

REPUBLIC OF KENYA



COUNTY GOVERNMENT OF NAKURU

Tender Name: **PROPOSED 2NO KIVUMBINI I AND II SANITARY BLOCKS
ESTATE SANITARY IN FLAMINGO WARD - NAKURU EAST SUB-COUNTY.**

Tender No. **NCG/MOH/T/73/2017-2018**

Instruction to Tenderers

Agreement

Annexes

CLOSE DATE: 29TH JUNE, 2018

County Government of Nakuru

Department of Health

P.O. BOX 2870-20100

NAKURU

INSTRUCTIONS TO TENDERERS.

General

- 1.1 The Employer as defined in the Appendix to Conditions of Contract invites Tenders for the Works Contract as described in the Tender Documents.
- 1.2 Tenderers shall include the following information and documents with their Tenders, unless otherwise stated:
 - (a) Must be in the current county register of prequalified contractors.
 - (b) Provide Tax Compliance Certificate from Kenya Revenue Authority (KRA)
 - (c) Provide Valid single business permit
 - (d) Provide Relevant NCA certificate
- 1.3 The Tenderer shall bear all costs associated with the preparation and submission of the Tender.
- 1.4 The Tenderer, at the Tenderer's own expense, responsibility and risk, shall visit and examine the Site of the Works and its surroundings, to obtain all information that may be necessary for the preparation of the Tender and entering into a Contract for the Works as defined in the Specifications.
- 1.5 Eligible Tenderers
 - a) The Invitation to tender is open to all Tenderers pre-qualified by the county as contractors 2017/2018. Only Tenders from qualified Tenderers will be accepted.
 - b) A Tenderer debarred from participating in Public Procurement by the Public Procurement Directorate shall not be eligible to submit a Tender.
 - c) If the Employer has not undertaken the prequalification of Tenderers, all Tenderers shall include the information required to satisfy the qualification criteria as determined by the Employer.
 - d) Preference where allowed in the evaluation of tenders shall not exceed 15%

1.6 Evaluation Criteria

The following evaluation criteria shall be applied not withstanding any other requirement in the tender documents.

MANDATORY REQUIREMENTS (MR)

Must Submit a copy of Valid Tax Compliance certificate	
Must Submit a copy of Registration Certificate/Certificate of Incorporation	
Must Submit a copy of Pin/VAT Certificate	
Must submit a copy of a Valid Business Permit	
Relevant Licences	
Must submit a registration certificate/Incorporation	
Must duly Fill the tender document	

A. TECHNICAL SCORES (TS)

This section (Technical Evaluation) will be marked out of 100 and will determine the technical score (TS)

NO.	EVALUATION ATTRIBUTE	WEIGHTING SCORE	MAXIMUM SCORE
T.S.1	Number of years in Business(attach evidence e.g LPOs or Signed Contracts)	<ul style="list-style-type: none"> • 10 years and above =10 marks • Others prorated at: <u>Number of Years x 10</u> 10 	10
T.S.2	Provide a list of clients and references to which the company has done similar supply or services in the last ten (10) years.	<ul style="list-style-type: none"> • 10 Clients with references letters from the clients - 20 marks • Others prorated at: <u>Number of Clients' x 20</u> 10 	20
T.S.3	Financial Strength: Provide audited accounts for the last three years or Attach Letter of Undertaking by the firm's banker on financing.	<ul style="list-style-type: none"> • Three years audited accounts - 15 marks • One year audited accounts - 5 marks 	15
T.S.4	Physical Facilities: • Provide details of physical address and contacts - attach evidence	Details of physical address and contacts with copy of either title, lease document or latest utility bill	10
T.S.5	Organization structure and curriculum vitae of staff	Give structure with details of Responsibilities	10

T.S.6	Equipment and accessories owned assigned to contract period/Hired (motor vehicle log book)	<ul style="list-style-type: none"> • Owned equipment's (Show evidence) -15 • Hired-10 	15
T.S.7	Business Questionnaire and Form of Tender	Duly filled	10
T.S.8	Maximum accumulative volume of business in the last 2 years (Depending on complexity of the project/works)	Above-10 million-(10) 7-10 million -(7) 3-6 Million -(5) 1-3 Million -(2)	10

Only bidders who score 70% and above will be subjected to financial evaluation. Those who score below 70% will be eliminated at this stage from the entire evaluation process and will not be considered further.

