

REPUBLIC OF KENYA



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

STATE DEPARTMENT FOR HOUSING AND URBAN DEVELOPMENT

**REHABILITATION AND IMPROVEMENT OF SIAKAGO FRESH PRODUCE
MARKET IN EMBU COUNTY**

**TENDER NO: MTH&UD/SDHUD/UDD/SIAKAGO
MKT/EMBU/23/2019/2020**

TENDER DOCUMENTS

EMPLOYER

Principal Secretary
State Department for Housing
and Urban Development
P.O. Box 30119-00100

NAIROBI

PROJECT MANAGER

The Director
Urban Development Department
P.O. Box 34477-00100

ISSUE DATE: 10 MARCH 2020

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SECTION I: INVITATION TO BID

Issue Date: 10 March, 2020

Tender Number: MTH&UD/SDHUD/UDD/SIKAGO MKT/EMBU/02/2019/2020

Tender Name: Proposed Rehabilitation and Improvement of Siakago Fresh Produce Market in Embu County

1. The Government of Kenya through the Ministry of Transport, Infrastructure, Housing and Urban Development and Public Works, State Department for Housing and Urban Development invites sealed bids for the *Proposed Rehabilitation and improvement of Siakago Fresh Produce Market in Embu County*
2. Interested bidders may access the bid documents from the State Department's website www.housingandurban.go.ke or the **Public Procurement Information Portal (PIIP)** <https://tenders.go.ke> free of charge from **10 March 2020**. Bidders who download the documents from the website are required to inform the employer of their wish to submit their proposals. All enquiries and clarifications should be sent via email to: procurementhousingandurban@gmail.com.
3. Hard copies of the tender documents may be obtained by the interested bidders upon payment of a non-refundable fee of **Kshs. 1,000.00** in cash or banker's cheque payable to the **Principal Secretary, State Department for Housing and Urban Development** at cash office, 2nd Floor, Wing B. Ardhi House. Interested bidders are advised that the fee does not include postage charges and are strongly advised to arrange for direct collection of complete tender documents. Hard Copies will be available from **10 March, 2020** during normal working hours (**Monday to Friday, 8:00 am – 5:00 pm**)
4. Completed tender documents should be submitted accompanied by a bid security issued by a reputable bank in the amount of **Kshs. 219,880.00**. The bid security shall be valid for a period of **180 days** from the tender opening date. Failure to provide bid security in the right format, correct value and validity period shall lead to disqualification of the bidder.
5. Prices quoted shall be inclusive of duty and other taxes and shall remain valid for **150 calendar days** from the closing date of the tenders.
6. Completed Tender documents shall be submitted as follows; One Original and One Copy, which shall then be enclosed in one envelope marked "DO NOT OPEN BEFORE **27th March 2020 11:00am** and shall be deposited in the Tender Box **located at Ardhi House, 6th Floor Lift Lobby**. Bulky documents shall be delivered and registered at the office of the **Head Supply Chain Management Services**, located on 6th Floor, Wing B, Ardhi House 1st Ngong Avenue, off Ngong Road.
7. The bid opening will be at **State Department for Housing and Urban Development Boardroom, located on 6th Floor - Ardhi House, 1st Ngong Avenue off Ngong Road on 27th March 2020 at 11:00 am in the presence of** bidders representatives who choose to attend.
8. The Government is not bound to accept any tender and shall not be held liable for any cost incurred in the tender preparation.

Head of Supply Chain Management Services
For: The Principal Secretary
State Department of Housing and Urban Development
Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works.
P.O. Box 30119 -00100

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SECTION II : INSTRUCTION TO TENDERERS

A: GENERAL

1. Definitions

- (a) “Tenderer” means any 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 the entity specified in the **Appendix to Instructions to Tenderers**

2. Eligibility and Qualification Requirements

2.1. Eligibility requirements

This invitation to tender is open to all tenderers who are eligible as specified in the **Appendix to Tenders**.

2.2. Qualification Requirements

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 provide the following information and documentation as required in the **Appendix to Instructions to Tenderers**:

- (a) Details of experience and past performance of the tenderer on the works of a similar nature 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 sub-contractors 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 Condition 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.

2.3. 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 an 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.

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 not exceed Kshs. 5,000/= as provided for in the **Appendix to Instructions to Tenderers**.
- 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.

B. 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.
- Section I: Invitation to Bid
 - Section II: Instructions to Bidders
 - Section III: Evaluation and Qualification Criteria
 - Section IV: Bidding Forms
 - Section V: Employer's Requirements
 - Section VI: Conditions of Contract and Contract Forms
- 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 an inquiry relating to the tender document 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 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 as provided in the **Appendix to Instructions to Tenderers**.

- 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.

C. 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:
- (a) the Form of Tender and Appendix thereto,
 - (b) a Tender Security or Tender Securing Declaration,
 - (c) the Priced Bills of Quantities and Schedules,
 - (d) written confirmation authorizing the signatory of the Bid to commit the Bidder,
 - (e) documentary evidence establishing the eligibility of the Bidder, in accordance with the requirements of Section III Evaluation and Qualification Criteria, using the relevant forms furnished in Section IV Bidding Forms;
 - (f) documentary evidence establishing the Bidder's qualifications in accordance with the requirements of Section III Evaluation and Qualification Criteria, using the relevant forms furnished in Section IV Bidding Forms;
 - (g) documentary evidence establishing the conformity of the Technical Proposal offered by the Bidder with the tender documents, using the relevant forms furnished in Section IV Bidding Forms,
 - (h) Supplementary documents and any other document required in the Appendix to ITT and Section III Evaluation and Qualification Criteria.
- 9.2 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.
- 10.3 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, taxes and other levies payable by the

Contractor under the Contract, or for any other cause prior to the deadline for submission of tenders, shall be included in the rates and prices and the total Tender Price submitted by the tenderer.

- 10.4 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.
- 10.5 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.
- 10.6 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.
- 10.7 The tenderer shall furnish with his tender written confirmation from his suppliers or manufacturers of basic unit rates for the supply of items listed in the Conditions of Contract clause 70 where appropriate.
- 10.8 The Employer may require the tenderer to justify such rates so obtained from the suppliers or manufacturers.
- 10.9 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 70 of the Conditions of Contract Part II.
- 10.10 Contract price variations shall not be allowed within the first 12 months of the contract.
- 10.11 Where quantity contract variation is allowed, the variation shall not exceed 15% of the original contract quantity.
- 10.12 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.

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 the rates of exchange used for pricing the tender shall be the 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 specified in the Appendix to Information Tenderers** from the date of tender opening or from the extended date of tender opening (in accordance with clause 7.3 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 specified amount and form, or Tender Securing Declaration as specified in the **Appendix to Information to Tenderers**.
- 13.2. The tender security shall not exceed 2 percent of the tender price, specified in absolute value.
- 13.3 The Tender Security shall be valid at least thirty (30) days beyond the tender validity period, as specified in the **Appendix to Instructions to Tenderers**
- 13.4 Any tender not accompanied by an acceptable Tender Surety will be rejected by the Employer as non-responsive.
- 13.5 The Tender Securities of unsuccessful tenderers will be returned as promptly as possible but not later than twenty-eight (28) days after expiration of the tender validity period. 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 Securities 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, within the specified time limit
 - 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 to Instructions to Tenderers**
- 14.2. Only one tender may be submitted by each tenderer either by himself or as partner in a joint venture. A tenderer who submits or participates in more than one tender will be disqualified.
- 14.3. 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 at the venue and time 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 (7) 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-bid 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.

D. SUBMISSION OF TENDERS

17. Sealing and Marking of Tenders

- 17.1. The tenderer shall seal the original and copy of the tender in separate envelopes, duly marking the envelopes as "ORIGINAL" and "COPY". The envelopes shall then be sealed in an outer separate 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 **Appendix to Instructions to Tenderers**.
- 17.3. The inner envelopes shall each indicate 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 Tender Notice and **Appendix to Instructions to Tenderers**, subject to the provisions of clause 7.3, 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 shall be rejected and 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.
- 19.3. No tender may be modified subsequent to the deadline for submission of tenders.
- 19.4. No tender may be withdrawn in the interval between the deadline for submission of tenders and the 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.
- 19.5. 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.

E. 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 minutes of the tender opening including the information disclosed to those present.
- 20.5. Tenders not opened and read out at the 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 of 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, reservation or omission. 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 evaluated as provided in ITT 26.5.*
- 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) In the event of a discrepancy between the tender amount as stated in the Form of Tender and the corrected tender figure in the main summary of the Bills of Quantities, the amount as stated in the Form of Tender shall prevail.
- (d) The Error Correction Factor shall be computed by expressing the difference between the tender amount and the corrected tender sum as a percentage of the corrected builder's work (i.e. corrected tender sum less Prime Cost and Provisional Sums).
- (e) The Error Correction Factor shall be applied to all builder's work (as a rebate or addition as the case may be) for the purposes of valuations for Interim Certificates and valuations of variations.
- (f) 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. Preference where allowed in the evaluation of tenders shall not exceed 15%
- 26.8. The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 26.9. The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.
- 26.10. 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.
- 26.11. Poor past performance shall not be used as evaluation criteria unless specifically provided for in the **Appendix to Instructions to Tenderers**.

F: AWARD OF CONTRACT

27. Award Criteria

- 27.1 Subject to Sub-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 as required in Sub-clause 2.1 and 2.2 here above.
- 27.2 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.

28. Notification of Award

- 28.1. 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.

- 28.2. At the same time that the Employer notifies the successful tenderer that his tender has been accepted, the Employer shall notify the other tenderers that the tenders have been unsuccessful.
- 28.3. 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.
- 28.4. 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. Performance Guarantee

- 29.1. 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 the amount stated in the **Appendix to Instructions to Tenderers** and in the format stipulated in the Conditions of Contract.
- 29.2. The Performance Security to be provided by the successful tenderer shall be an unconditional Bank Guarantee issued at the tenderer’s option by 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 60(5) 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.
- 29.3. 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.

30. Advance Payment

- 30.1. An advance payment, if approved by the Employer, shall be made under the Contract, if requested by the Contractor, in accordance with clause 60(1) of the Conditions of Contract. The Advance Payment Guarantee shall be denominated in the proportion and currencies named in the form of foreign currency requirements. For each currency, a separate guarantee shall be issued. The guarantee shall be issued by a Bank located in the Republic of Kenya, or a foreign Bank through a correspondent Bank located in the Republic of Kenya, in either case subject to the approval of the Employer.

31. Corrupt or fraudulent practices

- 31.1 The procuring entity requires that tenderers observe the highest standard of ethics during the procurement process and execution of contracts. 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

ITT Clause PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERERS

A: GENERAL

- Clause 1(d) Employer means the **State Department for Housing and Urban Development**
- Clause 2.1 (a) To establish the eligibility of the Bidder in accordance with ITT Clause 2.1, the Bidder shall complete the relevant forms included in *Section IV Bidding Forms*; and,
- (b) The Bidders must meet the eligibility criteria specified in *Section III Evaluation and Qualification Criteria*, without material deviations, reservations or omissions.
- Clause 2.2 (a) The Bidder shall provide documentary evidence establishing the Bidder's qualifications using the relevant forms in *Section IV Bidding Forms*; and;
- (b) The Bidders shall meet the Qualification Criteria specified in *Section III Evaluation and Qualification Criteria* without material deviations, reservations or omissions.
- Clause 2.3 (e) Replace "agreement" with "duly signed and sealed joint venture agreement"
- Clause 2.3 (d) The Form of Tender must be duly filled, signed and stamped. The person signing must have written authority in the form of Power of Attorney. Any tender without or unfilled a form of tender shall be disqualified.
- Clause 3.2 The price to be charged for the hard copy tender document shall be **Ksh. 1,000.00** or available free as download from our website.
- Bidders who download the documents from the website are required to immediately inform the Employer of their wish to submit their bids. The bidder shall provide the following information:
- (a) Name of Bidder
 - (b) Name of contact person
 - (c) Telephone contact
 - (d) Email address

B: TENDER DOCUMENTS

- Clause 5.1 (f) Statement of Foreign Currency Requirements Not Applicable
- Clause 7.2 Communication of all addendums and any clarifications will also be done through local daily newspapers, email, and the information uploaded on the State Department's website (www.housingandurban.go.ke) as appropriate.

C: PREPARATION OF TENDERS

- Clause 8.1 The language to be used in tendering shall be **English**
- Clause 10.2 The bidders should include **all Government taxes and shall be in the MAIN SUMMARY PAGE.**
- Clause 12.1 The Tender validity period shall be **150 days** from the specified date of tender opening or from the extended date of tender opening whichever is the later.
- Clause 13.1 The tender security shall be of an amount of **Kenya Shillings 219,880.00**
- Clause 13.3 The tender security validity period shall be **180 days** from date of tender opening.
- Clause 13.3 Alternative offers shall not be allowed and any such bid shall be disqualified.

- Clause 15.1 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.
- Clause 15.2(b) **The Bidders are required to read carefully the content of the tender documents and ensure the request for clarifications about the documents and the work site within the stipulated timelines.**
- Clause 16.2 All pages of the bid shall be serialized and initialed by the authorized representative.

D: SUBMISSION OF TENDERS

- Clause 17.1 In addition to the **original bid**, the number of hard copies is: **One (1) copy**, prepared from the original.
- Clause 17.2 **Attention:**
The Principal Secretary
State Department for Housing and Urban Development;
Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works
Address: **Ardhi House, 1st Ngong Avenue**
Floor/Room number: **6th Floor, Tender Box**
Email: procurementhousingandurban@gmail.com
- Clause 18.1 **The deadline for bid submission is: 11:00am on 27th March, 2020**

E: TENDER OPENING AND EVALUATION

- Clause 20.3 In the event of a discrepancy between the tender amount in words and amount in figures as stated in the Form of Tender the amount in words **shall prevail**.
- Clause 23.3 and 26.5 **Bids should conform to the requirement of these clauses.**
- Clause 24 Where there will be a difference between the evaluated price after correction of errors pursuant to ITT 24 and the tender sum in the Form of Tender, the error shall be declared as major deviation, reservation or omission and the tender disqualified as non-responsive pursuant to Section 79 of the Public Procurement and Asset Disposal Act 2015.
- Clause 25.1 All prices shall be quoted in Kenya Shillings.
- Clause 26.2 **This clause shall apply as read together with Clause 24.**
- Clause 26.6 Only Citizen Contractors are eligible to bid and be considered for award of contract.
- Clause 26.11 Poor past performance shall be a factor in the evaluation of bids, as provided for in *Section III Evaluation and Qualification Criteria*.

