considered by the Employer each on its own merits and independently of whether the tenderer has priced the item as described in the Employer's design included with the tender documents.

## SECTION VI

## DRAWINGS



## SECTION VI: DRAWINGS

### Note

1. The actual Contract drawings including site plans should be annexed in a separate booklet.

## SECTION VII

# BILL OF QUANTITIES

## SECTION VII: BILLS OF QUANTITIES

### Notes for preparing Bills of Quantities

#### 1.0 Preamble to Bill of Quantities

- a) The Bill of Quantities shall form part of the Contract Documents and is to be read in conjunction with the Instructions to Tenderers, Conditions of Contract Parts I and II, Specifications and Drawings.
- b) The brief description of the items in the Bill of Quantities is purely for the purpose of identification, and in no way modifies or supersedes the detailed descriptions given in the conditions of Contract and Specifications for the full direction and description of work and materials.
- c) The Quantities set forth in the Bill of Quantities are estimated and provisional, representing substantially the work to be carried out, and are given to provide a common basis for tendering and comparing of Tenders. There is no guarantee to the Contractor that he will be required to carry out all the quantities of work indicated under any one particular item or group of items in the Bill of Quantities. The basis of payment shall be the Contractor's rates and the quantities of work actually done in fulfillment of his obligation under the Contract.
- d) The prices and rates inserted in the Bills of Quantities will be used for valuing work executed, and the Engineer will measure the whole of the works executed in accordance with this Contract.
- e) A price or rate shall be entered in ink against every item in the Bill of Quantities with the exception of items, which already have provisional sums, affixed thereto. The Tenderers are reminded that no "nil" or "included" rates or "lump-sum" discounts will be accepted. The rates for various items should include discounts if any. Tenderers who fail to comply will be disqualified.
- f) Provisional sums (including Dayworks) in the Bill of Quantities shall be expended in whole or in part at the discretion of the Engineer in accordance with Sub-clause 52.4 and Clause 58 of part of the Conditions of Contract.
- g) The price and rates entered in the Bill of Quantities shall, except insofar as it is otherwise provided under the Contract, include all Constructional plant to be used, labour, insurance, supervision, compliance, testing, materials, erection, maintenance or works, overheads and profits, taxes and duties together with all general risks, liabilities and obligations set out or implied in the Contract, transport, electricity and telephones, water, use and replenishment of all consumables, including those required under the Contract by the Engineer and his staff.
- h) Errors will be corrected by the Employer for any arithmetic errors in computation or summation as follows:

- (a) Where there is a discrepancy between amount in words and figures, the amount in words will govern; and
  - (b) Where there is a discrepancy between the unit rate and the total amount derived from the multiplication of the unit price and the quantity, the unit rate as quoted will govern, unless in the opinion of the Employer, there is an obviously gross misplacement of the decimal point in the unit price, in which event the total amount as quoted will govern and the unit rate will be corrected.
  - (c) If a Tenderer does not accept the correction of errors as outlined above, his Tender will be rejected.
- i) The Bills of Quantities, unless otherwise expressly stated therein, shall be deemed to have been prepared in accordance with the principles of the latest edition of the Civil Engineering Standard Method of Measurement (CESMM).
  - j) “Authorised” “Directed” or “Approved” shall mean the authority, direction or approval of the Engineer.
  - k) Unless otherwise stated, all measurements shall be net taken on the finished work carried out in accordance with the details shown on the drawings or instructed, with no allowance for extra cuts or fills, waste or additional thickness necessary to obtain the minimum finished thickness or dimensions required in this Contract. Any work performed in excess or the requirements of the plans and specifications will not be paid for, unless ordered in writing by the Engineer.
  - l)
    - (a) Hard material, in this Contract, shall be defined as the material which, in the opinion of the Engineer, require blasting, or the use of metal wedges and sledgehammers, or the use of compressed air drilling for their removal, and which cannot be extracted by ripping with a dozer tractor of at least 150 brake horse power (112 kilowatt) with a single, rear-mounted, hydraulic ripper. Boulders of more than 0.2m<sup>3</sup> occurring in soft material shall be classified as hard material
    - (b) Soft material shall be all material other than hard material.

2.0 The objectives of the Bills of Quantities are;

- (a) to provide sufficient information on the quantities of Works to be performed to enable tenders to be prepared efficiently and accurately;
- and
- (b) When a Contract has been entered into, to provide a priced Bills of Quantities for use in the periodic valuation of Works executed.

In order to attain these objectives, Works should be itemized in the Bills of Quantities in sufficient detail to distinguish between the different classes of Works, or between Works of the same nature carried out in

different locations or in other circumstances which may give rise to different considerations of cost. Consistent with these requirements, the layout and content of the Bills of Quantities should be as simple and brief as possible.

**3.0 The Bills of Quantities should be divided generally into the following sections:**

**(a) Preliminaries.**

The preliminaries should indicate the inclusiveness of the unit prices, and should state the methods of measurement which have been adopted in the preparation of the Bills of Quantities and which are to be used for the measurement of any part of the Works.

The number of preliminary items to be priced by the tenderer should be limited to tangible items such as site office and other temporary works, otherwise items such as security for the Works which are primarily part of the Contractor's obligations should be included in the Contractor's rates.

**(b) Work Items**

- (i) The items in the Bills of Quantities should be grouped into sections to distinguish between those parts of 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. General items common to all parts of the Works may be grouped as a separate section in the Bills of Quantities.
- (ii) The brief description of the items in the Bill of Quantities should in no way modify or supersede the detailed descriptions given in the Contract drawings, Conditions of Contract and Specifications.
- (iii) Quantities should be computed net from the Drawings, unless directed otherwise in the Contract, and no allowance should be made for bulking, shrinkage or waste. Quantities should be rounded up or down where appropriate.
- (iv) The following units of measurement and abbreviations are recommended for use.

<i>Unit</i>	<i>Abbreviation</i>	<i>Unit</i>	<i>Abbreviation</i>
cubic meter	M <sup>3</sup> or cu m	millimeter	mm
hectare	ha	month	mon
hour	h	number	nr
kilogram	kg	square meter	m <sup>2</sup> or sq m
lump sum	sum	square millimeter	mm <sup>2</sup> or sq mm
meter	m	week	wk
metric ton (1,000 kg)	t	measured separately	m.s.

- (v) The commencing surface should be identified in the description of each item for Work involving excavation, boring or drilling, for which the commencing surface is not also the original surface. The excavated surface should be identified in the description of each item for Work involving excavation for which the excavated surface is not also the final surface. The depths of Work should be measured from the commencing surface to the excavated surface, as defined.