2 Tender Documents

- 2.1 The complete set of Tender documents comprises the documents listed below and any addenda issued in accordance with paragraph 2.4
 - (i) Instructions to Tenderers
 - (ii) Articles 1 to 7
- 2.2 The Tenderer shall examine all documents in the Tender documents. Failure to furnish all information required by the Tender documents may result in the rejection of the Tender.
- 2.3 A Tenderer requiring any clarification of the Tender documents may notify the Employer in writing or by electronic means at the address indicated in the letter of Invitation to Tender. The Employer shall respond to any request for clarification received earlier than seven days prior to the deadline for submission of Tenders. Copies of the Employer's response will be forwarded to all persons issued with Tender documents, including a description of the inquiry, but without identifying its source.
- 2.4 Before the deadline for submission of Tenders, the Employer may modify the Tender documents by issuing addenda. Any addenda thus issued shall be part of the Tender documents and shall be communicated in writing or by electronic means to all Tenderers. Tenderers shall acknowledge receipt of each addendum in writing to the Employer.
- 2.5 The Employer may extend, as necessary, the deadline for submission of Tenders in accordance with paragraph 4.5 below, to take account of any addenda issued.

3 Preparation of Tenders

- 3.1 All documents relating to the Tender and any correspondence shall be in the English Language.
- 3.2 The Tender submitted shall comprise the following:-
 - (a) The Form of Agreement;
 - (b) Priced Bill of Quantities initialled on each page, or Schedule of Rates (whichever is applicable)

- (c) Any other documents/materials required by the Employer to be completed and submitted by Tenderers.
- 3.3 The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities/Schedule of Rates. Items for which no rate or price is entered shall be deemed covered by the other rates and prices in the Bill of Quantities/Schedule of Rates.
- 3.4 The unit rates and prices shall be in Kenya Shillings.
- 3.5 Tenders shall remain valid for a period of 150 days from the date of submission. However, the Employer may request the Tenderers to extend the period of validity for a specified additional period. Such a request and the Tenderers' responses shall be made in writing.

4 Submission of Tenders

- 4.1 The Tender duly completed
 - (a) Duly completed tenders, marked with “tender number” should be submitted to Nakuru County Government or be placed at the tender box so as to be received on or before 22nd June, 2018.
 - (b) bear the name and identification number of the Tenderer as defined in the Invitation to Tender; and
 - 4.2 Tenders shall be delivered to the Employer at the address specified not later than the time and date specified in the Invitation to Tender.
 - 4.3 The Tenderer shall not submit alternative offers unless they are specifically required in the Tender documents.
- Each Tenderer may submit only one Tender. Any Tenderer who fails to comply with this requirement will be disqualified.
- 4.4 The Employer may extend the deadline for submission of Tenders by issuing an amendment in accordance with paragraph 2.5 in which case all rights and obligations of the Employer and the Tenderers previously subject to the original deadline will then be subject to the new deadline.

5 Tender Evaluation

6.1 Information relating to the examination, clarification, evaluation and comparison of Tenders and recommendations for the award of the Contract shall not be disclosed to Tenderers or any other persons not officially concerned with such process until the award to the successful Tenderer has been announced. Any effort by a Tenderer to influence the Employer's officials, processing of Tenders or award decisions will result in the rejection of the Tender.

6.2 A preferential bias of 10% in favour of AGPO registered contractors will be applicable in this tender in accordance with section 39 of PPDA 2005.

6.3 Prior to the detailed evaluation of Tenders, the Employer shall determine if each Tender:-

- a) Meets the eligibility criteria defined in paragraphs 1.2 and 1.5.
- b) Has been properly signed;
- c) Is substantially responsive to the requirements of the Tender documents.

The Employer will reject any Tenders deemed to be non-responsive on the above criteria.

6.4 A substantially responsive Tender is one which conforms to all the terms, Conditions and Specifications of the Tender documents, without material deviation or reservation. A material deviation or reservation is the one:-

- a) which affects in any substantial way the scope, quality or performance of the Works;
- b) which limits in any substantial way, inconsistent with the Tender documents, the Employer's rights or the Tenderer's obligations under the Contract;
- c) Whose rectification would affect unfairly the competitive position of other Tenderers presenting substantially responsive Tenders.

6.5 Tenders determined to be substantially responsive will be checked for any arithmetic errors. Errors will be corrected as follows:

- (a) where there is a discrepancy between the amount in figures and the amount in words, the amount in words shall prevail;
- (b) Where there is a discrepancy between the arithmetically correct line item Amount, resulting from the multiplication of the Unit Rate and the Quantity, and the Amount entered, the latter shall prevail and the Unit Rate shall be adjusted accordingly.