F: AWARD OF CONTRACT

- Clause 29.1 The Performance Security shall be at least **10% (ten percent)** of the contract amount.
- Clause 29.2 The Performance Security shall be an unconditional Bank Guarantee in the required format and issued by a reputable Bank in Kenya; and furnished by the successful Bidder prior to signing the contract.
- Clause 30 Advance payment is applicable in Kenya Shillings, and shall be **20% of the contract sum**. Advance payment shall be paid against an unconditional bank guarantee of an equivalent amount issued by a bank in Kenya.

Clause 31.1

All tenderers shall fill and sign a declaration that they have not and will not be involved in corrupt or fraudulent practices.

SECTION III: EVALUATION AND QUALIFICATION CRITERIA

This section contains all the criteria that the Employer shall use to evaluate Bids and qualify Bidders through post-qualification. No other factors, methods or criteria shall be used other than specified in this tender document. The Bidder shall provide all the information requested in the forms included in *Section IV Bidding Forms*. After tender opening, the tenders will be evaluated in three stages:

1. **Preliminary Examination of Bids;**
2. **Detailed Technical Evaluation of Bids**
3. **Detailed Commercial Evaluation of Bids**
4. **Recommendation for Award.**

STAGE 1: PRELIMINARY EXAMINATION OF BIDS

This stage of evaluation shall involve preliminary examination of each bid that had been submitted before the deadline using the following criteria. The Bidder shall provide the documentary evidence by submitting the required documents as specified in *Section IV Bidding Forms* and Supplementary Documents.

Per ITT Clause 2.1, Bidders shall be required to meet the following eligibility criteria without material deviations, reservations or omissions, otherwise the bid shall be assessed as non-responsive to the requirements of the tender documents and not considered for further evaluation.

No.	Eligibility Criteria and Requirements	Documentary Evidence
1	Completeness of Bid	Section IV Bidding Forms
2	The Bidder shall be a recognized legal entity in Kenya	(a) Certificate of Incorporation or Registration (b) Confidential Business Questionnaire (c) Business Permit or Trade License
3	The Bidder shall have legal capacity to enter into a contract of awarded the tender.	Signed Power of Attorney authorizing the signing of the bid on behalf of Bidder.
4	The Bidder as a member of a regulated profession has certified the professional requirements.	NCA Certificate Category 6 or 7 as a building or civil engineering contractor.
5	The Bidder has fulfilled its tax obligations	(a) Valid Tax Compliance Certificate (b) VAT Certificate
6	The Bidder guarantees that it shall not withdraw its bid, refuse to sign the contract if awarded, or fail to furnish any required performance security.	(a) Bid valid for the period specified in the Appendix to Instructions to Tenderers as evidenced in the Form of Tender (b) Tender Security in the amount, form and valid as specified in the Appendix to Instructions to Tenderers.
7	Only the Citizen Contractors are eligible to bid for this contract.	CR 12 dated within the last 12 months
8	The Bidder shall not be in conflict of interest in the procurement proceedings.	Form 9: Declaration Form
9	The Bidder is not insolvent, in receivership, bankrupt, or in the process of being wound up.	Form 9: Declaration Form
10	The Bidder has not been convicted of corrupt or fraudulent practices	Form 9: Declaration Form
11	The Bidder is not precluded from entering into a contract.	Form 9: Declaration Form
12	The Bidder and its subcontractors, if any, are not debarred from participating in procurement.	Form 9: Declaration Form
13	The Bidder has not guilty of any serious violation of fair employment practices.	Form 9: Declaration Form

STAGE 2: DETAILED TECHNICAL EVALUATION OF BIDS

- (a) This stage shall involve technical evaluation of the bid to determine its compliance to the tender requirements and that the bidder is qualified with capacity and resources to perform the contract.
- (b) If a Bid is not substantially responsive to the requirements of the tender documents, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.
- (c) The **bids** shall first be examined to determine the consistence of the Technical Proposal regarding site organization, a statement of work methods, mobilization schedule, construction schedule, contractor's equipment, proposed key personnel, resume of key personnel, details of subcontractors, and any other information as stipulated in *Section IV Bidding Forms*.
- (d) The **bidders** shall next be evaluated to determine their capability and resources to effectively carry out the contract of works, using the following criteria to be applied on **pass-fail** basis.

No.	Qualification Criteria	Required Document
1	Pending Litigation and Arbitration: All pending litigation shall in total not represent more than 50% of the Bidder's net worth and shall be treated as resolved against the Bidder.	Form 20 Pending Litigation and Arbitration
2	<p>Financial Situation: The Bidder shall submit audited financial statements acceptable to the Employer, for the last <i>three years</i> to demonstrate the current soundness of the bidder's financial position and its prospective long term profitability as follows:</p> <ol style="list-style-type: none"> (a) The Current Assets divided by Current Liabilities [Current Ratio] should be equal or greater than 1 (one) for each year. (b) The difference between Total Assets and Total Liabilities [Net-Worth] shall be positive for each year. (c) The annual profit before taxes divided by the Net-Worth expressed as a percent [Return on Equity] shall be greater than 1% each year. (d) The Total Liabilities divided by Total Assets [Debt Ratio] shall be less than 1 (one). 	Form 23: Financial Situation
3	Financial Resources: The Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet the (i) cash-flow requirement of Kshs 3 million and (ii) the overall cash flow requirements for this contract and its current works commitment.	Form 25: Financial Resources
4	Average Annual Construction Turnover: Minimum average annual construction turnover of Kshs 100 million , calculated as total certified payments received for contracts in progress or completed, within the last <i>five years</i> .	Form 24: Average Annual Turnover
5	<p>General Construction Experience: General construction experience under contracts in the role of contractor, subcontractor, or management contractor:</p> <ol style="list-style-type: none"> (a) In at least two contracts each of a value of at least KShs 10 million, completed within the last <i>five years</i> prior to the bid submission deadline; OR; (b) In at least four contracts each of a value of at least KShs 5 million, completed within the last <i>five years</i> prior to the bid submission deadline. 	Form 22: Completed Civil Works

<p>6 Specific Construction Experience: Participation as contractor, management contractor, or subcontractor for <i>similar works</i>:</p> <p>(a) In at least three contracts within the last <i>five years</i> each with a value of at least KES 10 million, that have been successfully and substantially completed and that are similar to the proposed works in terms of physical size, complexity, methods, technology; OR,</p> <p>(b) In at least two contracts within the last <i>five years</i>, each with a value of at least KES 15 million, that have been successfully and substantially completed and that are similar to the proposed works in terms of physical size, complexity, methods, technology.</p>	<p>Form 22: Completed Civil Works</p>
<p>7 Personnel: The Bidder shall provide details of the proposed key personnel and their experience records in the relevant Forms included in <i>Section IV Bidding Forms</i>. The Bidder must demonstrate that it will have adequate number of qualified personnel for the key positions that meet the following requirements:</p>	<p>Form 16: Personnel Form 17: CV of Proposed Personnel</p>
<p>7.1 Director: The director of the firm shall possess:</p> <p>(a) A minimum of Bachelor's <i>Degree in Engineering</i> and at least three years' experience in construction projects in Kenya; OR,</p> <p>(b) A minimum of <i>Diploma in Engineering</i> and at least five years' experience in construction projects in Kenya; OR,</p> <p>(c) A minimum of <i>Certificate in Engineering</i> and at least eight years' experience in construction projects in Kenya; OR,</p> <p>(d) A minimum of <i>Trade Test Certificate in Engineering</i> and at least ten years' experience in construction projects in Kenya.</p>	
<p>7.2 Site Agent: The Site Agent shall possess:</p> <p>a) A minimum of <i>Bachelor's Degree in Engineering</i> and at least five years' experience in construction projects in Kenya; OR,</p> <p>b) A minimum of <i>Diploma in Engineering</i> and at least eight years' experience in construction projects in Kenya; OR,</p> <p>c) A minimum of <i>Certificate in Engineering</i> and at least ten years' experience in construction projects in Kenya.</p>	
<p>7.3 Foreman: The Foreman shall possess:</p> <p>(a) A minimum of Diploma in Civil Engineering and at least three years' experience in construction projects in Kenya; OR,</p> <p>(b) A minimum of Certificate in Engineering and at least eight years' experience in construction projects in Kenya; OR,</p> <p>(c) A minimum of <i>Trade Test Certificate in Engineering</i> and at least ten years' experience in construction projects in Kenya.</p>	
<p>7.4 Draughtsman: The Draftsman shall possess:</p> <p>(d) A minimum of Diploma in Civil Engineering and at least three years' experience in construction projects in Kenya; OR,</p> <p>(e) A minimum of Certificate in Engineering and at least eight years' experience in construction projects in Kenya; OR,</p> <p>(f) A minimum of <i>Trade Test Certificate in Engineering</i> and at least ten years' experience in construction projects in Kenya.</p>	
<p>8 Equipment: The Bidder shall provide details of proposed key contractor's equipment using the relevant form in <i>Section IV Bidding</i></p>	<p>Form 15: Contractor's</p>

Form. The Bidder must demonstrate that it will have access to the key Equipment contractor's equipment listed below:

- 8.1 Hoe Excavator Qty 1 No.
- 8.2 Dozer 70Kw Qty 1 No.
- 8.3 Concrete Mixer Type 5/3.5 Qty 1 No.
- 8.4 Concrete dumper 0.5 cu.m Qty 1 No.
- 8.5 Mobile Crane 5 tones Qty 1 No.
- 8.6 Concrete vibrator poker type N.D. 50 mm Qty 1 No.
- 8.7 4 WD Pickup 1 tonne Qty 1 No.
- 8.8 Tipper Truck 7 tonne Qty 1 No.
- 8.9 Tipper Truck 15 tonne Qty 1 No.

Any bid that fails the detailed technical evaluation stage **shall not** be considered further in the next stage of detailed commercial evaluation of bids.

STAGE 3: DETAILED COMMERCIAL EVALUATION OF BIDS

This stage will involve the detailed evaluation of the commercial aspects of the bids using the following procedure and methodology as provided in the tender documents:

- (1) The prices for components of the bill of quantities and for unit rates of the bid shall be analysed to verify whether the bill of quantities is complete, without material deviations, reservations or omissions.
- (2) The cost of items against which the bidder has failed to enter a rate or price shall be deemed to be covered by other rates and prices entered in the bill of quantities, hence there shall be no adjustments for missing items in the bill of quantities.
- (3) If a bidder does not quote a price for one entire bill, or fail to carry a bill to the summary or tender sum, the bid shall be rejected as non-responsive.
- (4) The bids shall be checked for any arithmetical errors in computation and summations. If a bid has material errors in the line subtotals, totals, it shall be rejected as non-responsive.
- (5) The amounts in foreign currency shall be converted to Kenya Shillings for evaluation purposes.
- (6) The reservations and margins to preference as provided in ITT 26.6 and 26.7 and Appendix to ITT will be applied as applicable for evaluation purposes.
- (7) Non-responsive bids shall be rejected at this stage and shall not be considered further in the next evaluation stage.
- (8) The bids that are responsive at the detailed commercial evaluation stage shall be ranked based on the lowest to the highest evaluated price.

STAGE 4: RECOMMENDATION FOR AWARD

The purpose of this stage will be to determine the successful bidder using the following procedure:

- (a) The Bidders shall be ranked from lowest to the highest evaluated price, and the bidder with the

lowest evaluated bidder identified.

- (b) The lowest evaluated bidder shall be subjected to **due diligence** based on the documents submitted under *Section IV Bidding Forms* and tender documents.
- (c) If the lowest evaluated bidder fails after the conduct of due diligence, a report shall be prepared to that effect and the bid rejected as non-responsive.
- (d) In that event, the second lowest bidder shall be subjected to the due diligence based on the forms submitted under *Section IV Bidding Forms* and tender documents.
- (e) The Bidder whose offer has been determined to be the lowest evaluated bid and is substantially responsive to the tender documents, provided further that the Bidder is determined to be qualified to perform the contract satisfactorily and passes the due diligence shall be recommended for award of contract.
- (f) Where for any reasons the lowest bidder recommended for award of contract declines in writing to accept the award or furnish the required performance security within the given timelines; the award shall be revoked and the next ranked bidder shall be recommended for award of the contract.
- (g) 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.