**(c) Daywork Schedule**

A Daywork Schedule should be included if the probability of unforeseen work, outside the items included in the Bills of Quantities is relatively high. To facilitate checking by the Employer of the realism of rates quoted by the tenderers, the Daywork Schedule should normally comprise:

- (i) A list of the various classes of labour, and materials for which basic Daywork rates or prices are to be inserted by the tenderer, together with a statement of the conditions under which the Contractor will be paid for Work executed on a Daywork basis; and
- (ii) A percentage to be entered by the tenderer against each basic Daywork Subtotal amount for labour, materials and plant representing the Contractor's profit, overheads, supervision and other charges.

#### (d) Provisional Quantities and Provisional Sums

- i. Provision for quantity contingencies in any particular item or class of Work with a high expectation of quantity overrun should be made by entering specific “Provisional Quantities” or “Provisional Items” in the Bills of Quantities, and *not* by increasing the quantities for that item or class of Work beyond those of the Work normally expected to be required. To the extent not covered above, a general provision for physical contingencies (quantity overruns) should be made by including a “Provisional Sum” in the Summary of the Bills of Quantities. Similarly, a contingency allowance for possible price increases should be provided as a “Provisional Sum” in the Summary of the Bills of Quantities. The inclusion of such provisional sums often facilitates budgetary approval by avoiding the need to request periodic supplementary approvals as the future need arises.
- ii. Provisional Sums to cover specialized works normally carried out by Nominated Sub Contractors should be avoided and instead Bills of Quantities of the specialised Works should be included as a section of the main Bill of Quantities to be priced by the Main Contractor. The Main Contractor should be required to indicate the name (s) of the specialised firms he proposes to engage to carry out the specialized Works as his approved domestic sub-contractors. Only Provisional Sums to cover specialized Works by statutory authorities should be included in the Bills of Quantities.
- iii. Unless otherwise provided in the Contract, the Provisional Sums included in the Bills of Quantities should always be expended in whole or in part at the discretion of the Engineer after full consultation with the Employer.

#### (e) Summary

The Summary should contain a tabulation of the separate parts of the Bills of Quantities carried forward, with Provisional Sums for Dayworks, physical (quantity) contingencies, and price contingencies (upward price adjustment) where applicable.

## **SPECIAL NOTES TO TENDERERS**

- a) The tenderer is required to check the number of pages of these Bills of Quantities and should he find any missing in duplicate or indistinct he must inform the Quantity Surveyor at once and have the same rectified.
- b) Should the Tenderer be in doubt about the precise meaning of any item or figure for any reason whatsoever he must inform the Project Manager in order that the correct meaning may be determined before the date for submission of tenders.
- c) No liability will be admitted or claim allowed in respect of errors in the Tenderers offer due to mistakes in the Bills of Quantities which should have been rectified in the manner described above.
- d) The Tenderer shall not alter or otherwise qualify the text of these Bills of Quantities. Any alteration or qualification made without authority will be ignored and the printed text will be adhered to.
- e) In no case will any expenses incurred by the Tenderer in preparation of this Tender be allowed.
- f) The contractor will be required to enter into contract which will be the latest Form of Agreement and Schedule of conditions of Building contract for small works (With Quantities) prepared by the Public Procurement Directorate, Ministry of Finance excepting in so far as varied hereinafter.
- g) All work in this contract shall be re-measured on completion and a final account of the contract prepared by the project Manager. The contractor will be given the opportunity to be present for all re-measurements. The final contract sum will be based on the final re-measurements. The Contractor is therefore cautioned against using the bills of quantities for ordering of materials as the quantities may change in the course of the contract. Neither should the contractor use the Quantities in the Bills of Quantities for executing work on site. The use of the bills of quantities by the contractor the above purposes shall be at the contractors own risk and no claims arising from any losses arising therefrom shall be accepted.
- h) The Copyright of these documents is vested in The Government of Kenya. This document may not be reproduced in whole or in part without their written permission. It shall also not be used for any other purpose other than the proposed project as measured and described in these Bills of Quantities.



Item	Description	Shs	Cts																											
A	<p><b>Section No. 1</b></p> <p style="text-align: center;"><b><u>PRELIMINARIES</u></b></p> <p><u>Sufficiency of Tender</u></p> <p>The Contractor shall be deemed to have satisfied himself before tendering as to the correctness and sufficiency of his Tender for the Works and of the rates and prices stated in the priced Bills of Quantities which rates and prices shall cover all his obligations under the Contract and all matters and things necessary for the proper completion and maintenance of the Works.</p>																													
B	<p><u>Definition of Terms and Abbreviations</u></p> <p>The Terms and Abbreviations used in this Bills of Quantities shall be interpreted as follows:-</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 15%;">“K.S.”</td> <td style="width: 25%;">shall mean</td> <td style="width: 60%;">Kenya Standard Specification published by The Kenya Bureau of Standards, P.O. Box 10610, Nairobi</td> </tr> <tr> <td>“B.S.”</td> <td>shall mean</td> <td>The current British Standard of Specification published by the British Standards Institution, 2 Park Street, London, W.1 England</td> </tr> <tr> <td>“NO.”</td> <td>shall Mean</td> <td>Number</td> </tr> <tr> <td>“L.M.”</td> <td>shall Mean</td> <td>Linear metres</td> </tr> <tr> <td>“S.M.”</td> <td>shall Mean</td> <td>Square metres</td> </tr> <tr> <td>“C.M.”</td> <td>shall Mean</td> <td>Cubic metres</td> </tr> <tr> <td>“Ditto.”</td> <td>shall Mean</td> <td>The whole of preceding description except where it occurs in brackets, it shall mean the whole of the preceding description which is contained within the appropriate.</td> </tr> <tr> <td>“MS”</td> <td>shall Mean</td> <td>Measured separately</td> </tr> <tr> <td>“B.S.M.”</td> <td>shall Mean</td> <td>Both sides Measured</td> </tr> </table>	“K.S.”	shall mean	Kenya Standard Specification published by The Kenya Bureau of Standards, P.O. Box 10610, Nairobi	“B.S.”	shall mean	The current British Standard of Specification published by the British Standards Institution, 2 Park Street, London, W.1 England	“NO.”	shall Mean	Number	“L.M.”	shall Mean	Linear metres	“S.M.”	shall Mean	Square metres	“C.M.”	shall Mean	Cubic metres	“Ditto.”	shall Mean	The whole of preceding description except where it occurs in brackets, it shall mean the whole of the preceding description which is contained within the appropriate.	“MS”	shall Mean	Measured separately	“B.S.M.”	shall Mean	Both sides Measured		
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	<b>Carried collection</b>																													

