

SECTION VII - SPECIAL CONDITIONS OF CONTRACT

The following **Special Conditions of Contract** shall supplement the GCC. Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

SCC Clause	Conditions	INSERT CONDITION
1.1.2(d)	Procuring Entity's name	State Department for Housing and Urban Development
1.1.2(a) & 1.3. 1(b)	Procuring Entity's address	P.O BOX 30119-00100 NAIROBI.
1.1.2(n)	Utility's Name	Machakos Estates – Machakos County
2.1(f)	Additional Conditions of Effectiveness	
2.3.1	Period of Contract	The duration of the contract is 24 months renewable annually at the discretions of SDHUD but subject to performance appraisals. Performance of below 60% score shall lead to termination or non- renewal of the contract
3.5.1	Contractor's responsibility for the acts or defaults of its Subcontractor	There are no Special Conditions of Contract applicable to GCC Clause 3.5.1
3.8	Compliance with Laws	There are no Special Conditions of Contract applicable under Sub-Clause 3.8
8.6	Categories of staff that must be hired locally if and to the extent that a sufficient number of appropriately qualified staff is locally available	All the staff shall be local
11.2	Period within which the Procuring Entity should make a decision on Contractor's management advice	[7] days
15.4	Procuring Entity's intention to publish the Contract and Performance Targets	The Procuring Entity has the right and intention to publish the Contract in its entirety in the Public Procurement Information Portal (PPIP)
16.1	Maximum total liability of the Contractor to the Procuring Entity	The product of 1.5 times the Contractor's Remuneration,
16.3	Performance Security	The performance security shall be 10 % of annual contract price.
16.4	Periods for required submissions by the relevant insuring Party to the other Party	Period (calculated from the Commencement Date) for submission of: (a) evidence that the insurances described in Clause 16 have been effected: 14 days and (b) copies of the policies for the insurances as required by Schedule M: 14 days
20.2(a)	List of Procuring Entity-proposed potential Independent Experts	There are no Independent Experts
	Date by which the Procuring Entity shall respond to Contractor's counterproposal (if any)	Not Applicable

SCC Clause	Conditions	INSERT CONDITION
	Appointing entity or official in case of disagreement between the Parties	Nairobi Centre for International Arbitration
20.3.1	Currency for payment of the Independent Expert	Not Applicable
20.4.1 (a) (i)	International Arbitration Institution	Not Applicable
20.4.1(a) (ii)	Place of arbitration	
21.10 (f)(i)	Amount of Liquidated Damages on Termination for Procuring Entity Convenience	There are no special conditions of contract applicable under GCC clause 21.10(f) (i)

SECTION VIII - CONTRACT FORMS

1 NOTIFICATION OF INTENTION TO AWARD

[This Notification of Intention to Award shall be sent to each Tenderer whose Financial Proposal was opened. Send this Notification to the authorized representative of the Tenderer].

For the attention of Tenderer's authorized representative

Name:*[insert authorized representative's name]*

Address:*[insert authorized representative's address]*

Telephone numbers: *[insert authorized representative's telephone/fax*

numbers] Email Address:*[insert authorized representative's email address]*

[IMPORTANT: insert the date that this Notification is transmitted to all Tenderers. The Notification must be sent to all Tenderers simultaneously. This means on the same date and as close to the same time as possible.]

DATE OF TRANSMISSION: This Notification is sent by: *[email]* on *[date]* (local time)
Notification of Intention to Award

Procuring Entity:*[insert the name of the Procuring Entity]*

Contract title: *[insert the name of the contract]*

ITT No: *[insert ITT reference number from Procurement Plan]*

This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period. During the Standstill Period you may:

- a) Request a debriefing in relation to the evaluation of your Tender, and/or
- b) Submit a Procurement-related Complaint in relation to the decision to award the contract.