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FORM 1: FORM OF TENDER

TO: _____ [Name of Employer] _____ [Date]
_____ [Name of Contract]

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 _____ 20 _____

Signature _____ in the capacity of _____

duly authorized to sign tenders for and on behalf of

_____ [Name of Employer]
of _____ [Address of Employer]

Witness; Name _____

Address _____

Signature _____

Date _____

FORM 2: APPENDIX TO FORM OF TENDER

(This appendix forms part of the tender)

CONDITIONS OF CONTRACT	CLAUSE	AMOUNT
Tender Security (Bank Guarantee only)		Kshs 219,880
Amount of Performance Security (Unconditional Bank Guarantee)	10.1	10 (ten) percent of Tender Sum in the form of Unconditional Bank Guarantee
Program to be submitted	14.1	Not later than 15 days after issuance of Order to Commence
Cash flow estimate to be submitted	14.3	Not later than 15 days after issuance of Order to Commence
Minimum amount of Third Party Insurance	23.2	The minimum insurance amounts and deductibles shall be: <ul style="list-style-type: none"> (a) For loss or damage to the Works, Plant and Materials: 110 % of cost of plant & materials. (b) For loss or damage to Equipment: 110 % of cost of equipment. (c) for loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract: 100% of cost of property. (d) for personal injury or death: <ul style="list-style-type: none"> (i) of the Contractor's employees: as per Kenya Applicable Law. (ii) of other people: as per Kenya Applicable Law.
Period for commencement, from the Engineer's order to commence	41.1	30 days
Time for completion	43.1	6 (six) months
Amount of liquidated damages	47.2	0.05% per week
Limit of liquidated damages	47.2	10% of Contract Value
Defect Liability period	49.1	6 (Six Months)
Minimum amount of interim certificates	60.2	Contract value/Time for completion in months
Percentage of Retention	60.5	5% of Interim Payment Certificate, reduced to 2.5% upon issue of taking over certificate.
Limit of Retention Money	60.5	10% of Contract Price
Time within which payment to be made after Interim Payment Certificate signed by Engineer	60.8	60 days
Time within which payment to be made after Final Payment Certificate signed by Engineer	60.8	60 days
Appointer of Arbitrator	67(3)	Chief Justice of The Republic of Kenya

Notice to Employer and Engineer	68.2	<p>The Employers address is: Permanent Secretary, Ministry of....., P.O. Box <u>NAIROBI</u></p> <p>The Engineer's address is: Chief Engineer (.....), Ministry of....., P.O. Box..... <u>NAIROBI</u></p>
---------------------------------	------	--

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

FORM 3: SCHEDULE OF PRICES/BILLS OF QUANTITIES

[The Bidder shall insert the priced bill of quantities here]

FORM 4: 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)

FORM 5: SCHEDULE OF MATERIALS-BASIC PRICES

(Ref: Clause 70 of Conditions of Contract)

Material	Unit	Origin and Price			Transport Cost from Source of Origin	
		Country of Origin	Supplier	Price	Mode	Price
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 CIP Construction Site 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.

FORM 6: SCHEDULE OF LABOUR-BASIC PRICES

(Reference: Clause 70 of Conditions of Contract)

<i>LABOUR CATEGORY</i>	<i>UNIT (MONTH/SHIFT/HOUR)</i>	<i>RATES</i>

Categories to be generally in accordance with those used by the Kenya Building Construction and Engineering and Allied Trades Workers' Union.

I certify that the above information is correct.

.....
(Title)

.....
(Signature)

.....
(Date)

FORM 7: FORM OF TENDER SECURITY

WHEREAS (hereinafter called “the Tenderer”) has submitted his tender dated for the construction of
..... (name of Contract)

KNOW ALL PEOPLE by these presents that WE having our registered office at (hereinafter called “the Bank”), are bound unto (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 of20.....

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 or 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 the Insurance Company)

FORM 8: TENDER SECURING DECLARATION

[Not applicable]

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

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

Tender No.: [insert number of bidding process]

To: [insert complete name of Purchaser]

We, the undersigned, declare that:

1. We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.
2. We accept that we will automatically be suspended from being eligible for tendering in any public procurement tenders with any public entity for the period of time determined by the Public Procurement Oversight Authority, if we are in breach of our obligation(s) under the tendering conditions, because we:
 1. a) have withdrawn our tender during the period of tender validity specified in the Tender Data Sheet; or
 2. b) having been notified of the acceptance of our Tender by the Procuring Entity during the period of tender validity fail or refuse to execute the contract; or fail or refuse to furnish the performance security, if so required.
3. We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer, upon our receipt of your notification or regret of the tender award letter; or thirty-eight days after the expiration of our Tender, whichever is earlier.
4. We understand that if we are a Joint Venture, the Tender Securing Declaration must be in the name of the Joint Venture that submits the bid, and if the Joint Venture has not been legally constituted at the time of tendering, the Tender Securing Declaration shall be in the names of all envisaged partners as named in the letter of intent.

Signed: [insert signature of person whose name and capacity are shown] In the capacity of [insert legal capacity of person signing the Tender Securing Declaration]

Name: [insert complete name of person signing the Tender Securing Declaration]

Duly authorized to sign the bid for and on behalf of: [insert complete name of Bidder] Dated on _____ day of _____, _____ [insert date of signing]

FORM 9: DECLARATION FORM

Date _____

To _____

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.
- c) Is not in conflict of interest in the procurement proceedings
- d) Is not insolvent, in receivership, bankrupt, or in the process of being wound up
- e) Has not been precluded from entering into a procurement contract
- f) Is not in serious violation of fair employment practices.

Title

Signature

Date

(To be signed by authorized representative and officially stamped)

FORM 10: 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 authorized 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)

TECHNICAL PROPOSAL FORMS

*{The Bidder shall present the proposed site organization, method statement, mobilization, and construction schedule in the format presented below in a consistent manner that complies with requirements stipulated in **Section V Employer's Requirements** without material deviation, reservation, or omission }*

FORM 11: SITE ORGANISATION

FORM 12: METHOD STATEMENT

FORM 13: MOBILIZATION SCHEDULE

FORM 14: CONSTRUCTION SCHEDULE

FORM 15: CONTRACTOR'S EQUIPMENT

The Bidder shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in *Section III, Evaluation and Qualification Criteria*. A separate Form shall be prepared for each item of equipment listed. The Bidder shall provide all the information requested below, to the extent possible. The Bidder shall attach in annex the evidence of either ownership or lease of the each of the listed key equipment.

Type of Equipment		
Equipment Information	Name of manufacturer	Model and power rating
	Capacity	Year of manufacture
Current Status	Current location	
	Details of current commitments	
Source	Indicate source of the equipment <input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Leased <input type="checkbox"/> Specially manufactured	

The following information shall be provided only for equipment not owned by the Bidder.

Owner	Name of owner	
	Address of owner	
	Telephone	Contact name
	Email	Contact title
Agreements	Details of rental / lease / manufacture agreements specific to the project	

FORM 16: PERSONNEL

Bidders should provide the names of suitably qualified personnel to meet the specified requirements for each of the positions listed in *Section III Evaluation and Qualification Criteria*. The data on their experience should be supplied using the Form below for each personnel. The academic and professional certificates shall be attached in annex.

1.	Title of position
	Name
2.	Title of position
	Name
3.	Title of position
	Name
4.	Title of position
	Name
5.	Title of position
	Name
6.	Title of position
	Name
etc.	Title of position
	Name

FORM 17: CURRICULUM VITAE OF PROPOSED PERSONNEL

Key Personnel

Name of Bidder

Position [#1]: [title of position from Form 15]											
Personnel information	<table border="1"> <tr> <td>Name:</td> <td>Date of birth:</td> </tr> <tr> <td>Address:</td> <td>E-mail:</td> </tr> <tr> <td colspan="2">Professional qualifications:</td> </tr> <tr> <td colspan="2">Academic qualifications:</td> </tr> <tr> <td colspan="2">Language proficiency:<i>[language and levels of speaking, reading and writing skills]</i></td> </tr> </table>	Name:	Date of birth:	Address:	E-mail:	Professional qualifications:		Academic qualifications:		Language proficiency: <i>[language and levels of speaking, reading and writing skills]</i>	
Name:	Date of birth:										
Address:	E-mail:										
Professional qualifications:											
Academic qualifications:											
Language proficiency: <i>[language and levels of speaking, reading and writing skills]</i>											
Details	<table border="1"> <tr> <td colspan="2">Address of employer:</td> </tr> <tr> <td>Telephone:</td> <td>Contact (manager / personnel officer):</td> </tr> <tr> <td>Fax:</td> <td></td> </tr> <tr> <td>Job title:</td> <td>Years with present employer:</td> </tr> </table>	Address of employer:		Telephone:	Contact (manager / personnel officer):	Fax:		Job title:	Years with present employer:		
Address of employer:											
Telephone:	Contact (manager / personnel officer):										
Fax:											
Job title:	Years with present employer:										

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

Project	Role	Duration of involvement	Relevant experience
<i>[main project details]</i>	<i>[role and responsibilities on the project]</i>	<i>[time in role]</i>	<i>[describe the experience relevant to this position]</i>

Declaration: I, the undersigned Key Personnel, certify that to the best of my knowledge and belief, the information contained herein correctly describes myself, my qualifications and my experience. I confirm that I am available as certified in the following table and throughout the expected time schedule for this position as provided in the Bid:

Commitment	Details
Commitment to duration of contract:	<i>[insert period (start and end dates) for which this Key Personnel is available to work on this contract]</i>
Time commitment:	<i>[insert the number of days/week/months/ that this Key Personnel will be engaged]</i>

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

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

Name of Key Personnel: *[insert name]*

Signature: _____

Date: (day month year): _____

Countersignature of authorized representative of the Bidder:

Signature: _____

Date: (day month year): _____

FORM 18: 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

BIDDER'S QUALIFICATION FORMS

FORM 19: 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)
.....

Title:

Signature of Tenderer:

Date:

FORM 20: PENDING LITIGATION AND ARBITRATION

[The Bidder shall provide details of all pending litigations and arbitrations using the following form]

Year	Other Party	Cause of Dispute	Amount involved (KES)

I certify that the above information is correct.

.....
Title

.....
Signature

.....
Date

FORM 21: SCHEDULE OF ONGOING PROJECTS

Employer	Description of Works	Total Value of Works (Kshs)	Value of Outstanding Work (Kshs)	Contract Period (Years)	Date of Commencement	Remaining Contract Period in months

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

.....
(Title)

.....
(Signature)

.....
(Date)

FORM 22: COMPLETED CIVIL WORKS

*{The Bidder to list completed civil works carried out by the Bidder in the last **five** years}*

Employer	Description of Works	Total Value of Works (KES)	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.

FORM 23: FINANCIAL SITUATION

{The Bidder shall fill completely the following form and attach to the bid the copies of audited financial statements (balance sheets, including all related notes, and income statements) for the years required above complying with the following conditions: (a) Must reflect the financial situation of the Bidder and not sister or parent companies; (b) Must be audited by a certified accountant; (c) Must be complete, including all notes to the financial statements; (d) Must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted)}

Bidder Name:
Tender Number
Tender Description:

Date: _____

Financial information in Kenya Shilling	Historic information for previous 5 years						
	Year 1	Year 2	Year 3	Year 4	Year 5	Avg.	Avg. Ratio
Information from Balance Sheet							
Total Assets (TA)							
Total Liabilities (TL)							
Net Worth (NW=TA-TL)							
Current Assets (CA)							
Current Liabilities (CL)							
Working Capital (CA-CL)							
Information from Income Statement							
Total Revenue (TR)							
Profits Before Taxes (PBT)							
Profit After Taxes							

FORM 24: AVERAGE ANNUAL TURNOVER

Bidder Name:
 Tender Number
 Tender Description:

Date: _____

<i>Annual turnover data (construction only)</i>			
<i>Year</i>	<i>Amount in Currency</i>	<i>Exchange Rate</i>	<i>Amount (KShs)</i>
<i>*Average Annual Construction Turnover</i>			

*Average annual turnover calculated as total certified payments received for work in progress or completed over the number of years specified in *Section III Evaluation and Qualification Criteria* divided by that same number of years.

FORM 25: FINANCIAL RESOURCES

The Bidder shall specify the proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cash flow demands of the subject contract or contracts as indicated in *Section III Evaluation and Qualification Criteria* and attach documentary evidence of each source.

Bidder Name:
Tender Number
Tender Description:

Date: _____

No.	Source of financing	Amount (KShs)
1	Working Capital	
2	Credit Line	
3	Other financial resources	
Total available financial resources		

FORM 26: GENERAL EXPERIENCE

Bidder Name:
 Tender Number
 Tender Description:

Date: _____

Starting Month / Year	Ending Month / Year	Year	Contract Identification
			Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:
			Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:
			Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:
			Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:
			Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:
			Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:

FORM 27: SPECIFIC EXPERIENCE

Similar Contract Number: ___ [insert specific number] of ___ [insert total number of contracts required]	Information		
<i>Contract Identification</i>			
<i>Award date</i> <i>Completion date</i>			
Role in Contract	<input type="checkbox"/> Contractor	<input type="checkbox"/> Management Contractor	<input type="checkbox"/> Subcontractor
<i>Total contract amount</i>			<i>KSHS</i>
<i>If partner in a JVCA or subcontractor, specify participation of total contract amount</i>	_____%	_____	<i>KSHS</i>
<i>Employer's Name:</i>			
<i>Address:</i> <i>Telephone:</i> <i>E-mail:</i>			

SUPPLEMENTARY DOCUMENTS

The Bidder shall provide certified copies of documents and information as annex to the bid:

Annex 1: Certificate of Incorporation or Registration

Annex 2: CR 12 dated within the last 12 months from date of submission of bids

Annex 3: Registration with NCA

Annex 4: Value Added Tax Certificate

Annex 5: Tax Compliance Certificate

Annex 6: Valid Business Permit or Trade License

Annex 7: Copies of audited financial statements for the latest five years

Annex 8: Letter from a financial institution as evidence of financial resources

Annex 9: Contract Agreement or Purchase orders to meet general experience criteria

Annex 10: Contract Agreement or Purchase Orders to meet the specific experience criteria

Annex 11: Academic certificates for each of the proposed personnel

Annex 12: Professional certificates for each of the proposed personnel

Annex 13: Ownership or lease documents for each of the proposed equipment

Annex 14: Contact of the Bidder’s bankers using the following form:

Name of Bank	
Physical Address	
Telephone	
Email	
Bank Account Number	
Contact Person	

Annex 15: 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.

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

Annex 16. 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 the (Name of Contract:
.....)

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

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.

SECTION V: EMPLOYER'S REQUIREMENTS

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 permanent 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.
- 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 construction works, 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 may also 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.
6. 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.
7. 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

8. Health Care and Welfare

In addition to providing, equipping and maintaining adequate first aid stations throughout the works in accordance with the Laws of Kenya, the Contractor shall provide and maintain on Site during the duration of the Contract, a fully equipped dispensary. This shall be with a qualified Clinical Officer/Nurse who shall offer the necessary medical advice on AIDS/HIV and related diseases to the Engineer's and Contractor's Site staff. The Contractor shall allow for this in the rates and be responsible for all site welfare arrangements at his own cost.