Item	Description	Shs	Cts
	<p><b>Section No. 1 cont...</b></p> <p>“P.C.” shall mean Prime Cost</p> <p>“75 mm to 150 mm” shall mean Exceeding 75mm but not exceeding 150 mm in girth, and oil items described in this manner shall be similarly construed.</p> <p>“A small pipe” shall mean: Any pipe not exceeding 55mm internal diameter</p> <p>“A large pipe” shall mean: Any pipe exceeding 55mm internal diameter and not exceeding 110mm internal diameter</p> <p>“An extra large pipe” shall mean: Any pipe exceeding 110mm internal diameter</p> <p><u>Access to site and Temporary Roads</u></p> <p>A Means of access to the Site shall be agreed with the Project Manager prior to the commencement of the works and the contractor must allow for building any temporary access roads for the transport of materials, plant and workmen as may be required for the complete execution of the Works including the provision of the temporary culverts, crossings, bridges or any other means of gaining access.</p> <p>Upon the completion of the Works, the Contractor shall remove such temporary roads, culverts, bridges, etc, and make good and reinstate all works and services disturbed to the satisfaction of the Project Manager.</p> <p><u>Area to be Occupied by the Contractor</u></p> <p>B The area of the site which may be occupied by the Contractor for use as storage and for the purpose of erecting workshops, etc. shall be defined on the site by the Project Manager.</p>		
	<b>Carried collection</b>		

Item	Description	Shs	Cts
<p>A</p> <p>B</p> <p>C</p>	<p><b><u>Section No. 1 cont....</u></b></p> <p><b><u>Progress Schedule</u></b> Immediately after the signing of the contract, the contractor is to cooperate with the project Manager in the Preparation of a Time and Progress Schedule, and the Works are to proceed in such a manner as agreed. It is the intention also that this schedule shall be the basis for ordering materials on time, and will also be used as the basis for determining commencement and completion dates for the Sub Contractors, etc.</p> <p><b><u>Setting out</u></b> The Contractor shall set out the Works in accordance with the dimension and levels shown on the Drawings and shall be responsible for the correctness of all dimensions and levels so set out by him and will be required to amend all errors arising from inaccurate setting out at his own cost and expense. In the even of any error or discrepancy in the dimensions or levels marked on the Drawings being discovered, such errors or discrepancies by the Contractor to the Project Manager for his immediate attention.</p> <p>No work shall be commenced by the Contractor until he has received written instruction from the Project Manager to adjust such discrepancies which may be proved. Upon receipt of such instructions, the Contractor shall thereupon be responsible for accurate setting out of the Works, giving effect to the adjustments necessary to comply with such instructions and no claim for extra expense or relief from the provision of Clause 5 of the Conditions of Contract based on any discrepancy or error in the dimensions or levels shown on the drawings may be made thereafter.</p> <p>Before any work is commenced by the Sub-Contractors or Specialized Firms, dimensions must be checked on the Site and / or buildings and agreed with the Contractor, irrespective of the comparative dimensions shown on the Drawings. The Contractor shall be responsible for the accuracy of such dimensions.</p> <p><b><u>Existing Services</u></b> Prior to the commencement of any Work, the Contractor is to ascertain from the relevant Authorities the exact position, depth and levels of all existing electric cables, water pipes 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 service shall be reported immediately to the Project Manager and the relevant Authority shall be made good to their satisfaction at the Contractors expense.</p>		
	<b>Carried collection</b>		

Item	Description	Shs	Cts
	<u>Section No. 1 cont....</u>		
A	<p><u>Transport to and from the Site</u></p> <p>The Contractor shall include in his prices for the transport of materials, workmen, etc, and to and from the Site of the proposed Works, at such hours and such routes as are permitted by the Authorities.</p>		
B	<p><u>Public and Private Roads, pavements, etc</u></p> <p>The Contractor will be required to make good, at his own expense, any damage he may cause to the present road surfaces and pavements during the period of the Works. In particular all the existing lawns, gardens, storm water channels, hedges, fences, etc, which may be destroyed or damaged during the progress of the Works are to be made good by the contractor to the approval of the Project Manager.</p>		
C	<p><u>Security of the Works</u></p> <p>The Contractor shall be entirely responsible for the security of all the Works, stores, materials, plant, personnel, etc, both of his own Sub-Contractors', and shall provide all necessary watching, lighting and other precautions as necessary as to ensure the security and protection of the public.</p>		
D	<p><u>Water</u></p> <p>The Contractor may tap the existing water supply at a convenient point to be agreed with the Employer. He shall provide a water meter at the point of a junction between the temporary and the permanent supply and shall pay the Employer for the water used at the same rate as currently charged by the Local Authority. All necessary temporary piping and storage tanks must be provided by the Contractor and cleared way on completion.</p>		
E	<p><u>Electric Light and Power</u></p> <p>The Contractor shall, if so required, arrange, with Power and Lighting Authority for a metered supply to site and shall pay all charges for the same and for electric current consumed during the period of the Works.</p> <p>He shall make his own arrangements with the Sub-Contractors for current provide</p>		
	<b>Carried collection</b>		

Item	Description	Shs	Cts
	<b>Section No. 1 cont....</b>		
A	<u>Telephone</u>  The contractor shall arrange for, provide and maintain a wireless or mobile phone on the Site from the commencement to the completion of the Contract and shall pay all charges in connection therewith.		
B	<u>Temporary Buildings for use by the Contractor &amp; project management team.</u>  The contractor shall at his own cost, supply and erect all temporary buildings, sheds, mess rooms and stores with floors at least 150mm above ground level. No office, stores or other temporary buildings shall be erected on Site without first obtaining the consent from the Project Manager as to the type of temporary building to be supplied and the position in which they are to be erected.		
	<u>Sheds for Storage of Materials</u>		
C	The Contractor shall provide and maintain on the Site, ample weatherproof sheds for storage of cement and other perishable materials and shall clear the same away on completion and make good any disturbed surfaces.		
	<u>Project Supervision</u>		
D	Allow a Provisional sum of Kshs. 250,000/- for project supervision team allowances, monitoring/evaluation and facilitation of site meetings.		
	Allow for Contractors profits & overhead .....%	250,000	
E	<u>Signboard</u>		
F	Provide and erect where directed and maintain during the whole period of building operations and remove at completion, two (2No) approved temporary signboards to the Project Manager's standard design and giving the title of the Works and showing the names of the Employer, Project Manager, and the Contractor with sufficient space to add the names of the nominated Sub-Contractors and suppliers. The lettering concerning the Project Manager should not be more than 50mm high.		
	<b>Carried collection</b>	<b>Shs</b>	