1) The successful Tenderer

Name: *[Insert name of successful Tenderer]*

Address: *[Insert address of the successful Tenderer]*

Contract price: *[insert contract price of the successful Tenderer]*

- 2) Tenderers [INSTRUCTIONS: insert names of all Tenderers. As applicable, insert prices, technical scores and combined scores. Where the selection method requires it, state the price offered by each Tenderer as read out, and as evaluated. Include over all technical scores and scores assigned for each criterion and sub-criterion.]**

1	Name of Tenderer	Technical scores	Financial Proposal price	Evaluated Financial Proposal Cost	Combined score and ranking (if applicable)	
2						
3						
4						
5						
6						

3) Reason/s why your Tender was unsuccessful *[Delete if the combined score already reveals the reason]*
[INSTRUCTIONS; State the reason/s why this Tenderer's Tender was unsuccessful. Do NOT include: (a) a point by point comparison with another Tenderer's Tender or (b) information that is marked confidential by the Tenderer in its Tender.]

4) How to request a debriefing *[This applies only if your Tender was unsuccessful as stated under point (3) above]*
DEADLINE: The deadline to request a debriefing expires at midnight on [insert date] (local time).

You may request a debriefing in relation to the results of the evaluation of your Tender. If you decide to request a debriefing your written request must be made within three (3) Business Days of receipt of this Notification of Intention to Award.

Provide the contract name, reference number, name of the Tenderer, contact details; and address the invitation to debriefing as follows:

Attention:*[insert full name of person, if applicable]*

Title/position:*[insert title/position]*

Agency:*[insert name of Procuring Entity]*

Email address:*[insert email address]*

If your invitation to a debriefing is received within the 3 Business Days deadline, we will provide the debriefing within five (5) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (5) Business Days after the date that the debriefing is provided. If this happens, we will notify you the date that the extended Standstill Period will end.

The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and contend the date and time.

If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Business Days from the date of publication of the Contract Award Notice.

5) How to make a complaint

DEADLINE: The deadline for submitting a Procurement-related Complaint challenging the decision to award the contract expires on midnight, [insert date] (local time).

Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-related Complaint as follows:

Attention:*[insert full name of person, if applicable]*

Title/position:*[insert title/position]*

Agency:*[insert name of Procuring Entity]*

Email address: *[Insert email address]*

[At this point in the procurement process] [Upon receipt of this notification] you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.

Further information:

In summary, there are four essential requirements:

1. You must be an 'interested party'. In this case, that means a Tenderer who has submitted a Tender in this selection process, and is the recipient of a Notification of Intention to Award.
2. The complaint can only challenge the decision to award the contract.

- 3 You must submit the complaint within the deadline stated above.
- 4 You must include, in your complaint, all of the information required.

6) Standstill Period

DEADLINE: The Standstill Period is due to end at midnight on *[insert date]* (local time).

The Standstill Period lasts fourteen (14) Days after the date of transmission of this Notification of Intention to Award. The Standstill Period may be extended. This may happen where we are unable to provide a debriefing within the five (5) Business Day deadline. If this happens we will notify you of the extension.

If you have any questions regarding this Notification please do not hesitate to contact

us. On behalf of..... *[insert the name of the Procuring Entity]:*

Signature: _____

Name: _____

Title/position: _____

Telephone: _____

Email: _____

Date _____

2 REQUEST FOR REVIEW

FORM FOR REVIEW (r.203(1))

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..... for(Tender description).

REQUEST FOR REVIEW

I/We.....,the above named Applicant(s), of address: Physical address.....P. O. Box No..... Tel. No.....Email, hereby request the Public Procurement Administrative Review Board to review the whole/part of the above mentioned decision on the following grounds , namely:

- 1.
- 2.

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 Secretary

3 LETTER OF AWARD

Form of Acceptance

[Form head paper of the Procuring Entity]

.....*[date]*

To: *[name and address of the Contractor]*

This is to notify you that your Tender dated *[date]* for execution of the *[name of the Contract and identification number, as given in the Particular Conditions of Contract]* for the Contractor's Remuneration of the equivalent of *[amount in numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers, is hereby accepted by our Agency.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose one of the Performance Security Forms included in Section X, Annex to the Particular Conditions

- Contract Forms, of the Tendering Document

Authorized Signature: Name and

Title of Signal Services Requirements: Name of Agency:

.....