DRAWINGS

Note

A list of Contract drawings should be inserted here

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

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 Day works) 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 of 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 0.2m³ 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 ³ or cu m	millimeter	mm
hectare	ha	month	mon
hour	h	number	nr
kilogram	kg	square meter	m ² or sq m
lump sum	sum	square millimeter	mm ² or sq mm
meter	m	week	wk
metric ton (1,000 kg)	t		

- (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) Day work 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 specialized 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 specialized 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 Day works, physical (quantity) contingencies, and price contingencies (upward price adjustment) where applicable.

REHABILITATION OF SIAKAGO MARKET-EMBU COUNTY

ITEM	DESCRIPTION	QTY	UNIT	RATE (KShs.)	SHS/CTS
	BILL No 1 Project Provisions				
A	Provide, erect and maintain contract signboards as directed by the Project Manager, including for removal after end of defects liability period.	1	No		
B	Allow for head office staff supervision allowances and expenses for the duration of the contract and defects liability period.		Sum		300,000.00
C	Allow for running cost of the vehicle up to 20,000km, this to include insurance, vehicle maintenance, servicing, all consumables such as fuel, lubricants and spare parts.	15,000	Km		
D	Include a Provisional Sum of Kshs 50,000 for testing of samples and geotechnical investigation as shall be instructed by the Project Manager.		Sum		50,000.00
E	Allow for facilitation for county architect and Quantity surveyor and relevant staff inspection of work during various stages of construction, substantial completion and final maintenance inspection.		Sum		150,000.00
F	Provide for facilitation of Clerk of Works (County) during construction of the project.	3	Month	40,000	120,000.00
G	Provide for facilitation and establishment of temporary project manager's site office (10 plastic chairs and table) as directed.		Sum		100,000.00
H	Include a percentage for Contractors Overheads and Profits for items "A" to "G".		%		
	TOTAL FOR PRELIMINARIES TO MAIN SUMMARY PAGE				

ITEM	DESCRIPTION	QTY	UNIT	RATE	SHS/CTS
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BILL NO. 2					
MARKET SHEDS					
(Works in this section entails repairs to existing sheds, earthworks, concrete tamped slab and installation of rain water goods)					
(ALL PROVISIONAL) SUBSTRUCTURES					
A	Clear the site of all bushes, short trees, grass undergrowth and the like and burn the ensuing.	7,500	SM		
B	Excavate topsoil average 250mm deep wheel and deposit spoil 50 meters away in soil heaps.	850	SM		
C	Excavate foundation trenches commencing at reduced level and not exceeding 1.50 m deep.	100	CM		
D	Return fill in and ram selected excavated material around foundation.	81	CM		
E	Remove surplus excavated material from site	35	CM		
F	250mm bed of selected hardcore well-compacted and blended with fine material 50 mm thick to receive dump proof membrane measured separately.	723	SM		
G	Approved insecticide treatment as gladiator TC or other equally and approved anti-termite treatment with 10 years manufacturers guarantee	850	SM		
H	1000 gauge diothene or other equal and approved polyene sheet being as damp proof membrane laid on blinded hardcore with melted laps (measured net no.) allowance made for laps	850	SM		
Reinforcement (Provisional)					
High Yield Deformed Reinforcement bars					
I	8mm Diameter bars	380	KG		
J	10mm Diameter bars	450	KG		
TOTAL C/F					

ITEM	DESCRIPTION	QTY	UNIT	RATE	KSHS/CTS
	B/F				
	<u>Vibrated reinforced concrete (grade 20).</u>				

A	Foundation footings	15	CM		
B	150mm thick Bed (tamped to finish) laid on dump proof membrane (ms) in bays not exceeding 50 square meters including formwork to edges of bays.	850	SM		
	Steel wire fabric mesh reinforcement to B.54483 Ref: A 98 and K.S 02-18:1976 in concrete bed (measured net no. Allowance made for minimum of 225 mm laps) including tying and supporting as required.				
C	<u>Formwork to:</u>	850	SM		
D	Edges of slab	280	LM		
	Foundation Walling				
E	200mm approved local stone walling in cement mortar (1:3)	280	SM		
	<u>Rainwater disposal GCI pipes to B. S 4514 and fittings.</u>				
	Supply the following steel materials, connect and erect gutters as directed on site. The rate to include surface treatment,3mm welds and any necessary holes.				
F	150x150mm square downpipe fixed to steel section with and including approved holderbats.	110	LM		
G	250x300mm deep box gutter welded to roof truss structure(ms) ditto.	60	LM		
H	Extra for shoe	32	NO		
I	Extra for swan neck 500 mm projection	32	NO		
J	Allow for testing of rain water goods		sum		
	TOTAL FOR MARKET SHEDS CARRIED TO MAIN SUMMARY				

ITEM	DESCRIPTION	QTY	UNIT	RATE	SHS/CTS
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BILL NO. 3					
ABLUTION BLOCK (IKO TOILET)					
(All Provisional) Substructure work					
A	Excavate topsoil average 250mm deep wheel and deposit spoil 50 meters away in soil heaps.	50	SM		
B	Allow for excavation on hard material (rock)	15	CM		
C	Allow for plucking and strutting; keep excavations free from falling debris.		ITEM		
D	Allow for general waste removal; keep excavated trenches free from water and weed.		ITEM		
E	Excavate foundation pits and trenches commencing at reduced level and not exceeding 1.00 m deep.	38	CM		
F	Return fill in and ram selected excavated material around foundation.	23	CM		
G	Remove surplus excavated material from site	15	CM		
H	250mm bed of selected hardcore well-compacted and blended with fine material 50 mm thick to receive dump proof membrane measured separately.	48	SM		
I	Approved insecticide treatment as gladiator TC or other equally and approved anti-termite treatment with 10 years manufacturers guarantee	55	SM		
J	500 gauge diothene or other equal and approved polythene sheet being as damp proof membrane laid on blinded hardcore with melted laps (measured net no.) allowance made for laps	55	SM		
	TOTAL C/F				

ITEM	DESCRIPTION	QTY	UNIT	RATE	KSHS/CTS
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	B/F				
	High Yield deformed Reinforcement bars				
A	8mm Diameter bars	90	KG		
B	10mm Diameter bars	130	KG		
	<u>Concrete (grade 15).</u>				
C	50mm blinding	30	SM		
	<u>Vibrated reinforced concrete (grade 20).</u>				
D	Foundation footings	10	CM		
E	100 mm Bed laid on dump proof membrane (measured separately) in bays not exceeding 50 square meters including formwork to edges of bays. Steel wire fabric mesh reinforcement to B.54483 Ref: A 98 and K.S 02-18:1976 in concrete bed (measured net no. Allowance made for minimum of 225 mm laps) including tying and supporting as required.	55	SM		
F	<u>Formwork to:</u>	55	SM		
G	Edges of slab	35	LM		
	TOTAL C/F				

ITEM	DESCRIPTION	QTY	UNIT	RATE	KSHS/CTS
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	B/F				
	<u>Foundation Walling</u>				
A	200mm approved local stone walling in cement mortar (1:3)	50	SM		
B	12mm cement and sand (1.5) external rendering on plinth walls finished smooth with a wood float.	11	SM		
C	Prepare and apply three coats of black bituminous paint on rendered plinth surfaces externally to be executed by an approved sub-contractor	11	SM		
D	Pluvex No. 1 horizontal bitumen damp proof course to B.5 743, 200 mm wide under walling (measured net no. Allowance made for laps).	40	LM		
E	150 mm wide ditto.	15	LM		
F	100 mm wide ditto.	10	LM		
	TOTAL C/F				

ITEM	DESCRIPTION	QTY	UNIT	RATE	KSHS/CTS
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	B/F SUPERSTRUCTURE WORK				
	<u>Vibrated reinforced concrete (grade 20).</u>				
A	Ring Beam	6	CM		
	<u>Formwork to :</u>				
B	Sides and Soffits of ring beam.	25	SM		
	High Yield Square Twisted Reinforcement bars				
C	8mm Diameter bars	130	KG		
D	12mm Diameter bars	160	KG		
	<u>Walling</u>				
E	200mm thick external Local stone walling bedded and jointed in cement sand (1:3) mortar.	66	SM		
F	200mm ditto internally	26	SM		
G	150mm ditto internally	35	SM		
H	100mm ditto internally	20	SM		
	Splash Area				
I	1800mm long x600mm wide x75mm thick concrete splash top, reinforced with mesh fabric BRC A98 including formwork and plaster steel trowelled smooth as per details given and to approval.	2	NO		
	TOTAL C/F				

ITEM	DESCRIPTION	QTY	UNIT	RATE	KSHS/CTS
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	B/F				
	<u>FINISHES</u>				
	Floor				
A	25mm thick c/s screed receive floor tiles	50	SM		
B	100x20mm c/s skirting.	47	LM		
C	8mm thick 300x300mm non slip ceramic floor "SAJ" tiles or any other equal and approved	50	SM		
	Wall				
	<u>Cement Sand 1:3 plaster</u>				
D	15mm thick externally	76	SM		
E	Ditto internally	234	SM		
F	Ditto backing to receive wall tiles (ms)	75	SM		
	Ceramic Wall Tiles				
G	300x200x6mm glazed wall tiles fixed with approved adhesive	75	SM		
	Ceiling				
	Branding with prime grade treated timber				
H	100x50mm timber	139	LM		
	Soft board				
I	10mm thick soft board ceiling nailed to branding(ms)	55	SM		
J	75x50mm cypress cornice.	42	LM		
	TOTAL C/F				

ITEM	DESCRIPTION	QTY	UNIT	RATE	KSHS/CTS
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	B/F				
	<u>Painting and Decoration</u>				
	<u>Three Coats Plastic Emulsion paint to:</u>				
A	Walls externally	76	SM		
B	Walls internally	234	SM		
C	Soft board ceiling	55	SM		
	<u>ROOF CONSTRUCTION, FINISHES AND RAINWATER DISPOSAL.</u>				
D	15 gauge pre-painted profile GCI sheets or other equal and approved roofing material laid in accordance with the manufacturing instructions	123	SM		
E	Half round approved ridge to match roofing material	27	LM		
F	Half round valley flashing to match roofing material	8	LM		
	<u>Roof Structure</u>				
	<u>Prime Grade Celcured Timber Cypress</u>				
G	150x50mm Rafters	210	LM		
H	150x50mm Tie beams	97	LM		
I	100x50mm struts and ties	65	LM		
J	100x50mm Purlins	124	LM		
K	100x50mm Wall plate	34	LM		
L	200x25mm Fascia board painted white	76	LM		
	TOTAL C/F				

ITEM	DESCRIPTION	QTY	UNIT	RATE	KSHS/CTS
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	B/F				
	<u>Rainwater disposal GCI pipes to B. S 4514 and</u>				
A	100x100 mm downpipe fixed to walls with approved holderbats (ms).	20	LM		
B	Ditto but 200x250mm box gutter	30	LM		
C	Holder bats	40	NO		
D	Extra for shoe	10	NO		
F	Extra for swan neck 500 mm projection	10	NO		
G			Sum		
	Allow for testing the whole of the rainwater installation during the progress of the works and again on completion and leave in perfect working order to the satisfaction of the Project Manager.				
	TOTAL C/F				

ITEM	DESCRIPTION	QTY	UNIT	RATE	KSHS/CTS
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	B/F				
	OPENINGS				
	WINDOWS				
	Supply and fix the following standard steel casement windows complete with bolt fasteners, stays and lugs with one coat red oxide priming and including fixing to natural stone walls.				
A	800x900mm high	4	NO		
B	1500x600mm high	2	NO		
C	800x600mm high	10	NO		
	GLAZING				
	6mm clear sheet float glass and glazing to metal with putty.				
D	In panes 0.10-0.50 square metres	6	SM		
	6mm obscure glass and glazing to metal with putty.				
E	In panes 0.10-0.50 square metres	4	SM		
F	Prepare, prime and paint two under coats and one gloss finishing coat of oil paint on metal window surfaces.	10	SM		
	DOORS				
	Steel metal door				
G	900x2100mm steel grille door to Architect's details.	2	NO		
	45mm Finished semi-solid cored flush doors faced with ordinary plywood both sides and hardwood lipped on all edges.				
H	Door size 900x2100mm high	4	NO		
I	Door size 900x1850mm high	8	NO		
	TOTAL C/F				

ITEM	DESCRIPTION	QTY	UNIT	RATE	KSHS/CTS
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	B/F				
	Wrot Cypress framed frames and finishing.				
A	150x50mm frame with one labour	62	LM		
B	38x20mm architraves with one labour	125	LM		
	Ironmongery				
	Supply and fix the following ironmongery to timber complete with all matching screws and keys to the approval of the architect.				
C	100mm pressed steel butt hinges	12	Prs		
D	2-lever mortice lock with pair of lever handles.	4	NO		
E	Indicator bolt	8	NO		
F	Rubber Door stopper	12	NO		
G	150x900mm aluminium kick plate	8	NO		
	Prepare, prime and paint two under coats and one gloss finishing coat of oil paint to:				
H	Metal door surfaces.	4	SM		
I	Timber door surfaces	25	SM		
	TOTAL C/F				