Item	Description	Shs	Cts
<p>A</p> <p>B</p> <p>C</p>	<p><b><u>Section No. 1 cont....</u></b></p> <p><b><u>Sanitation of the Works</u></b></p> <p>Sanitation of the Works shall be arranged and maintained by the Contractor to the satisfaction of the Government and Local Authorities, Labour Department and the Project Manager.</p> <p><b><u>Materials, Tools, Plant and Scaffolding</u></b></p> <p>All materials and workmanship used in the execution of the Work shall be of the best quality and description unless otherwise described. Any materials for the Works condemned by the Project Manager shall immediately be removed from the Site at the Contractor's expense.</p> <p>The Contractor shall be responsible for the provision of all materials, scaffolding, tools, plants, transport and workmen required for the Works except insofar as may be stated otherwise herein and he shall allow for the provision of the foregoing except for such items specifically and only required for the use of the Nominated Sub-Contractors as described herein.</p> <p>No timber used for scaffolding, formwork or similar purpose shall be used afterwards in the permanent Works.</p> <p>All such plant, tools and scaffolding shall comply with all regulations whether general or local in force throughout the period of the Contract and shall be altered or adapted during the Contract as may be necessary to comply with any amendments in / or additions to such regulations.</p> <p><b><u>Supervision and Working Hours</u></b></p> <p>The said Works shall be executed under the direction and to the entire satisfaction of the Project Manager, who shall at all times during normal working hours have access to the Works and to the yards and the workshops of the Contractor and Sub-Contractor or other places where work is being prepared for the Contract.</p> <p>The working hours shall be those generally worked by good employers in the Building and Civil Engineering Trade in Kenyan. No work shall be carried out at night or gazetted holidays unless the Project Manager shall so direct.</p> <p>No work shall be covered up nor shall any concreting be carried out in the absence of the Clerk of Works without the prior approval of the Project Manager in writing.</p>		
	<b>Carried collection</b>	<b>Shs</b>	

Item	Description	Shs	Cts
	<u>Section No. 1 cont...</u>		
A	<u>Training</u>  Allow in the Preliminaries of this Contract a provisional sum of Kenya shillings (Kshs) 100,000/- for training of project Manager's officers as approved & directed by the Project Manager.  Allow for contractors profits & overheads.....%	100,000	
B	<u>Existing Property</u>  The contractor shall take every precaution to avoid damage to all existing property including roads, cables, drains and other services and he will be held responsible for all damage thereto, arising from the execution of this Contract, and he shall make good all such damages when directed at his own expenses.		
C	<u>Protection of the Works</u>  The Contractor shall cover up and protect all finished works liable to damage including provision of temporary roofs, gutters, drains, etc, until the completion of the Works. In the even of any damage occurring to the Works materials, sewers, drains, gullies, paths or other Works on the Site temporarily in the possession of the Contractor alone shall be responsible and shall without extra charges, make good all damages and pay all costs which may be levied.		
D	<u>Standard Measures</u>  All dimensions and measures, etc, shown on the Drawings and given in this Bills of quantities shall be metric.		
	<b>Carried collection</b>		

Item	Description	Shs	Cts
A	<p><b><u>Section No. 1 cont...</u></b></p> <p><b><u>Bills of Quantities</u></b></p> <p>The whole of the Works contained in these Bills of Quantities is measured on the basis of the Standard method of Measurements of the Building Works for the Republic of Kenya, Second Edition.</p> <p>The Method of Measurements herein used must be accepted and will be strictly adhered to for the adjustments of variations or for re-measurements as necessary. The whole of the quantities in these Bills, unless expressly otherwise stated, have been arrived at by taking the net measurements of various items of completed Works from the Drawings.</p> <p>All the Works in this Contract that is liable to adjustment has been measured as “Provisional” in these Bills of Quantities, and no excavation or foundation work or other works so described shall be filled in or covered up until all measurement needed for the Adjustments of Variations under clause 11 of the conditions of Contract have been made by the Project Manager.</p> <p>The rates set out by the Contractor against each item shall, unless otherwise expressly provided to the contrary, or unless there is a separate item for extra labour, cutting or waste, be held to include for waste on materials, carriage and cartage, carrying in and return of empties, hoisting, setting, fitting and fixing in position, making good and all other labours and everything else necessary for the completion of each item and for establishment charges and profit.</p> <p>Throughout the Bills of Quantities generally, no mention is made of heights for hoisting and all prices must include for hoisting and fixing at any level within the limit shown on the Drawings or included in the general description unless a specific level is stated.</p> <p>The Contractor shall be deemed to have made allowance in his rates generally to cover items of Preliminaries expenses in connection with P.C Sums or other items if these have not been priced against the respective items.</p> <p>These Bills of Quantities have been prepared in the elemental form and each element contains work in various trades. For the purpose of pricing, the Bills of Quantities may be taken apart and each trade collected together but when the Tender is submitted the Bills of quantities must be re-assembled in the correct order.</p>		
	<b>Carried collection</b>		



ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT (KSHS)	Cts
	<b><u>ROAD SETTING OUT</u></b>					
A	Allow for surveying of the road including alignment, setting out width of carriage way, shoulders, vertical curves, and the size of drainage.	ITEM	ITEM			
B	Ditto preparations of civil works engineering drawings.	ITEM	ITEM			
C	Ditto geotechnical engineering survey for the underlying soils within the road area.	ITEM	ITEM			
	<b><u>SUBSTRUCTURE WORKS (ALL PROVISIONS)</u></b>					
	<b><u>CARRIAGE WAY</u></b>					
D	Excavate on carriageway commencing ground level but not exceeding 1.5m deep	CM	11550			
E	Ditto on shoulders ditto	CM	3150			
F	Planking and strutting to sides of the excavation	ITEM	ITEM			
G	Keeping excavation from general water	ITEM	ITEM			
H	Backfill the carriageway excavation commencing on bottom of trench up to ground floor level with approved hardcore fill packed and compacted in layers of 250mm thick.	CM	10500			
I	Ditto road shoulders	CM	3000			
J	Build up levels of carriage way with approved gravel (murrum) commencing from firm carriage way level, compacted in layers of 150mm thick to a maximum dry density of 95% as directed by the civil Engineer.	CM	3150			
	Carried to collection				-	

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT (KSHS)
A	Allow for ant termite treatment for the surface	SM	7700		
B	Ditto to road shoulders ditto	CM	2100		
C	Supply and fix precast road kerbs of class 30/20 (mix cement: sand: ballast, 1:1:2) Chamfered once on top and anchored with concrete surrounded (mix 1:3:6 cement: sand: Ballast) on both sides of the road and as directed by the civil Engineer.	L	2800		
D	Ditto road channels to serve as road drainage between the carriage way and the precast kerbs.	L	1400		
E	Supply and fix 80mm thick paving blocks on Quarry dust as directed by the civil Engineer.	SM	7700		
F	Set the fall on one direction towards the storm drain channel approximately 2.5%	SM	7700		
G	Clear the surface with clean river sand including compacting using plate compactor.	SM	7700		
H	<b><u>DRAINAGE</u></b> Set out the storm water drainage on one side of the carriage way as directed by the Civil Engineer.	L	1400		
I	Establish the correct levels of the drainage as directed	ITEM	50000		
J	Cast 150mm thick concrete class 25/20 (1:1.5:3) on bottom of drainage bed.	CM	315		
	Carried to collection				-