Attachment: Contract Agreement

4 Contract Agreement

THIS AGREEMENT made the _____ day of _____, _____, between _____ of _____ (herein after “the Procuring Entity”), of the one part, and _____ of _____ (herein after “the Contractor”), of the other part:

WHEREAS the Procuring Entity desires that the Services known as _____ should be executed by the Contractor, and has accepted a Tender by the Contractor for the execution and completion of these Management Services and the remedying of any defects therein, The Procuring Entity and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail overall other Contract documents.
 - a) The addenda Nos. _____ (if any)
 - b) The Form of Acceptance
 - c) The Special Conditions of Contract
 - d) The General Conditions of Contract;
 - e) The Schedules of Services Requirements,
 - f) The Form of Tender
3. In consideration of the payments to be made by the Procuring Entity to the Contractors indicated in this Agreement, the Contractor hereby covenants with the Procuring Entity to execute the Services therein in conformity in all respects with the provisions of the Contract.
4. The Procuring Entity hereby covenants to pay the Contractor in consideration of the execution and completion of the Services, the Contractor Remuneration or such other sum as may be come payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of _____ On the day, month and year indicated above.

Signed by _____ (for the Procuring

Entity) Signed by _____ (for the Contractor)

Signed by _____ (Contractor's Parent Company)

[This last signature line to be added when the Successful Tenderer is required to incorporate in Kenya, pursuant to ITT45.3, and a Parent Company Guarantee is not required in the corresponding TDS]

4. Performance Security – Option 1: (Bank Guarantee)

[The bank, as requested by the successful Tenderer, shall fill in this form in accordance with the instructions indicated][Guarantee Services Requirements Form head or SWIFT identifier code]

Beneficiary: _____ *[insert name and Address of Procuring*

Entity] Date: _____ *[Insert date of issue]*

PERFORMANCE GUARANTEE No.: _____ *[Insert guarantee reference number]*

Guarantee Services Requirements: *[Insert name and address of place of issue, unless indicated in the Form head]*

We have been informed that _____ *[insert name of Supplier, which in the case of a joint venture shall be the name of the joint venture]* (herein after called "the Applicant") has entered into Contract No. _____ *[insert reference number of the contract]* dated _____ *[insert date]* with the Beneficiary, for the supply of _____ *[insert name of contract and brief description of Management Services]* (herein after called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required. At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of.....*[insert amount in figures]* ()*[insert amount]*, ¹such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the.....Day of....., 2...², and any demand for payment under it must be received by us at this office indicated above on or before that date.

[signature(s)]

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

¹The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Form of Acceptance, and denominated either in the currency (ies) of the Contract or a freely convertible currency acceptable to the Beneficiary.

²Insert the date twenty-eight days after the expected completion date. The Procuring Entity should note that in the event of an extension of this date for completion of The Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Procuring Entity might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months] [one year], in response to the Beneficiary's written invitation to such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

5. Performance Security- Option 2: Performance Bond

By this Bond _____ as Principal (hereinafter called “the Contractor”) and _____] as Surety (hereinafter called “the Surety”), are held and severally bound unto _____] as Obligee (herein after called “the Procuring Entity”) in the amount of _____, for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contractor's Remuneration is payable, the Contractor and the Surety bind themselves, their heirs, executive Services Requirements, administrative Services Requirements, successors and assigns, jointly and severally bound by these presents.