ITEM	DESCRIPTION	QTY	UNIT	RATE	KSHS/CTS
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	B/F				
	<u>SANITARY APPLIANCES</u>				
A	White "Twyfords" low level w.c.suite complete with pan heavy duty plastic seat and cover, ceramic cistern and flush pipe.	6	NO		
B	Wash Hand Basin as "Twyfords Classic" complete with mixer tap, waste out, go plug and chain.	5	NO		
C	1800mm urinal channel complete with all necessary accessories.	1	NO		
D	900x900x150mm deep white glazed shower tray complete with shower rose, mixer taps, towel rail and recessed soap dish.	2	NO		
E	600x400mm 'impala' beveled edge polished plate glass mirror fixed to wall with chromium plated cups and dome headed screws.	2	NO		
F	Provide and install 2000 litres water storage tank with all connections and including roof platform.	2	NO		
G	Allow for testing the whole of the sanitary installation during the progress of the works and again on completion and leave in perfect working order to the satisfaction of the Architect. Septic tank and soak pit				
H	Allow for the construction of 5000x2400x1500mm deep septic tank and 2000diameterx 2000mm deep soak pit including earthworks, foul drainage and all necessary manholes		sum		350,000.00
	TOTAL ABLUTION BLOCK CARRIED TO MAIN SUMMARY				

ITEM	DESCRIPTION	QTY	UNIT	RATE	SHS/CTS
BILL NO. 4 WATER STORAGE STEEL TOWER (2400x2400mm widex 6M HIGH) (All provisional) Substructure work					
A	Excavate stub column pits commencing at reduced level and not exceeding 1.50 m deep.	102	CM		
B	Return fill in and ram selected excavated material around foundation.	57	CM		
C	Remove surplus excavated material from site	35	CM		
High Yield deformed Reinforcement bars					
D	8mm Diameter bars	145	KG		
E	16mm Diameter bars	280	KG		
<u>Concrete (grade 15).</u>					
F	50mm blinding	16	SM		
<u>Vibrated reinforced concrete (grade 20).</u>					
G	Columns bases	7	CM		
H	Stub columns	2	CM		
<u>Formwork to:</u>					

I	Surfaces of stub columns	66	SM		
	TOTAL C/F				

ITEM	DESCRIPTION	QTY	UNIT	RATE	KSHS/CTS
	B/F				
	Steel work				
	Supply the following steel materials, connect and erect frames as directed on site. The rate to include surface treatment and one coat primer and two coats finishing oil paint ,3mm welds and any necessary holes.				
A	75x75x4mm thick SHS steel column pipe bottom welded to 200x200x6mm thick ms plate with four holes bolted to concrete stub columns class 25 with 16mm diameter bolts and welded to top curved members (ms) to structural engineers details	24	LM		
B	50x50x4mm angle bracing members	45	LM		
C	100x50x4mm I- Channels	12	LM		
D	100x40x4mm RHS ties	12	LM		
E	600mm long x 20mm diameter holding down bolts with nut and washers as specified.	16	NO		

F	400x400x10mm thick ms plate, with bolt holes and welded ready for connection.	8	NO		
	<u>Mild steel bearers</u>				
G	100x50mm thick bearers	47	LM		
H	3mm thick chequered plate welded to bearers (ms)	12	SM		
	TOTAL C/F				

ITEM	DESCRIPTION	QTY	UNIT	RATE	KSHS/CTS
	B/F				
	<u>900mm High Railing</u>				
A	25x25mm horizontal steel angles	24	LM		
B	Ditto but vertical members	81	LM		
	Cat Ladder				
C	50x4mm CHS main members	48	LM		
D	50x4mm CHS internal members	66	LM		
	<u>STEEL TANK</u>				
E	Provide and install 10M ³ water storage plastic tank with all necessary connections and including hoisting and fixing the tank into position to approval.	1	NO		
	<u>PAINTING AND DECORATION</u>				
	<u>Three coats of aluminium paint to:</u>				

F	Steel structures	72	LM		
TOTAL FOR STEEL TOWER CARRIED TO MAIN SUMMARY					

ITEM	DESCRIPTION	QTY	UNIT	RATE	KSHS/CTS
BILL NO. 5					
EXTENAL WORKS					
STORMWATER					
<u>Drainage</u>					
A	Provide, lay and joint 300mm x 225mm (Type A) Invert Block Drain (IBD) including earthworks.	120	LM		
B	Reinforced concrete storm water channel size 300mm x 300mm x 450mm deep with precast concrete slotted covers size 450 x 250mm including earthworks.	80	LM		
C	600mm diameter concrete pipes including earthworks and concrete surround to approval	25	LM		
PAVED AREAS					
D	Excavate topsoil average 300mm deep wheel and deposit spoil 50 meters away in soil heaps.	180	SM		

E	Provide gravel material and spread and compact in layers not more than 150mm thick to 95 % MDD AASHTO 180 (include for all haulage)	180	SM		
F	Approved insecticide treatment as gladiator TC or other equally and approved anti-termite treatment with 10 years manufacturers guarantee	180	SM		
G	50 mm thick precast concrete (grade 25) paving slab size 600 x 600 mm laid on and including 50 mm bed of sand an bedded, jointed and pointed in cement works (1:3) with concrete edging to approval. Gate Allow for cutting existing wall and opening an exit gate size 3000x2400mm high including earthworks, formwork and holding reinforced concrete columns to approval of the Architect.	180	SM		
H	TOTAL FOR EXTERNAL WORKS TO MAIN SUMMARY PAGE	1	NO		

ITEM	DESCRIPTION	QTY	UNIT	RATE	SHS/CTS
	BILL NO. 6				
	PROVISIONAL AND P.C SUMS				
A	Include a Sum of Shillings Two Hundred Thousand only (shs 200,000) for Electrical works (lighting purposes only) to be expended with the approval of the Project Manager.		Sum		200,000.00
B	Include a Sum of Shillings One Hundred and twenty Thousand only (shs 120,000) for Plumbing, Drainage and firefighting equipments Installation to be expended with the approval of the Project Manager.		Sum		120,000.00

C	<p>Include a Sum of Shillings One Hundred and fiftyThousand only (shs 150,000) for Rainwater harvesting with 2No. 10,000 litre plastic tanks) including platform and pumping system to be expended with the approval of the Project Manager.</p>		Sum	150,000.00
<p>TOTAL CARRIED TO THE MAIN SUMMARY PAGE.</p>				

REHABILITATION OF SIAKAGO MARKET IN EMBU COUNTY

MAIN SUMMARY

BILL NO.	DESCRIPTION	AMOUNT (KShs.)
A	Preliminary and General Items	
1	Project Provisions	
2	Market Sheds	
3	Ablution Block	
4	Steel tower	
5	External Works	
6	Provisional and P.C Sums	
A	Sub Total 1	
B	Contingencies 2% (To be expended on written Instructions of the Project Manager	
C	Sub Total 2	
D	VAT 16% (To be paid directly to KRA)	
E	GRAND TOTAL TAKEN TO FORM OF TENDER	

Amount of tender in words: Kenya Shillings.....

.....

Tenderer's signature and stamp.....

Address

Date

Witness: Name and Signature

Description

Address

Date

SECTION VI: CONDITIONS OF CONTRACT AND CONTRACT FORMS

LIST OF CONTRACT FORMS

This section contains the following forms that will be part of the contract with the successful bidder. These forms shall not be submitted as part of the bid.

GENERAL CONDITIONS OF CONTRACT 82
PARTICULAR CONDITIONS OF CONTRACT 83
LETTER OF NOTIFICATION OF AWARD 107
LETTER OF ACCEPTANCE 108
FORM OF AGREEMENT 109
PERFORMANCE BANK GUARANTEE 111
BANK GUARANTEE FOR ADVANCE PAYMENT 112
REQUEST FOR REVIEW 113

GENERAL CONDITIONS OF CONTRACT

The Conditions of Contract, Part I – General Conditions, shall be those forming Part I of the “Conditions of Contract for works of Civil Engineering Construction, Fourth Edition 1987, re-printed in 1992 with further amendments, prepared by the Federation Internationale des Ingenieurs – conseils (FIDIC). The Conditions are subject to variations and additions set out in Part II hereof entitled “Conditions of Contract, Part II - Conditions of Particular Application”.

Note

- i. The standard text of the General Conditions of Contract must be retained intact to facilitate its reading and interpretation by tenderers. Any amendments and additions to the General Conditions, specific to a given Contract, should be introduced in the Conditions of Particular Application or in the Appendix to Form of Tender.
- ii. The Conditions of Particular Application take precedence over the General Conditions of Contract.
- iii. Copies of the FIDIC Conditions of Contract can be obtained from:
FIDIC Secretariat
P.O. Box 86
1000 Lausanne 12
Switzerland
Fax: 41 21 653 5432
Telephone: 41 21 653 5003

PARTICULAR CONDITIONS OF CONTRACT
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SECTION IV: CONDITIONS OF CONTRACT PART II – CONDITIONS OF PARTICULAR APPLICATION

GENERAL

The Conditions of Contract Part II – Conditions of Particular Application, modify and compliment like-numbered clauses in the Conditions of Contract Part I – General Conditions. Both Parts shall be read together, with the Conditions of Particular Application prevailing in case of conflict or discrepancy. Clauses of the General Conditions not specifically modified and supplemented shall remain in effect.

Clause No.

Definitions and Interpretation

1.1 (a)(i) The said “Employer” shall be _____ (*Name of Employer*) represented by _____ (*Name of Employer’s representative*)

(iv) The said “Engineer” shall be _____ (*Name of the Engineer*) or any other competent person appointed by the Employer, and notified to the Contractor, to act in replacement of the Engineer.

(b)(i) Insert in line 2 after “the Bills of Quantities”, the following,” the rates entered by the Contractor (whether or not such rate be employed in computation of the Contract Price)”.

Add the following sub-clause;

Engineer's Duties and Authority

- 2.1 (b) The Engineer shall obtain specific approval of the Employer before taking any of the following actions specified in Part I:
- (i) Consenting to the sub-letting of any part of the Works under clause 4.
 - (ii) Certifying additional cost determined under Clause 12
 - (iii) Determining an extension of time under Clause 44
 - (iv) Issuing a variation under Clause 51 except in an emergency situation as reasonably determined by the Engineer.
 - (v) Fixing rates or prices under clause 52

4 Assignment and Subcontracting

- 4.1 Delete the second and third sentence and substitute:

No single subcontract may be for more than 10 percent of the Contract Price nor shall the sum of all subcontracts exceed 25 percent of the Contract price. No one subcontractor may be awarded subcontracts to a total value greater than 10 percent of the Contract Price. All subcontracts greater than 2 percent of the Contract Price are to have the prior consent of the Engineer. The Contractor shall however, not require such consent for purchases of materials or to place contracts for minor details or for any part of the Works of which the manufacturer of supplier is named in the Contract. Any such consent shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any subcontractor, his agents, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor, his agents, servants or workmen.

5 Contract Documents

- 5.1 (a) The language governing this Contract shall be English.

The "Ruling Language" which shall be used to interpret this Contract shall be English. Communication between the Contractor and Engineer or Engineer's representative shall be in English.

- (b) The law applicable to this Contract shall be the laws of the Republic of Kenya. Except to the extent otherwise provided by the Contract, the Kenyan courts shall have exclusive jurisdiction to hear and to determine all actions and proceedings in connection with and arising out of the Contract, and the Contractor shall submit to the jurisdiction of Kenyan courts for the purpose of any such actions and proceedings.

- 5.2 Delete the documents listed 1-6 and substitute:

- (1) The Contract Agreement;
- (2) The Notification of Award;
- (3) Tender and Appendix to Form of Tender;
- (4) The Conditions of Contract Part II;
- (5) The Conditions of Contract Part I (FIDIC);
- (6) The Special Specifications;

- (7) The Standard Specifications for Road and Bridge Construction, MOTC – 1986;
- (8) Clarifications and rectifications accepted by the Employer; and
- (9) The Drawings;
- (10) The priced Bills of Quantities; and
- (11) Schedules and other documents forming part of the Contract.

8.1 Add to sub clause 8.1 the following:

- (a) Within 28 days after receipt of the Engineer’s order to commence the Works, the Contractor shall establish an office at the Site duly equipped for the Contractor’s representative and his supervisory personnel.

The Contractor shall maintain this office throughout the Contract period. The said office shall be the legal domicile of the Contractor, and all correspondence sent to this office shall be deemed to have been sent to the Contractor’s head office.

- (b) A foreign Contractor or a Kenya-foreign joint venture, if not registered in Kenya under the applicable laws of Kenya, shall undertake registration upon receipt of the letter of acceptance and prior to signing of the Contract.

10.1. Performance Security

In lines 1,2 and 3 delete the words “If the Contract... within 28 days” and substitute “The Contractor shall obtain a Performance Security within 28 days

Add the following at the end of this Sub-Clause: -

The Performance Security shall be issued by a Bank incorporated in Kenya. The amount of guarantee shall be as stated in the Appendix to Form of Tender.

The bank guarantee, shall be issued either (a) by an established and reputable bank approved by the Employer and located in Kenya or a foreign bank through a correspondent established and reputable bank located in Kenya and approved by the Employer or (b) directly by a foreign bank acceptable to the Employer. The performance security shall normally be in the currency or currencies requested for payment by the Contractor and in the same proportions as those requested for payment in the Contract.

The performance security may, subject to the approval of the Engineer, be adjusted at the end of each period of 12 months to reflect the residual value of the Contract Works.

10.1 The performance guarantee shall be valid until a date 28 days after the date of issue of the Taking-Over Certificate. The security shall be returned to the Contractor within 28 days of the expiration.

10.2 Delete sub-clause 10.3

11.1. Inspection of Site

Add the words “and the Contractor shall be deemed to have based his tender on all the aforementioned” after the words “affect his tender”.

Delete the last paragraph completely and replace with the following:

“The Employer in no way guarantees completeness nor accuracy of the soil, materials, subsurface and hydrological information made available to the Contractor at the time of tendering or at any other time during the period of the Contract, and the Contractor shall be responsible for ascertaining for himself all information as aforesaid for the execution of Works and his tender shall be deemed to have been priced accordingly.

14.1. Programme to be Submitted

The time within which the Programme shall be submitted shall be twenty-eight (28) days. This detailed Programme shall be based upon the programme submitted by the Contractor as part of his tender and shall, in no material manner, deviate from the said programme.