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT (KSHS)
A	<b><u>DRAINAGE (CONT'D)</u></b>  Allow for <b>shaping</b> of storm drain to achieve the shape of trapezoid as directed by the Civil Engineer	L	1400		
B	Ditto stone pitching filled up with 1:3 cement:sand mortar as directed Civil Engineer.	SM	2100		
C	Allow for gulley traps to arrest surface storm water on sides of the road carriage way, spaced 2000mm c/c	NO	701		
	Total to collection below				
	<b>COLLECTION</b>				
	Brought forward from pg 1				
	Brought forward from pg 2				
	Brought forward from above				
	<b>TOTAL FOR ROADWORKS CARRIED TO SUMMARY PAGE</b>				-

<b>Item</b>	<b>Description</b>	<b>Unit</b>	<b>Qty</b>	<b>Rate</b>	<b>Amount</b>
	<b>SECTION 3: PROVISIONAL &amp; PRIME COSTS SUMS</b>				
A	Allow for provisional sums of Kenya shillings Two million for relocation of services (Kshs 2,000,000/-) .				2,000,000
B	Allow provisional sum of Kshs 500,000 to Regional Works office for supervision and liaison in the project as directed by the Project Manager.				500,000
C	Allow a provisional sum of Kenya Shillings Two Hundred thousand (Kshs.200, 000/=) for environmental impact assessment costs as approved by the Engineer and directed by the Project Manager.				200,000
D	Allow provisional Sums of Two Hundred Thousands (Kshs 200,000/-) for airtime for the Project Manager's Team as approved and directed by the Project Manager.				200,000
	<b>Totals Carried summary page</b>	<b>Kshs</b>			

Item	Description	Unit	Qty	Rate	Amount
	<b><u>MAIN SUMMARY</u></b>				
1	<b>PRELIMINARIES</b>				
2	<b>TOTAL FOR ROAD WORKS</b>				
3	<b>PROVISIONAL AND PRIME COST SUMS</b>				
	<b>SUB TOTAL 1</b>				
4	<b>ALLOW FOR 10% CONTINGENCIES</b>				
	<b>SUB-TOTAL 2</b>				
	<b>Add 16% V.A.T</b>				
	<b>TOTAL AMOUNT CARRIED TO FORM OF TENDER</b>				
	CONTRACTOR: ..... ..... SIGNED..... ADDRESS:..... ..... WITNESS: ..... ..... SIGNED:..... DESIGNATION:.....				

## SECTION VIII

### STANDARD FORMS

## SECTION VIII: STANDARD FORMS

### *LIST OF STANDARD FORMS*

- (i) Form of Invitation for Tenders
- (ii) Form of Tender
- (iii) Appendix to Form of Tender
- (iv) Letter of Acceptance
- (v) Form of Agreement
- (vi) Form of Tender Security
- (vii) Performance Bank Guarantee (unconditional)
- (viii) Bank Guarantee for Advance Payment
- (ix) Tender Questionnaire
- (xi) Confidential Business Questionnaire
- (x) Statement of Foreign Currency Requirement
- (xi) Schedule of Materials;- Basic Prices
- (xii) Schedule of Labour;- Basic Prices
- (xiii) Schedule of Plant and Equipment
- (xv) Details of Sub-Contractors
- (xvi) Certificate of Tenderer's Site visit
- (xvii) Form of Written Power of Attorney
- (xviii) Key Personnel
- (xix) Completed Civil Works
- (xx) Schedule of Ongoing Projects
- (xxi) Other Supplementary Information

**FORM OF INVITATION FOR TENDERS**

\_\_\_\_\_ *[date]*

To: \_\_\_\_\_ *[name of Contractor]*  
\_\_\_\_\_ *[address]*  
\_\_\_\_\_  
\_\_\_\_\_

Dear Sirs:

**REFERENCE: Proposed Upgrading of 1.4 km Road to Cabro Standards at  
Zimmerman Informal Settlement – Nairobi**

You have been prequalified to tender for the above project.

We hereby invite you and other prequalified tenderers to submit a tender for the execution and completion of the above Contract.

A complete set of tender documents may be purchased by you from  
**The Principal Secretary**  
**State Department of Housing and Urban Development**  
**P.O BOX 30450-00100**  
**NAIROBI**

Upon payment of a non-refundable fee of **Kshs. 1,000.00**

All tenders must be accompanied by **2** numbers of copies of the same and a security in the form and amount specified in the tendering documents, and must be delivered to

**The Principal Secretary**  
**State Department of Housing and Urban Development**  
**P.O BOX 30450-00100**  
**NAIROBI**

at or before 10.00 O'clock \_\_\_\_\_ day of \_\_\_\_\_ 2019. Tenders will be opened immediately thereafter, in the presence of tenderers' representatives who choose to attend.

Please confirm receipt of this letter immediately in writing by cable/facsimile or telex.

Yours faithfully,

\_\_\_\_\_  
**Principal Secretary**



**FORM OF TENDER**

**TO: The Principal Secretary** \_\_\_\_\_ [Date]  
**State Department of Housing and Urban Development**  
**P.O BOX 30450-00100**  
**NAIROBI**

**RE: PROPOSED UPGRADING OF 1.4 KM ROAD TO CABRO STANDARDS AT ZIMMERMAN INFORMAL SETTLEMENT – NAIROBI.**

Dear Sir,

1. In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Quantities for the execution of the above named Works, we, the undersigned offer to construct, install and complete such Works and remedy any defects therein for the sum of Kshs. \_\_\_\_\_ *[Amount in figures/Kenya Shillings*  
\_\_\_\_\_ *[Amount in words]*
2. We undertake, if our tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Project Manager’s notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Appendix to Conditions of Contract.
3. We agree to abide by this tender until \_\_\_\_\_ *[Insert date]*, and it shall remain binding upon us and may be accepted at any time before that date.
4. Unless and until a formal Agreement is prepared and executed this tender together with your written acceptance thereof, shall constitute a binding Contract between us.
5. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2019 \_\_\_\_\_

Signature \_\_\_\_\_ in the capacity of \_\_\_\_\_

duly authorized to sign tenders for and on behalf of  
\_\_\_\_\_ *[Name of the Tenderer]*  
of \_\_\_\_\_ *[Address of Tenderer]*