WHEREAS the Contractor has entered into a written Agreement with the Procuring Entity dated the _____ day of _____, 20_____, for _____ [name of contract and brief description of Management Services] _____ in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Procuring Entity to be, in default under the Contract, the Procuring Entity having performed the Procuring Entity's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- (1) Complete the Contract in accordance with its terms and conditions; or
- (2) obtain a Tender or tenders from qualified Tenderers for submission to the Procuring Entity for completing the Contract in accordance with its terms and conditions, and upon determination by the Procuring Entity and the Surety of the lowest responsive Tenderer, arrange for a Contract between such Tenderer and Procuring Entity and make available as work progresses (even though there should be a default or a succession of defaults under the Contractor Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contractor's Remuneration; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term “Balance of the Contractor's Remuneration,” as used in this paragraph, shall mean the total amount payable y Procuring Entity to Contractor under the Contract, less the amount properly paid by Procuring Entity to Contractor ;or
- (3) pay the Procuring Entity the amount required by Procuring Entity to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Handback Certificate.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Procuring Entity named herein or the heirs, executive Services Requirements, administrative Services Requirements, successors, and assigns of the Procuring Entity.

In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this _____ Day of _____ 20_____.

SIGNED ON _____ on behalf of

By _____ in the capacity of

In the presence of

SIGNED ON _____ on behalf of

By _____ in the capacity

of In the presence of

6 Advance Payment Security

[Guarantee Services Requirements Form head or SWIFT identifier code]

Beneficiary:*[Insert name and Address of Procuring Entity]*

Date:*[Insert date of issue]*

ADVANCEPAYMENTGUARANTEENo.:.....*[Insertguaranteereferencenumber]*

Guarantee Services Requirements:*[Insert name and address of place of issue, unless indicated in the Form head]*

We have been informed that.....*[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (herein after called “the Applicant”) has entered into Contract No.....*[insert reference number of the contract]* dated.....*[insert date]* with the Beneficiary, for the execution of *[insert name of contract and brief description of Management Services]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum _____ *[insert amount in figures]* () *[insert amount in words]* is to be made against an advance payment guarantee.

At the request of the Applicant, here are the Requirements, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ *[insert amount in figures]* () *[insert amount in words]* 'upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:

- a) Has used the advance payment for purposes other than toward delivery of Management Services; or
- b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

A demand under this guarantee may be presented as from the presentation to the Guarantee Services Requirements of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Applicant on its account number _____ *[insert number]* at _____ *[insert name and address of Applicant's bank]*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, has been certified for payment, or on the *[insert day]* day of *[insert month]*, 2 *[insert year]*, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

[signature(s)]

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

7. BENEFICIAL OWNERSHIP DISCLOSURE FORM

INSTRUCTIONS TO TENDERERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE FORM

This Beneficial Ownership Disclosure Form (“Form”) is to be completed by the successful tenderer. In case of joint venture, the tenderer must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.

For the purposes of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the Tenderer by meeting one or more of the following conditions:

- *Directly or indirectly holding 25% or more of the shares.*
- *Directly or in directly holding 25% or more of the voting rights.*
- *Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer.*

Tender Reference No.: _____ [insert identification no] Name of the Assignment: _____
 _____ [insert name of the assignment] to: _____ [insert complete name of Procuring Entity]

In response to your notification of award dated _____ [insert date of notification of award] to furnish additional information on beneficial ownership: _____ [select one option as applicable and delete the options that are not applicable]

We here by provide the following beneficial ownership information.

Details of beneficial ownership

Identity of Beneficial Owner	Directly or indirectly holding 25% or more of the shares (Yes / No)	Directly or indirectly holding 25 % or more of the Voting Rights (Yes / No)	Directly or indirectly having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer (Yes / No)
<i>[include full name (last, middle, first), nationality, country of residence]</i>			

OR

We declare that there is no Beneficial Owner meeting one or more of the following conditions: directly or indirectly holding 25% or more of the shares. Directly or indirectly holding 25% or more of the voting rights. Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer.

OR

We declare that we are unable to identify any Beneficial Owner meeting one or more of the following conditions. [If this option is selected, the Tenderer shall provide explanation on why it is unable to identify any Beneficial Owner]

Directly or indirectly holding 25% or more of the shares. Directly or indirectly holding 25% or more of the voting rights.

Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer]”

Name of the Tenderer:[insert complete name of the Tenderer]_____*

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

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

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

Date signed [insert date of signing] day of..... [Insert month],