The Contractor shall allow in his Programme for the following 11 public holidays per calendar year in Kenya upon which the Contractor shall not be permitted to work

New Year’s Day	(1st January)
Good Friday	
Easter Monday	
Labour Day	(1 st May)
Madaraka Day	(1 st June)
Idd-UI-Fitr	
	29
Moi Day	(10 th October)
Kenyatta Day	(20 th October)
Jamhuri Day	(12 th December)
Christmas Day	(25 th December)
Boxing Day	(26 th December)

The Contractor should also allow per calendar year for a further 2 unspecified public holidays which may be announced by the Government of Kenya with no prior notification, and upon which he shall not be permitted to work.

14.1 Add the following at the end of this sub clause: -

The Employer shall have the right to withhold payment at any time if the Contractor fails to submit the contractual construction programmes in accordance with sub clause 14.1 above or revise construction programmes due to his negligence, failure or omission.

14.2. Cash Flow Estimate to be Submitted

The time limit within which a detailed cash flow estimate is to be submitted shall be twenty-eight (28) days.

In preparing the estimates, the Contractor shall make provision for Advance payment, repayment of advance, retention, payment for services provided by the Employer and timing implications of sub clause 60 – Certificates and Payments.

15. Contractor’s Superintendence

Add the following at the end of the first paragraph of sub-clause 15.1:

14.2 The Contractor shall, within seven (7) days of receipt of the Engineer’s order to commence the Works, inform the Engineer in writing, the name of the Contractor’s representative and the anticipated date of his arrival on Site.

Add the following sub-clause 15.2:

14.3 The Contractor’s agent or representative on the Site shall be an Engineer registered by the Engineer’s Registration Board of Kenya in accordance with the Laws of Kenya cap. 530 or have equivalent status approved by the Engineer and shall be able to read, write and speak English fluently.

16.2. Engineer at Liberty to object

At the end of this clause add “by a competent substitute approved by the Engineer at the Contractor’s own expense”.

The Contractor is encouraged to the extent practicable and reasonable, to employ staff and labour with appropriate qualifications who are Kenyan citizens.

Safety, Security and Protection of the Environment

19.1 Add at the end of sub clause 19.1 the following: -

The formulation and enforcement of an adequate safety program shall be the obligation of the Contractor with respect to all the Works under this Contract, regardless of whether performed by the Contractor or his subcontractors. The Contractor shall, within 14 days after commencement of the Works, meet the Engineer to present and discuss his plan for the establishment of such safety measures as may be necessary to provide against accidents, unsafe acts and so forth. Within 28 days after commencement of the Works, the Contractor shall submit a written safety program to the Engineer covering the overall Works and based on the laws and regulations of Kenya. In addition, he shall prepare special safety programs for blasting and handling of explosives as stipulated in the General and Special Specifications.

Notwithstanding the foregoing, the Contractor shall observe the following measures with a view to reducing or eliminating adverse environmental effects by the Site Works:

- (i) All queries and borrow pits shall be filled and landscaped to their original state after extraction of construction material
- (ii) Soil erosion due to surface runoff or water from culverts or other drainage structures should be avoided by putting in place proper erosion control measures that shall include, but not limited to grassing, planting of trees, gabions etc.

- (iii) Long traffic diversion roads shall be avoided so as to minimize the effect of dust on the surrounding environment. In any case all diversions shall be kept damp and dust free at the Contractor's expense.
- (iv) Spillage of oils, fuels and lubricants shall be avoided and if spilt, shall be collected and disposed off in such a way as not to adversely affect the environment.
- (v) Rock blasting near settlement areas shall be properly coordinated with the relevant officers of the Government so as to minimize noise pollution and community interference.
- (vi) Dumping shall be done only at designated dumping areas and not haphazardly on surroundings.

Insurance of Works & Contractor's Equipment

21.1 (a) Delete the first sentence of this clause and replace with the following:

“Prior to commencement of the Works the Contractor shall, without limiting his or the Employer's obligations and responsibilities under Clause 20, insure to the satisfaction of the Employer.”

(b) Add the following words at the end of sub - paragraph (a) and immediately before the last word in (b)

“it being understood the insurance shall provide for compensation to be payable in the types and proportions of the currencies required to rectify the loss or damage incurred.”

In sub clause 21.1(b), delete the words “or as may be specified in Part II of these Conditions”.

21.2 (a) Delete the words “from the start of Work at the Site” and substitute with the words “from the first working day after the commencement date”

(c) Add the following sub-clause: “It shall be the responsibility of the Contractor to notify the insurance company of any change in the nature and extent of the Works and to ensure the adequacy of the insurance coverage at all times during the period of the Contract”.

23.1. Third Party Insurance

Add the following at the beginning of this sub-clause: -

“Prior to commencement of the Works

23.2. Minimum Amount of Insurance

Add the following at the end of this sub-clause: -

“..... with no limits to the number of occurrences.”

25.1 Insert the words “as soon as practicable after the respective insurances have been taken out but in any case” before the words “Prior to the start of Work at the Site”

Add the following sub-clauses 25.5 to 25.7

25.5. Insurance Notices

Each policy of insurance effected by the Contractor for the purpose of the Contract shall include a provision to the effect that the Insurer shall have a duty to give notice in writing to the Contractor and Employer of the date when a premium becomes payable not more than thirty (30) days after the giving of such notice.

25.6. Re-insurance in Kenya

The risks against which the Contractor is obliged to insure under the Contract shall be insured through established and reputable companies approved by the Employer and located in Kenya and any cover against risks which the Contractor may enjoy shall be reinsured in Kenya by an approved Kenyan Insurance Company In respect of the Contractor's obligations under the Contract.

- 25.5 It shall be the responsibility of the Contractor to notify the insurers under any of the insurances referred or event which by the terms of such insurances are required to be so notified and the Contractor shall indemnify and keep indemnified the Employer against all losses, claims, demands, proceedings, costs, charges and expenses whatsoever arising out of or in consequence of any default by the Contractor in complying with the requirements of this sub clause whether as a result of avoidance of such insurance or otherwise.

26. Compliance with Statutes, Regulations

Add the following sub-clause 26.2; -

The Employer will repay or allow to the Contractor all such sums as the Engineer shall certify to have been properly payable and paid by the Contractor in respect of such fees. Provided always that, without prejudice to sub clause, nothing contained in this clause shall be deemed to render the Employer liable to all claims which may be considered to fall within the provisions of clause 22.1.

Royalties

- 28.2 Add the following at the end of this sub-clause;

“The Contractor shall also be liable for all payments or compensation, if any, that are levied in connection with the dumping of part or all of any such material.”

Interference with Traffic and Adjoining Properties

- 29.2 Add new sub-clause 29.2;

The Contractor shall reinstate all properties whether public or private which are damaged in consequence of the construction and maintenance of the Works to a condition at least equal to that prevailing before his first entry on them.

If in the opinion of the Engineer the Contractor shall have failed to take reasonable and prompt action to discharge his obligations in the matter of reinstatement, the Engineer will inform the Contractor in writing of his opinion, in which circumstances the Employer reserves the right to employ others to do the necessary work of reinstatement and to deduct the cost thereof from any money due or to become due to the Contractor.

The Contractor shall promptly refer to the Employer all claims, which may be considered to fall within the provisions of Clause 22.1.

Labour

34.2. Conditions of Employment of Labour

The Contractor shall be responsible for making all arrangements for and shall bear all costs relating to recruitment, obtaining of all necessary visas, permits or other official permission for movements of staff and labour.

34.3. Fair Wages

The Contractor shall, in respect of all persons employed anywhere by him in the execution of the Contract, observe and fulfill the following conditions:

- (a) The Contractor shall pay the rates of wages, observe hours of labour and provide conditions, housing amenities and facilities not less favorable than those required by the Regulation of wages (Building and Construction Industry) Order 1998, and any subsequent amendments thereto, or in any ministry of labour or other government department in consultation with the district whose general circumstances in the trade or industry in which the Contractor is engaged are similar. The Contractor shall at all times during the continuation of the Contract display, for the information of his employees, a notice setting out the general rates of wages, hours and conditions of labour of his employees and a copy of this clause.
- (b) In the absence of any rates for wages, hours or conditions of labour so established, the Contractor shall pay rates or wages and observe hours and conditions for labour which are not less favorable than the general circumstances in the trade or industry in which the Contractor is engaged.
- (c) Where the absence of established rates of wages, hours and conditions of labour or the dissimilarity of the general circumstances in the trade or industry in which the Contractor is engaged prevent the Contractor from observing rates of wages, hours and conditions of labour ascertained under sub-paragraph (a) or (b) above, the Contractor in fixing the rates of wages, hours and conditions of labour of his employees shall be guided by the advice of the labour department.
- (d) The Contractor shall recognize the freedom of his employees to be members of trade unions.
- (e) The Contractor shall maintain records of the times worked by, and the wages paid to his employees. The Contractor shall furnish to the Employer, if called upon so to do, particulars of the rates of wages, hours and conditions of labour as the employer may direct.
- (f) The Contractor shall be responsible for observance by his sub-Contractors of the foregoing provisions.

34.4. Breach of Fair Wages Clause

Should a claim be made to the Employer alleging the Contractor's default in payment of fair wages to any workman employed on the Contract and if proof thereof satisfactory to the Employer is furnished by the labour department, the Employer may, failing payment by the Contractor, pay the claims out of any monies due or which may become due to the Contractor under the Contract.

34.5. Recruitment of Unskilled Labour

Any additional unskilled labour which may be required by the Contractor for the Works and which is not in his employ at the time of the acceptance of the tender shall be recruited by the Contractor from the labour office nearest to the Site of the Works.

34.6. Compensation for injury

The Contractor shall, in accordance with the Workman's Compensation Act Chapter 236 of the laws of Kenya and any other regulations in force from time to time in Kenya, pay compensation for loss or damage suffered in consequence of any accident or injury or disease resulting from his work to any workman or other person in the employment of the Contractor or any sub-contractor.

34.7. Labour Standards

- a) The Contractor shall comply with the existing local labour laws, regulations and labour standards.
- b) The Contractor shall formulate and enforce an adequate safety program with respect to all Work under this Contract, whether

performed by the Contractor or his sub-contractors. The Contractor has assurance from the Employer of cooperation where the implementation of these safety measures requires joint cooperation.
- c) Upon written request of the Employer the Contractor will remove or replace any of his employees employed under this Contract.

34.8. Recruitment

The Contractor shall not induce personnel of the employer or the Engineer to leave their regular employment and shall not, without the prior consent in writing of the Employer, employ personnel who have resigned from such service within the preceding twelve months.

34 Add the following subclasses 35.2 and 35.3: -

34.2 The Contractor shall maintain such records and make such reports concerning safety, health and welfare of persons and damage to property as the Engineer may from time to time prescribe.

34.3 The Contractor shall report to the Engineer details of any accident as soon as possible after its occurrence. In the case of any fatality or serious accident, the Contractor shall, in addition, notify the Engineer immediately by the quickest available means. The Contractor shall also notify the relevant authority(s) whenever such report is required by the law.

41.1. Commencement and Delays

Insert immediately after the word Works----- "on Site within 28 days" and before the word --
-----after

41.2. Definition of Commencement

For the purposes of this clause, the Works shall be deemed to have commenced when all of the following conditions are satisfied;

- a) The approved competent and authorized agent or representative of the Contractor is resident in the project area and is giving his whole time to the superintendence of the Works.
- b) The provision by the Contractor of evidence that all insurances required by the Contract are in force.
- c) The Contractor has an established office in the project area with postal address for receipt of correspondence.
- d) The principal items of constructional plant have been brought to Site and put to work in the execution of the permanent Works.

42.2. Possession of Site and Access Thereto

Add the following to this clause 42.4;

The Contractor shall not enter any part of the Site until he has requested and received permission to do so from the Employer or the Engineer.

The Contractor shall not use any portion of the Site for any purpose not connected with the Works.

44.1 Add at the end of sub-clause 44.1 the following:

Neither rains falling between 1st November and 31st December (inclusive) and between 1st February and 31st May (inclusive) nor floods caused by such rains shall be deemed exceptional weather conditions such as may fairly entitle the Contractor to an extension of time for the completion of the Work.

45. Working Hours

Delete sub-clause 45.1 and substitute:

“subject to any provision to the contrary contained in the Contract, the Contractor shall have the option to work continuously by day and by night and on locally recognized days of rest.

If the Contractor requests for permission to work by day and night and if the Engineer shall grant such permission, the Contractor shall not be entitled to any additional payment for so doing. All such work at night shall be carried out without unreasonable noise or other disturbance and the Contractor shall indemnify the Employer from and against any liability for damages on account of noise or other disturbance created while or in carrying out night work and from and against all claims, demands, proceedings, costs, charges and expenses whatsoever in regard or in relation to such liability. In addition, the Contractor shall be required to provide, for any work carried out by night or recognized days of rest, adequate lighting and other facilities so that the Work is carried out safely and properly. In the event of the Engineer granting permission to the Contractor to work double or rotary shifts or on Sundays, the Contractor shall be required to meet any additional costs to the Employer in the administration and supervision of the Contract arising from the granting of this permission.

47.2. Reduction of Liquidated Damages

There shall be no reduction in the amount of liquidated damages in the event that a part or a section of the Works within the Contract is certified as completed before the whole of the Works comprising that Contract.

No bonus for early completion of the Works shall be paid to the Contractor by the Employer.

The sum stated in the Appendix to Form of Tender as liquidated damages shall be increased by a sum equivalent to any amount payable by the Employer to the Contractor under clause 70.1 in respect of an increase in costs in such period that would not have been incurred by the Contractor if the Works had been completed by the due date for completion prescribed by clause 43.

Defects Liability

49.2 Add at the end of this sub-clause the following sentence: -

Any work ordered to be executed under this clause shall be done at a time and in a manner as directed by the Engineer so as to interfere as little as possible with the operations of the Employer or of other contractors and no extension(s) of the defects liability period will be allowed for the execution of this Work.