Witness; Name \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

**APPENDIX TO FORM OF TENDER**  
(This appendix forms part of the tender)

<b>CONDITIONS OF CONTRACT</b>	<b>CLAUSE</b>	<b>AMOUNT</b>
Tender Security (Bank Guarantee only)		<b>Kshs 400,000/=</b>
Amount of Performance Security (Unconditional Bank Guarantee)	10.1	<b>10%</b> percent of Tender Sum in the form of Unconditional Bank Guarantee
Program to be submitted	14.1	Not later than <b>28</b> days after issuance of Order to Commence
Cashflow estimate to be submitted	14.3	Not later than <b>28</b> days after issuance of Order to Commence
Minimum amount of Third Party Insurance	23.2	<b>Kshs.100,000/=</b>
Period for commencement, from the Project Manager order to commence	41.1	<b>21 days</b>
Time for completion	43.1	<b>15 weeks</b>
Amount of liquidated damages	47.1	Kshs. <b>3000</b> per day
Limit of liquidated damages	47.1	<b>10%</b> of Contract Value
Defect Liability period	49.1	<b>6 Months</b>
Percentage of Retention	60.5	<b>10%</b> of Interim Payment Certificate
Limit of Retention Money	60.5	<b>10 %</b> of Contract Sum
Minimum amount of interim certificates	60.2	<b>Contract value/Time for completion in months</b>
Time within which payment to be made after Interim Payment Certificate signed by Engineer	60.8	<b>30 days</b>
Time within which payment to be made after Final Payment Certificate signed by Engineer	60.8	<b>60 days</b>
Appointer of Arbitrator	67(3)	Chief Justice of The Republic of Kenya
Notice to Employer and Engineer	68.2	The Employers address is: Principal Secretary, State Department of Housing and Urban Development P.O.Box 30450-00100 <u>NAIROBI</u>  The Engineer's address is: The County Secretary, Nairobi City COUNTY P.O BOX NAIROBI

Signature of Tender..... Date.....

LETTER OF ACCEPTANCE



MINISTRY OF TRANSPORT, INFRASTRUCURE, PUBLIC WORKS  
HOUSING AND URBAN DEVELOPMENT

Telegrams "MIDLANDS", Nairobi  
Telephone: (02) 2718050  
Fax: (02) 2734886  
When replying please quote

ARDHI HOUSE  
NGONG ROAD  
P.O. BOX 30450-00100  
NAIROBI

Ref.no: \_\_\_\_\_

Date.....

To: \_\_\_\_\_  
[Name of the Contractor]

\_\_\_\_\_  
[Address of the Contractor]

Dear Sir,

This is to notify you that your Tender dated \_\_\_\_\_  
for the execution of **Proposed Upgrading of 1.4 km Road to Cabro Standards at  
Zimmerman Informal Settlement – Nairobi** : **Tender No.  
MTIHU/DH/SUD/KENSUP/32/2018-2019** for the Contract Price of  
Kshs. \_\_\_\_\_ [amount in figures] Kenya  
Shillings \_\_\_\_\_ (amount in words) ] in accordance with the  
Instructions to Tenderers is hereby accepted.

You are hereby instructed to proceed with the execution of the said Works in accordance  
with the Contract documents.

Authorized Signature .....

Name and Title of Signatory .....

Attachment: Agreement

## FORM OF AGREEMENT

THIS AGREEMENT, made the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ between \_\_\_\_\_ of [or whose registered office is situated at] \_\_\_\_\_ (hereinafter called “the Employer”) of the one part AND \_\_\_\_\_ of [or whose registered office is situated at] \_\_\_\_\_ (hereinafter called “the Contractor”) of the other part.

WHEREAS THE Employer is desirous that the Contractor executes **Proposed Upgrading of 1.4 km Road to Cabro Standards at Zimmerman Informal Settlement – Nairobi: Tender No. MTIHU/DH/SUD/KENSUP/32/2018-2019** (hereinafter called “the Works”) located at \_\_\_\_\_ and the Employer has accepted the tender submitted by the Contractor for the execution and completion of such Works and the remedying of any defects therein for the Contract Price of Kshs \_\_\_\_\_ [*Amount in figures*], Kenya Shillings \_\_\_\_\_ [*Amount in words*].

NOW THIS AGREEMENT WITNESSETH as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and shall be read and construed as part of this Agreement i.e.
  - (i) Letter of Acceptance
  - (ii) Form of Tender
  - (iii) Conditions of Contract Part I
  - (iv) Conditions of Contract Part II and Appendix to Conditions of Contract
  - (v) Specifications
  - (vi) Drawings
  - (vii) Priced Bills of Quantities
3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.

4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties thereto have caused this Agreement to be executed the day and year first before written.

The common Seal of \_\_\_\_\_

Was hereunto affixed in the presence of \_\_\_\_\_

Signed Sealed, and Delivered by the said \_\_\_\_\_

Binding Signature of Employer \_\_\_\_\_

Binding Signature of Contractor \_\_\_\_\_

In the presence of (i) Name \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_

[ii] Name \_\_\_\_\_

Address \_\_\_\_\_

Signature \_\_\_\_\_

**FORM OF TENDER SECURITY**

WHEREAS ..... (hereinafter called “the Tenderer”) has submitted his tender dated ..... for the construction of **Proposed Upgrading of 1.4 km Road to Cabro Standards at Zimmerman Informal Settlement – Nairobi Tender No. MTIHU/DH/SUD/KENSUP/32/2018-2019.**

KNOW ALL PEOPLE by these presents that WE ..... having our registered office at .....(hereinafter called “the Bank”), are bound unto **The Principal Secretary, State Department of Housing and Urban Development** (hereinafter called “the Employer”) in the sum of Kshs..... for which payment well and truly to be made to the said Employer, the Bank binds itself, its successors and assigns by these presents sealed with the Common Seal of the said Bank this ..... Day of .....2019.

THE CONDITIONS of this obligation are:

1. If after tender opening the tenderer withdraws his tender during the period of tender validity specified in the instructions to tenderers  
Or
2. If the tenderer, having been notified of the acceptance of his tender by the Employer during the period of tender validity:
  - (a) Fails or refuses to execute the form of Agreement in accordance with the Instructions to Tenderers, if required; or
  - (b) Fails or refuses to furnish the Performance Security, in accordance with the Instructions to Tenderers;
  - (c) Rejects a correction of an arithmetic error in the tender.

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

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

_____ <i>[date]</i>	_____ <i>[signature of the Bank]</i>
_____ <i>[witness]</i>	_____ <i>[seal]</i>

(Amend accordingly if provided by Insurance Company)

**PERFORMANCE BANK GUARANTEE (UNCONDITIONAL)**

**TO: The Principal Secretary** \_\_\_\_\_ [Date]  
**State Department of Housing and Urban Development**  
**P.O BOX 30450-00100**  
**NAIROBI**

Dear Sir,

WHEREAS \_\_\_\_\_ (hereinafter called “the Contractor”) has undertaken, in pursuance of Contract No. **MTIHUD/DH/SUD/KENSUP/32/2018-2019** dated \_\_\_\_\_ to execute **Proposed Upgrading of 1.4 km Road to Cabro Standards at Zimmerman Informal Settlement – Nairobi** (hereinafter called “the Works”);

AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a recognized bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Contractor such a Bank Guarantee:

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of Kshs. \_\_\_\_\_ (*amount of Guarantee in figures*) Kenya Shillings \_\_\_\_\_ (*amount of Guarantee in words*), and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of Kenya Shillings \_\_\_\_\_ (*amount of Guarantee in words*) as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Contractor before presenting us with the demand.

We further agree that no change, addition or other modification of the terms of the Contract or of the Works to be performed thereunder or of any of the Contract documents which may be made between you and the Contractor shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any change, addition, or modification.

This guarantee shall be valid until the date of issue of the Certificate of Completion.

SIGNATURE AND SEAL OF THE GUARANTOR \_\_\_\_\_

Name of Bank \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_

(Amend accordingly if provided by Insurance Company)

**BANK GUARANTEE FOR ADVANCE PAYMENT**

TO: The Principal Secretary \_\_\_\_\_ [Date]  
State Department of Housing and Urban Development  
P.O BOX 30450-00100  
NAIROBI

Gentlemen,

Ref: **Proposed Upgrading of 1.4 km Road to Cabro Standards at Zimmerman Informal Settlement – Nairobi: Tender No. MTIHU/DH/SUD/KENSUP/32/2018-2019.**

In accordance with the provisions of the Conditions of Contract of the above-mentioned Contract, We, \_\_\_\_\_ [*name and Address of Contractor*] (hereinafter called “the Contractor”) shall deposit with \_\_\_\_\_ [*name of Employer*] a bank guarantee to guarantee his proper and faithful performance under the said Contract in an amount of Kshs. \_\_\_\_\_ [*amount of Guarantee in figures*] Kenya Shillings \_\_\_\_\_ [*amount of Guarantee in words*].

We, \_\_\_\_\_ [*bank or financial institution*], as instructed by the Contractor, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to \_\_\_\_\_ [*name of Employer*] on his first demand without whatsoever right of objection on our part and without his first claim to the Contractor, in the amount not exceeding Kshs \_\_\_\_\_ [*amount of Guarantee in figures*] Kenya Shillings \_\_\_\_\_ [*amount of Guarantee in words*], such amount to be reduced periodically by the amounts recovered by you from the proceeds of the Contract.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed thereunder or of any of the Contract documents which may be made between \_\_\_\_\_ [*name of Employer*] and the Contractor, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

No drawing may be made by you under this guarantee until we have received notice in writing from you that an advance payment of the amount listed above has been paid to the Contractor pursuant to the Contract.

This guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until \_\_\_\_\_ (*name of Employer*) receives full payment of the same amount from the Contract.

Yours faithfully,

Signature and Seal \_\_\_\_\_



Name of the Bank or financial institution \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_

Witness: Name: \_\_\_\_\_

Address: \_\_\_\_\_

Signature: \_\_\_\_\_

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

**TENDER QUESTIONNAIRE**

Please fill in block letters.

1. Full names of tenderer  
.....
2. Full address of tenderer to which tender correspondence is to be sent (unless an agent has been appointed below)  
.....
3. Telephone number (s) of tenderer  
.....
4. Telex address of tenderer  
.....
5. Name of tenderer's representative to be contacted on matters of the tender during the tender period  
.....
6. Details of tenderer's nominated agent (if any) to receive tender notices. This is essential if the tenderer does not have his registered address in Kenya (name, address, telephone, telex)  
.....  
.....

\_\_\_\_\_  
Signature of Tenderer

Make copy and deliver to: **Principal Secretary, State Department of Housing and Urban Development.**

**CONFIDENTIAL BUSINESS QUESTIONNAIRE**

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

You are advised that it is a serious offence to give false information on this Form.

*Part 1 – General*

Business Name .....

Location of business premises; Country/Town.....

Plot No..... Street/Road .....

Postal Address..... Tel No.....

Nature of Business.....

Current Trade Licence No..... Expiring date.....

Maximum value of business which you can handle at any time: K. pound.....

Name of your bankers.....

Branch.....

*Part 2 (a) – Sole Proprietor*

Your name in full..... Age.....

Nationality..... Country of Origin.....

\*Citizenship details .....

*Part 2 (b) – Partnership*

*Give details of partners as follows:*

<i>Name in full</i>	<i>Nationality</i>	<i>Citizenship Details</i>	<i>Shares</i>
1.....			
2.....			
3.....			

***Part 2(c) – Registered Company:***

Private or public.....

State the nominal and issued capital of the Company-

Nominal Kshs.....

Issued Kshs.....

Give details of all directors as follows:

Name in full . Nationality. Citizenship Details\*. Shares.

1.  
.....
2.  
.....
3.  
.....
4.  
.....

***Part 2(d) – Interest in the Firm:***

Is there any person / persons in .....(Name of Employer) who has interest in this firm? Yes/No.....(Delete as necessary)

I certify that the information given above is correct.

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

\* Attach proof of citizenship

**STATEMENT OF FOREIGN CURRENCY REQUIREMENTS**

(See Clause 60[5] of the Conditions of Contract)

In the event of our Tender for the execution of \_\_\_\_\_  
\_\_\_\_\_ (*name of Contract*) being accepted, we would  
require in accordance with Clause 21 of the Conditions of Contract, which  
is attached hereto, the following percentage:

(Figures)..... (Words).....

of the Contract Sum, (Less Fluctuations) to be paid in foreign currency.

Currency in which foreign exchange element is required:

.....

Date: The ..... Day of ..... 20.....

Enter 0% (zero percent) if no payment will be made in foreign currency.

Maximum foreign currency requirement shall be \_\_\_\_\_ (percent)  
of the Contract Sum, less Fluctuations.

\_\_\_\_\_  
(Signature of Tenderer)

**SCHEDULE OF MATERIALS:-BASIC PRICES**  
**(Ref: Clause 70 of Conditions of Contract)**

MATERIAL	UNIT	ORIGIN AND PRICE			TRANSPORTATION COST FROM SOURCE OF ORIGIN	
		COUNTRY OF ORIGIN	SUPPLIER	PRICE	MODE	PRICE (KSHS)
Cement	Mg					
Lime	Mg					
Sand	Mg					
Aggregate	Mg					
Diesel	L					
Regular Petrol	L					
Super Petrol	L					
Kerosene	L					
Structural steel	Mg					
Gabion Mesh	M2					
Reinforcement Steel	Mg					
Explosives	Kg					
Oil and Lubricants	L					
Bitumen Emulsion A3	L					
Bitumen Emulsion A4	L					
Bitumen Emulsion K1	L					
Bitumen Emulsion K3	L					
Bitumen 80/100	Kg					
Bitumen MC 30	ML					
Bitumen MC 70	L					
Bitumen MC 3000	L					
Ammonium nitrate for blasting	Kg					

I certify that the above information is correct.