Add the following sub-clause 49.5 to this Clause: -

52. Variations

52.1 Add the following final sentence to this sub clause: -

The agreement, fixing or determination of any rates or prices as aforesaid shall include any foreign currency and the proportion thereof.

52.4. Daywork

Add the following at the end of this sub-clause:

The Work so ordered shall immediately become part of the Works under the Contract. The Contractor shall, as soon as practicable after receiving the Daywork Order from the Engineer undertake the necessary steps for due execution of such Work. Prior to commencement of any work to be done on a Daywork basis, the Contractor shall give a notice to the Engineer stating the exact time of such commencement.

54. Plant, Temporary Works and Materials

Delete Sub-Clauses 54.3 to 54.4 entirely.

For the purpose of these Clauses, the term "Equipment" shall be read as "Contractor's Equipment" where the context so requires.

54.1 Line 5: - Add "written" between "the" and "consent".

Quantities

55.1 Delete sub-clause 55.1 and substitute with the following;

The quality and quantity of the Work included in the Contract Price shall be deemed to be that which is set out in the Contract Bills. The Bills, 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.

Any error in description or in quantity or any omission of items from the Contract Bills or Specifications shall not vitiate this Contract but shall be corrected and deemed to be a variation required by the Engineer. Subject to the foregoing, any error whether arithmetical or not in the computation of the Contract Price shall be deemed to have been accepted by the parties hereto.

The Contract Price shall not be adjusted or altered in any way whatsoever otherwise than in accordance with the express provisions of these Conditions.

55.2 Add as a new sub-clause:

“Items of Work described in the Bills of Quantities for which no rate or price has been entered in the Contract shall be considered as included in other rates and prices in the Contract and will not be paid for separately by the Employer.

Measurement

56.1 Delete sub clause 56.1 and replace with the following: -

The Contractor shall prepare and submit to the Engineer all necessary field notes and other records taken and computations made for the purpose of quantity measurements, of which the forms shall be approved by the Engineer, for the monthly progress payment under clause 60. The measurement of work quantities made by the Contractor shall be verified and certified by the Engineer based on the above-mentioned documents.

The Contractor shall furnish all personnel, equipment and materials to make such surveys and computations as necessary to determine the quantities of work performed. Unless otherwise prescribed in the specifications or the drawings, all measurements for payment shall be made by the dimensions, lines and grades as shown on the drawings or by direct survey of which the methods shall be approved by the Engineer.

The documents submitted for measurement and payment shall become the property of the Employer and shall be used to the extent necessary to determine the monthly progress payment to be made to the Contractor under the Contract. Direct survey, if done, shall be subject to checking and verification by the Engineer and all errors in the said survey work and related computations as found during such checking shall be immediately corrected by the Contractor.

57.1 Delete sub clause 57.1 and substitute with the following: -

The Works shall be measured net with deductions made in accordance with the principles of the latest edition of the Civil Engineering Standard Method of Measurement. All measurements shall be given in metric (SI) units.

Provisional Sums

58.4 **Prime Cost sum**

Wherever an item in the Bills of Quantities has been referred to as a “P.C. Sum” (Prime Cost Sum), that item shall be construed as a Provisional sum and the provisions of Sub-clauses 58.1 to 58.3 will apply.

59.5 Add the following paragraph at the end of sub clause 59.5: -

If the Engineer desires to secure final payment to any nominated sub-contractor before final payment is due to the Contractor and if such sub-contractor has satisfactorily indemnified the Contractor against any latent defects, the Engineer may, in an interim certificate, include an amount to cover the said final payment, and thereupon the Contractor shall pay to such nominated sub-contractor the amount so certified. Upon such final payment, the amount named in the Appendix to Form of Tender as Limit of Retention Money shall be reduced by the sum which bears the same ratio to the amount as does the subcontract and sub-contractor shall be discharged from all liability for the Work, materials or goods executed or supplied by such subcontractor under the Contract to which the payment relates.

Certificates and Payment

Delete Sub-clauses 60.1 to 60.10 entirely and substitute with the following: -

60.1. Advance Payment

In the event that an advance payment is granted, the following shall apply: -

- a) On signature of the Contract, the Contractor shall at his request, and without furnishing proof of expenditure, be entitled to an advance of 10% (ten percent) of the original amount of the Contract. The advance shall not be subject to retention money.
- b) No advance payment may be made before the Contractor has submitted proof of the establishment of deposit or of a directly liable guarantee satisfactory to the Employer in the amount of the advance payment. The guarantee shall be in the same currency as the advance.
- c) Reimbursement of the advance shall be effected by deductions from monthly interim payments.
- d) Reimbursement of the lump sum advance shall be made by deductions from the Interim payments and where applicable from the balance owing to the Contractor. Reimbursement shall begin when the amount of the sums due under the Contract reaches 20% of the original amount of the Contract. It shall have been completed by the time 80% of this amount is reached.

The amount to be repaid by way of successive deductions shall be calculated by means of the formula:

$$R = \frac{A(x^1 - x^{11})}{80 - 20}$$

Where:

R = the amount to be reimbursed

A = the amount of the advance which has been granted

X¹ = the amount of proposed cumulative payments as a percentage of the original amount of the Contract. This figure will exceed 20% but not exceed 80%.

X¹¹ = The amount of the previous cumulative payments as a percentage of the original amount of the Contract. This figure will be below 80% but not less than 20%.

- (e) with each reimbursement the counterpart of the directly liable guarantee may be reduced accordingly.

60.2. Interim Payment Certificate

The Contractor shall submit to the Engineer, in the manner required by the Engineer after the end of each month a statement showing the estimated total value of permanent Work properly executed and materials or goods for permanent works brought to Site up to the end of the previous month (if the value shall justify the issue of an interim certificate) together with any adjustments under clause 70 and any outstanding claims and sums the Contractor considers may be due to him. The Contractor shall amend or correct his estimate as directed by the Engineer and the latter shall not accept it until he is satisfied that it is fair and reasonable. With respect to the said materials and goods, no payment for them shall be made unless; -

- (i) The materials are in accordance with the specifications for the Works;
- (ii) The materials have been delivered to Site and are properly stored and protected against loss, damage or deterioration;
- (iii) The Contractor's record of the requirements, orders, receipts and use of materials are kept in a form approved by the Engineer, and such records are available for inspection by the Engineer;
- (iv) The Contractor has submitted a statement of his cost of acquiring and delivering the materials and goods to the Site, together with such documents as may be required for the purpose of evidencing such cost;
- (v) The materials are to be used within a reasonable time.

The Contractor will be paid on the certificate of the Engineer the amount due to him on account of the estimated total value of the permanent Work executed up to the end of the previous month together with such amount (not exceeding 75% of the value) as the Engineer may consider proper on account of materials and goods for permanent Work delivered by the Contractor on Site and in addition, such amount as the Engineer may consider fair and reasonable for any Temporary Works for which separate amounts are provided in the Bill of Quantities, all of which shall be subject to a retention of the percentage named in the Appendix to Form of Tender until the amount retained (hereinafter and in all Contract documents called the "Retention Money") shall reach the "Limit of Retention Money" named in the said Appendix. Provided always that no interim certificate shall be issued for a sum [such sum always being the net amount thereof after all deductions for retention etc.) less than that named in the Appendix to Form of Tender as "Minimum Amount of Interim Certificate" at one time.

Within 14 days after receiving a statement from the Contractor as aforesaid, and subject to the Contractor having made such further amendments and corrections as the Engineer may require, the Engineer shall issue a Certificate of Payment to the Employer showing the amount due, with a copy to the Contractor.

The Engineer shall not unreasonably withhold certifying an Interim Payment Certificate and where there is a dispute regarding an item for payment, the Engineer may delete this disputed item from the Interim Payment Certificate and certify the remainder for payment provided the said payment is in accordance with the preceding paragraph. In cases of difference in opinion as to the value of any item, the Engineer's view shall prevail.

60.3. Final Account and Final Payment Certificate

As soon as possible after the issue of Taking - Over Certificate or the termination of the Contract and not later than the time of issue of Defects Liability Certificate, the Contractor shall prepare and submit to the Engineer (with a copy to the Employer), a Statement of Final

Account showing in detail the total value of work done in accordance with the Contract together with all sums paid in previous payments. Within thirty (30) after receipt of such further information as may be reasonably required from the Contractor for its verification, the Engineer shall check the said statement, prepare and submit a Final Payment Certificate to the Employer (with a copy to the Contractor).

The Final Payment Certificate shall state;

- (a) The (final) total value of all Work done in accordance with the Contract;
- (b) After giving credit to the Employer for all amounts previously paid to the Contractor, the balance, if any, due from the Employer to the Contractor or the Contractor to the Employer, as the case may be.

Unless the Contractor notifies the Engineer of his objection to the Final Payment Certificate within twenty-eight [28] days of delivery thereof, he shall be deemed to have agreed that he accepts the total Contract Price as set out in the Final Payment Certificate as full settlement for all work done under the Contract including any claims, variations and omissions thereof.

However, a Final Certificate of Payment shall not be conclusive:

- a) to the extent that fraud or dishonesty relates to or affects any matter dealt with in the Certificate, or
- b) if any arbitration or court proceedings under the Contract have been commenced by either party before the expiry of 84 days after the issue of the Final Certificate of Payment.

60.4. Payment of Certificates

Payment upon each of the Engineer's Certificates for Interim Payments shall be made by the Employer within the time stated in the Appendix to Form of Tender from the date of issue of each Certificate of Payment.

Payment upon the Engineer's Final Payment Certificate shall be made by the Employer within the time stated in the Appendix to Form of Tender from the date of issue of the Final Certificate of Payment signed by the Engineer and countersigned by the Contractor or his authorized agent or representative.

Making of a payment by the Employer shall be considered to have been duly executed on the day that the Employer has issued a cheque.

60.5. Payment of Retention Money

One half of the retention money shall become due upon the issue of a Taking – Over Certificate and shall be paid to the Contractor when the Engineer shall certify in writing that the last section of the whole of the Works has been substantially completed and the other half shall be paid to the Contractor after the expiration of the Defects Liability Period and the issue of a Certificate under Clause 62. Provided always that if such time there shall remain to be executed by the Contractor any Works ordered during such period pursuant to Clauses 49 and 50 thereof, the Employer

shall be entitled to withhold payment [until the completion of such Works] of so much of the second half of the Retention Money as shall in the opinion of the Engineer represent the Costs of the Works so remaining to be executed. Provided further that in the event of different Defects Liability Periods having become applicable to different parts of the Works pursuant

to clause 48 hereof the expression “expiration of the Defect Liability Period” shall for the purpose of this Sub-clause be deemed to mean the expiration of the latest of such periods.

60.6. Currency of Payment

The Contract price shall be stated in Kenya Shillings. All payments to the Contractor shall be made in Kenya shillings and foreign currency(s) in the proportion indicated in the tender, or agreed prior to the execution of the Contract Agreement and indicated therein. The rate[s] of exchange for the calculation of the amount of foreign currency payment[s] shall be the rate of exchange indicated in the Tender. If the Contractor indicated foreign currencies for payment other than the currencies of the countries of origin of related goods and services, the Employer reserves the right to pay the equivalent at the time of payment in the currencies of the countries of such goods and services. The Employer and the Engineer shall be notified promptly by the Contractor of any changes in the expected foreign currency requirements of the Contractor during the execution of the Works as indicated in the Statement of Foreign Currency Requirements and the foreign and local currency portions of the balance of the Contract Price shall then be amended by agreement between Employer and the Contractor in order to reflect appropriately such changes.

60.7. Overdue Payments

Unless otherwise stated in the appendix interest shall be paid on the overdue amounts and the interest to be paid shall be in accordance with prevailing commercial bank rates.

60.8. Correcting and With-holding

The Engineer may by any interim certificate or through the final account make any correction or modification to any previous certified sum and shall have authority, if any work or part thereof is not being carried out to his satisfaction, to omit or reduce the value of such work in any Interim Payment Certificate.

60.9. Completion by Sections.

If a Taking-Over Certificate shall be issued for any section or part of the Works separately, the payments herein provided for on or after issue of such a Certificate shall be made in respect of such section or part and references to the Contract Price shall mean such part of the Contract Price as shall in the absence of agreement be apportioned thereto by the Engineer.

60.10. Proportion of Foreign Currency

Subject to the provision of sub clause 60.5 the proportion of foreign currency in any amount due to the Contractor or Employer shall be determined in the following manner: -

- a) For all measured Work, the percentages of foreign currency for the appropriate section of the Bill of Quantities as stated in the schedule of foreign currency requirements shall be applied.
- b) Variations in the cost of imported materials shall be paid in foreign currency.
- c) Variations in the cost of locally purchased materials and those due to changes of legislation shall be paid in local currency.
- d) For Day works labour and plant, the respective percentages of foreign currency stated in the schedule shall be applied.

- e) For Day works materials and materials on site, payment in foreign currency will only be made for imported materials.
- f) The provisions for the deduction and release of Retention Money and the payment of interest shall be applied similarly to both the local and foreign portions.
- g) The advance mobilization loan, its repayment thereof and liquidated damages shall all be apportioned on the basis of the ration between local and foreign currency indicated in the Contract Price.
- h) In the event that the payment is for an item not covered in the foregoing paragraphs, the Engineer shall determine the proportion of foreign and local currency based on the information given in the Schedule of Foreign Currency Requirements, together with any additional information he may request the Contractor to provide.

60.11. Statement at Completion

Not later than 14 days after the issue of the Taking-Over Certificate in respect of the whole of the works, the Contractor shall submit to the Engineer a statement at completion showing in detail, in a form approved by the Engineer;

- (a) The final value of all work done in accordance with the Contract up to the date stated in such Taking-Over Certificate.
- (b) Any further sums which the Contractor considers to be due; and
- (c) An estimate of amounts, which the Contractor considers, will become due to him under the Contract.