.....  
*(Title)*

.....  
*(Signature)*

.....  
*(Date)*

The prices inserted above shall be those prevailing 30 days before the submission of Tenders and shall be quoted in Kenya Shillings using the exchange rates specified in the Appendix to Form of Tender.

Prices of imported materials to be quoted CIF Mombasa or Nairobi as appropriate depending on whether materials are imported by the tenderer directly or through a local agent.

Transportation costs for imported materials to be quoted from Mombasa or Nairobi as appropriate to \_\_\_\_\_(Contract Site) depending on whether materials are imported directly by the tenderer or through a local agent.

**DETAILS OF SUB-CONTRACTORS**

If the Tenderer wishes to sublet any portions of the Works under any heading, he must give below details of the sub-contractors he intends to employ for each portion.

Failure to comply with this requirement may invalidate the tender.

(1) Portion of Works to be sublet:

.....

(i) Full name of Sub-contractor and address of head office:

.....  
.....

(ii) Sub-contractor's experience of similar works carried out in the last 3 years with Contract value:

.....  
.....  
.....

(2) Portion of Works to sublet:

.....

(i) Full name of sub-contractor and address of head office:

.....  
.....  
.....

(ii) Sub-contractor's experience of similar works carried out in the last 3 years with contract value:

.....  
.....  
.....

\_\_\_\_\_  
(Signature of Tenderer)

\_\_\_\_\_  
Date



**CERTIFICATE OF TENDERER'S VISIT TO SITE**

This is to certify that

[Name/s].....

.....

Being the authorized representative/Agent of *[Name of Tenderer]*

.....

.....

Participated in the organized inspection visit of the site of the works for **Proposed Upgrading of 1.4 km Road to Cabro Standards at Zimmerman Informal Settlement – Nairobi Tender No. MTIHU/DH/SUD/KENSUP/32/2018-2019**.....day of.....2019

Signed.....

(Employer's Representative)

.....

NOTE: This form is to be completed whether the site visit is made at the time of the organized site or privately organized.

## FORM OF WRITTEN POWER-OF-ATTORNEY

The Tenderer consisting of a joint venture shall state here below the name and address of his representative who is authorised to receive on his behalf correspondence in connection with the Tender.

.....  
*(Name of Tenderer's Representative in block letters)*

.....  
*(Address of Tenderer's Representative)*

.....  
*(Signature of Tenderer's Representative)*

**KEY PERSONNEL**

DESIGNATION	NAME	NATIONALITY	SUMMARY OF QUALIFICATIONS AND EXPERIENCE
Headquarters: 1. Director 2. 3. 4. 5. etc.			
Site Office: 1. Site Superintendent 2. 3. 4. 5. etc.			

I certify that the above information is correct.

.....  
*(Title)*

.....  
*(Signature)*

.....  
*(Date)*

**SCHEDULE OF COMPLETED CIVIL WORKS CARRIED OUT BY THE TENDERER IN THE LAST EIGHT YEARS**

DESCRIPTION OF WORKS AND CLIENT	TOTAL VALUE OF WORKS (KSHS)	CONTRACT PERIOD (YEARS)	YEAR COMPLETED

I certify that the above Civil Works were successfully carried out and completed by ourselves.

.....  
(Title)

.....  
(Signature)

.....  
(Date)

\*Value in Kshs using Central Bank of Kenya mean exchange rate at a reference date 30 days before date of tender opening.

**SCHEDULE OF ONGOING PROJECTS**

DESCRIPTI ON OF WORK AND CLIENT	CONTRACT PERIOD	DATE OF COMMEN -CEMENT	DATE OF COMPLETION	TOTAL VALUE OF WORK S (KSHS. )	PERCENTAGE COMPLETED TO DATE

I certify that the above Civil Works are being carried out by ourselves and that the above information is correct.

.....  
(Title)

.....  
(Signature)

.....  
(Date)

**OTHER SUPPLEMENTARY INFORMATION**

1. Financial reports for the last five years, balance sheets, profit and loss statements, auditors' reports etc. List them below and attach copies.  
 .....  
 .....  
 .....
2. Evidence of access to financial resources to meet the qualification requirements. Cash in hand, lines of credit etc. List below and attach copies of supporting documents  
 .....  
 .....  
 .....
3. Name, address , telephone, telex, fax numbers of the Tenderer's Bankers who may provide reference if contacted by the Employer.  
 .....  
 .....  
 .....
4. Information on current litigation in which the Tenderer is involved.

OTHER PARTY (IES)	CAUSE OF DISPUTE	AMOUNT INVOLVED (KSHS)

I certify that the above information is correct.

.....  
*(Title)*

.....  
*(Signature)*

.....  
*(Date)*

## DECLARATION FORM

TO: **The Principal Secretary** \_\_\_\_\_ [Date]  
**State Department of Housing and Urban Development**  
**P.O BOX 30450-00100**  
**NAIROBI**

The tenderer i.e. (name and address) \_\_\_\_\_  
\_\_\_\_\_ declare the following:

- a) Has not been debarred from participating in public procurement.
- b) Has not been involved in and will not be involved in corrupt and fraudulent practices regarding public procurement.

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

(To be signed by authorized representative and officially stamped)

**LETTER OF NOTIFICATION OF AWARD**

Address of Procuring Entity

\_\_\_\_\_

\_\_\_\_\_

**TO: The Principal Secretary  
State Department of Housing and Urban Development  
P.O BOX 30450-00100  
NAIROBI**

**RE: Tender No. MTIHUD/DH/SUD/KENSUP/32/2018-2019.**

**Tender Name: Proposed Upgrading of 1.4 km Road to Cabro Standards at  
Zimmerman Informal Settlement – Nairobi**

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

\_\_\_\_\_

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

*(FULL PARTICULARS)* \_\_\_\_\_

\_\_\_\_\_

SIGNED FOR ACCOUNTING OFFICER



**FORM RB 1**  
**REPUBLIC OF KENYA**  
**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

APPLICATION NO.....OF.....20.....

BETWEEN

.....APPLICANT AND

.....RESPONDENT (*Procuring Entity*)

Request for review of the decision of the..... (*Name of the Procuring Entity*) of  
.....dated the...day of .....20.....in the matter of Tender No.....of  
.....20...

**REQUEST FOR REVIEW**

I/We.....,the above named Applicant(s), of address: Physical  
address.....Fax 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:-

- 1.
  - 2.
- etc.

By this memorandum, the Applicant requests the Board for an order/orders that: -

- 1.
  - 2.
- etc

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  
..... day of .....20.....

SIGNED  
Board Secretary