Estimate amounts shall be shown separately in the Statement at Completion. The Contractor shall amend and correct the Statement as directed by the Engineer who shall issue a Certificate at Completion to be processed in accordance with sub-clause 60.4.

60.12. Final Statement

Not later than 56 days after the issue of the Defects Liability Certificate, the Contractor shall submit to the Engineer for consideration a draft final statement with supporting documents showing in detail, in the form approved by the Engineer;

- (a) The final value of all work done in accordance with the Contract;
- (b) Any further sums which the Contractor considers to be due to him.

If the Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer may reasonable require and shall make such changes in the draft as may be required.

60.13. Discharge

Upon submission of the Final Statement, the Contractor shall give to the Employer, with a copy to the Engineer, a written discharge confirming that the total of the Final Statement represents full and final settlement of all monies due to the Contractor arising out of or in respect of the Contract. Provided that such discharge shall become effective only after

payment under the Final Payment Certificate issued pursuant to Sub-clause 60.14 has been made and the Performance Security referred to in Sub-clause 10.1 has been returned to the Contractor.

60.14. Final Payment Certificate

Upon acceptance of the Final Statement as given in Sub-clause 60.12, the Engineer shall prepare a Final Payment Certificate which shall be delivered to the Contractor's authorized agent or representative for his signature. The Final Payment Certificate shall state:

- (a) The final value of all work done in accordance with the Contract;
- (b) After giving credit to the Employer for all amounts previously paid by the Employer, the balance, if any, due from the Employer to the Contractor or the Contractor to the Employer as the case may be

Final Certificate shall be issued for any sum due to the Contractor even if such is less than the sum said named in the Appendix to the Form of Tender.

60.15. Cessation of Employer's Liability

Unless the Contractor notifies the Engineer of his objection to the Final Certificate within fourteen days of delivery thereof he shall be deemed to have agreed that he accepts the total Contract Price as set out in the Final Certificate as full settlement for all work done under the Contract including any variations and omissions thereof.

62.1. Defects Liability Certificate

Delete the last sentence of this Sub-Clause beginning "Provided that the issue.....in Sub-Clause 60.3".

Remedies

63.4 Assignment of Benefit of Agreement

Add the following at the end of this sub-clause: -

"But on the terms that a supplier or sub-contractor shall be entitled to make any reasonable objection to any further assignment thereof by the Employer and the Employer may pay the supplier or sub-contractor for any such materials supplied or Works executed under such agreement, whether the same be assigned as aforesaid or not, before or after the said determination, the amount due by such arrangement in so far as it has not already been paid by the Contractor".

65. Special Risks

Add sub clause 65.9 as follows:

- (a) In the event of the Employer unilaterally ordering the final cessation of performance of the Contract for reasons not specified elsewhere in the Conditions of Contract the Contract shall be considered to be frustrated and the Contractor shall be indemnified as provided for under clause 65.1.

- (b) In the event of the Employer ordering the adjournment of the Contract before or after commencement of the Works for reasons not specified elsewhere in the Conditions of Contract, the Contractor shall be entitled to indemnity for any injury which he may have suffered as a consequence of such adjournment. The Engineer shall award the Contractor payment of such sum as in his opinion shall be reasonable giving regard to all material and relevant factors including the Contractor's on costs and overheads, and the nature of the instruction to adjourn the Contract.

Settlement of Disputes

67.3 Arbitration

For the purposes of this Clause, the Arbitrator shall be a person to be agreed between the parties or failing agreement, the Arbitrator shall be appointed by the appointer designated in the Appendix to the Form of Tender.

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Add the following paragraph after the last paragraph of sub-clause 67.3:

Arbitration shall take place in Nairobi, Kenya. The language of all arbitration proceedings shall be in English. The cost of arbitration shall be apportioned by the Arbitrator according to his findings.

Notices

- 68.1 Add the following at the end of this sub clause: -

Notwithstanding the foregoing, the Contractor shall either maintain an address close to the Works or appoint an agent residing close to the Works for the purpose of receiving notices to be given to the Contractor under the terms of the Contract. This obligation shall be terminated upon the issue of the Certificate of Completion.

- 68.2 Delete the words "nominated for that purpose in Part II of these Conditions" in this sub-clause.

Default of Employer

69.1. Default of Employer

In paragraph (a) of this Sub-Clause, delete the words "within 28 days of expiry of the time stated in Sub-clause 60.10" and insert "within 56 days after the expiry of the time stated in Sub-Clause 60.4".

69.4. Contractor's Entitlement to Suspend Work

Delete the first four lines of this Sub-Clause and replace with the following: -

"Without prejudice to the Contractor's entitlement to interest under Sub-clause 60.7 and to terminate his employment under Sub-Clause 69.1, the Contractor may, if the Employer fails to pay the Contractor the amount due under any certificate of the Engineer within 56 days after the expiry of the time stated in Sub-Clause 60.4...."

Delete sub-clause 69.4 (b) and substitute with the following----“the amount of such cost, which shall be added to the Contract Price. However, the costs due to idle time for plant, equipment and labour shall not be included in the said costs and shall be borne by the Contractor.

69.5. Resumption of Work

In line 3 of this Sub-Clause delete the Words “Sub-Clause 60.10” and replace with “Sub-Clause 60.7”

Changes in Cost and Legislation

70.1 Delete the sub-clause 70.1 in its entirety and substitute with the following: -

“The Contract Price shall be deemed to have been calculated in the matter set below and shall be subject to the adjustment in the event specified hereunder:

- (a) The rates contained in the priced Bill of Quantities are based upon the rates of wages and other emoluments and expenses applicable at the site and the date of tender pricing (as defined in sub-clause 70.4 hereinafter);
- (b) If the said rates of wages and other emoluments and expenses shall be increased or decreased by act, statue, decree, regulation and the like after the said date of tender pricing then the net amount of increase the emoluments and expenses shall, as the case may be, paid to or allowed by Contractor;
- (c) The rates contained in the price Bill of Quantities are based upon the rates of the Contractor’s compulsory contributions payable at the date of tender under or by virtue of any Act, Statue, Regulations and the like applicable at the site;
- (d) If any of the said rates of contribution becomes payable after that date then the net amount of new statutory contribution becomes payable after that date then the net amount of increase or decrease of the emoluments and expenses shall, as the case may be, be paid to or allowed by the Contractor. Difference between what the Contractor actually pays in respect of work people engaged upon or in connection with the works and what he would have paid in respect of such person had any of the said rates not been increased or decreased or had a new contribution not become payable as aforesaid, shall as the case may be, be paid to or allowed by the Contractor. Provided always that the Engineer and the Contractor may agree a sum, which shall be deemed to be the net amount of the aforesaid difference, and such sum shall be deemed for the purpose of this Contract to be, that which is to be paid to or allowed by the Contractor by the virtue of this sub-paragraph;
- (e) If the market price or any materials or goods specified as aforesaid shall be increased or decreased after the said Date of Tender Pricing, then the net amount of difference between the basic price and the market price payable by the Contractor and current when any such goods and materials are bought shall, as the case may be, be paid to or allowed by the Contractor. Orders for materials and goods listed as aforesaid shall have been placed within a reasonable time after the date at which sufficient information is available for the placing of such orders, and the placing of orders at that time shall be a condition precedent to any payments being made to the Contractor in respect of increased market prices.”

Substitute and add the following sub-clauses:

- 70.2 (a) If the Contractor shall decide subject to Clause 4 thereof to sub-let any portion of the work he shall incorporate in the sub-contract provisions to the like effect as those contained in sub-clause (1) of this Clause;
- (c) If the price payable under a sub-contract as aforesaid is increased above or decreased below the price in such sub-contract by reason of the operation of the incorporated provisions of sub-clause (1) of this clause then the net amount of such increase or decrease shall as the case may be, be paid to or allowed by the Contractor under this Contract.

70.3 The expression “the date of tender pricing” as used in this Clause means the date 28 days prior to the final date for submission of Tenders as determined by the Employer in the Tender documents.

70.4 For imported materials, the supplier’s/manufacturer’s Prime costs shall be C.I.F. cost at point of entry by the same means of transport as determined by the Contractor’s Basic Rate.

For locally produced materials, the supplier’s or manufacturer’s prime costs shall be at their nearest depot or the nearest railway station relevant to the works.

For materials, which are subject to Government Price Control, payments for price variations will be determined from the difference between the control price in force at a date 28 days prior to date for submission of Tenders and the price in force on the date of purchase.

70.5 The materials to which this Variation Clause applies are:

- ◆ All bitumen material
- ◆ Fuels, oils and lubricant
- ◆ Cement
- ◆ Lime
- ◆ Flex beam guardrail
- ◆ Explosives
- ◆ Gabion mesh
- ◆ Reinforcing steel

70.6 The Contractor shall not change the supplier or manufacturer during the Contract without the approval of the Engineer.

70.7 No payments will be made for price variation related to expenses incurred by the Contractor in his Head Office in Kenya, or overseas.

70.8 All payments made pursuant to Clause 70 shall be in Kenya Shillings.

70.9 No payments will be made for the cost of preparing V.O.P. claims.

70.10 Add the following at the end of this clause.

“Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited as aforesaid if the same shall already have been taken into account in accordance with the provisions of sub-clause 70.1”.

ADDITIONAL CLAUSES

Clause 73 Declaration Against Waiver

The condoning by the Employer of any breach or breaches by the Contractor or any authorized sub-contractor of any of the stipulations and Conditions contained in the Contract shall in no way prejudice or affect or be construed as a waiver of the Employer's rights, powers and remedies under the Contract in respect of any breach or breaches as aforesaid.

Clause 74 Bribery and Collusion

The Employer shall be entitled to determine the Contract and recover from the Contractor the amount of any loss resulting from such determination if the Contractor shall have offered or given or agreed to give any person any gift or consideration of any kind as an inducement of regard for doing or fore bearing to do or for having done or fore borne to do any action in relation to obtaining or the execution of the Contract or any other contract with the Employer or if any of the like acts shall have been done by any person employed by the Contractor or acting on his behalf (whether with or without the

knowledge of the Contractor) or if the Contractor shall have come to any agreement with another contractor or number of contractors whereby an agreed quotation or estimate shall be tendered to the Employer by one or more contractors.

Clause 75 Contract Confidential

The Contractor shall treat the Contract and everything in connection therewith as private and confidential. In particular, the Contractor shall not publish any information, drawings or photographs concerning the Works in any trade or technical paper etc, and shall not use the Site for the purpose of advertising except with the written consent of the Engineer and subject to such conditions as the Engineer may prescribe.

Clause 76 Employer's Officials etc., Not Personally Liable

No official of the Employer or the Engineer or the Engineer's Representative or anyone of their respective staffs or their employees shall be in any way personally bound or liable for the acts or obligations of the Employer under the Contract or answerable for default or omission in the observance or performance of any of the acts, matters or things which are herein contained.

Clause 77 Taxes and Duties

- (1) The Contractor shall list in his tender the plant and vehicles which he intends to import for the execution of the Works. The Engineer will consider the list in the context of the program of the Works and will give his approval subject to any modifications that he may see fit to make. No appeal against the Engineer's decision shall be permitted.

The Contractor will be permitted to import approved plant and vehicles required for the execution of the Works on the basis of temporary admission into Kenya and re-export thereafter upon completion of the Contract without payment of customs duties and Value Added Tax for them. If the plant and

equipment shall not be re-exported, duties and taxes shall then be paid based upon their residual value at the date of completion of the Contract, or the date of withdrawal from the Works, if earlier. Plant and vehicles so imported shall not be utilized on other works not associated with the Contract unless specifically authorized by the Engineer.

- (2) The Contractor will be permitted to import approved spare parts, tires and tubes without payment of customs duty and Value Added Tax for maintenance of any imported vehicles and plant as provided in sub-clause 77.1 above, within a financial limit indicated by himself. However, this limit will not exceed 15% of the Contract Price excluding Contingencies.
- (3) All materials approved by the Engineer to be incorporated into the Works or temporary works, and whose importation into Kenya is agreed to be essential shall be free of customs duties and Value Added Tax. The Contractor shall submit a list of such materials required with the tender. The Contractor shall be required to satisfy the Engineer that such materials have actually been incorporated into the Works.

Items produced in Kenya will not be permitted to be imported without payment of customs duty and Value Added Tax.

Items produced in Kenya shall mean commercially recognized goods or products that are either mined, grown, manufactured, processed or assembled (whether the components are imported or not) in Kenya.

Clause 78 Joint Ventures

- 78.1 If the Contractor is a joint venture, all partners of the joint venture shall be jointly and severally liable to the Employer for the execution of the entire Contract in accordance with its terms and Conditions.

LETTER OF NOTIFICATION OF AWARD

Address of Procuring Entity

To: _____

RE: Tender No. _____

Tender Name _____

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

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

(FULL PARTICULARS) _____

SIGNED FOR ACCOUNTING OFFICER

LETTER OF ACCEPTANCE
[Letterhead paper of the Employer]

_____ [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 _____
[name of the Contract and identification number, as given in the Tender documents] 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

_____ *(name and identification number of Contract)* (hereinafter called “the Works”) located
at _____ *[Place/location of the Works]* 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 _____

PERFORMANCE BANK GUARANTEE

To: _____ (*Name of Employer*) _____ (*Date*)
_____ (*Address of Employer*)

Dear Sir,

WHEREAS _____ (hereinafter called "the Contractor") has undertaken, in pursuance of Contract No. _____ dated _____ to execute _____ (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 there under 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: _____ [name of Employer] _____ (Date)
_____ [address of Employer]

Gentlemen,

Ref: _____ [name of Contract]

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 there under 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: _____

REQUEST FOR REVIEW

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*) ofdated the...day of20.....in the matter of Tender No.....of20...

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.

SIGNED (Applicant)

Dated on..... day of/...20...

FOR OFFICIAL USE ONLY

Lodged with the Secretary Public Procurement Administrative Review Board on day of20.....

SIGNED

Board Secreta