- (c) For Lump sum items, only the Amount will be considered, disregarding any filled in unit rate.
- (d) Where there is a discrepancy between the Tender Price as stated in the Form of Tender and the Tender total in the main Summary of the Bills of Quantities, the Tender Price shall prevail. The Employer shall notify the Tenderer and request that the Tenderer agrees to the Tender Price. The Unit Rate for the Items where the discrepancy occurs shall be adjusted by the Engineer. If the Tenderer fails to accept the corrected figure the Tender shall be rejected and the Tender Security shall be forfeit. Any discrepancy greater than 15% of the corrected figure shall result in rejection of the Tender and the forfeit of the Tender Security.

6.6 The Employer at his discretion may request any Tenderer for clarification of the Tender, including a breakdown of Unit Rates. The request for clarification and the response shall be in writing or electronic means.

7 Award of Contract

- 7.1 The award of the Contract will be made to the Tenderer who has offered the lowest evaluated Tender Price subject to the applicable preferential scheme as stated in clause 6.2
- 7.2 The Employer reserves the right to accept or reject any or all Tenders and to cancel the Tendering process at any time prior to the award of the Contract without thereby incurring any liability to the affected Tenderer or Tenderers or any obligation to inform the affected Tenderer(s) of the grounds for the action.
- 7.3 The Tenderer whose Tender has been accepted will be notified of the award prior to the expiration of the Tender validity period in writing or by electronic means. This notification (called the "Letter of Acceptance") will state the sum (called the "Contract Price"] which the Employer will pay the Tenderer in consideration of the execution, completion, and maintenance of the Works as set out in the Contract. The Letter of Acceptance will constitute a binding Agreement, prior to the Tenderer signing the Contract Agreement.
- 7.4 The Contract Agreement will incorporate all agreements between the Employer and the Tenderer. It will be signed by the Tenderer, not earlier than 21 days following the date of the Letter of Acceptance, and thereafter returned to the Employer within 14 days for signature.

Appendix to instructions to Tenderers

The following information regarding the particulars of the tender shall complement, supplement or amend the provisions of the instructions to tenderers. Wherever there is a conflict between the provision of the instructions to tenderers and the provisions of the appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers.

INSTRUCTIONS TO TENDERERS REFERENCE	PARTICULARS OF THE APPENDIX TO INSTRUCTIONS TO TENDERERS
1.5: Eligible Tenderers	Prequalified contractors
3.0: Format and signing of tender	All required documents must be arranged chronologically as listed in the evaluation criteria and clearly marked.
1.4: Closing date	See invitation to tenderers
1.6: Evaluation and comparison of tenders	See evaluation criteria (1.6)
6.2: Preference	AGPO prequalified contractors

STANDARD FORMS

List of Standard Forms

- (i) Form of Invitation for Tenders

- (ii) Form of Tender

- (iii) Letter of Acceptance

- (iv) Form of Agreement

- (ix) Qualification Information

- (x) Tender Questionnaire

- (xi) Confidential Business Questionnaire

- (xii) Litigation history form

- (xii) Details of Sub-Contractors

- (xiii) Request for Review Form

SECTION I: INVITATION FOR TENDERS

16.1 SECTION I: INVITATION FOR TENDERS Date: 21st June, 2018

TENDER REF. NO: NCG/MOH/T/73/2017-2018

TENDER NAME: PROPOSED 2 NO. KIVUMBINI I AND II SANITARY BLOCKS ESTATE SANITARY IN FLAMINGO WARD - NAKURU EAST SUB-COUNTY.

. The County Government of Nakuru invites tenders from eligible candidates for **PROPOSED 2 NO. KIVUMBINI I AND II SANITARY BLOCKS ESTATE SANITARY IN FLAMINGO WARD - NAKURU EAST SUB-COUNTY.AS PER THE BILL OF QUANTITIES.**

Bidding documents with detailed specifications may be obtained from the Supply Chain Office, Health Department.

1.2 Prices quoted should be net, inclusive of **all taxes**, must be in Kenya Shillings and shall remain valid for **120** days from the closing date of the tender.

1.3 **Duly completed tenders, marked with “tender number” should be submitted to Nakuru County Government or be placed at the tender box so as to be received on or before 29th June, 2018**

1.4 Tenders will be opened immediately thereafter.

The County Secretary,

Nakuru County Government

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/Schedule of Rates 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 Employer's Representative'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 Tenderer] of
_____ [Address of Tenderer]

Witness; Name _____

Address _____

Signature _____

Date _____

(Amend accordingly if provided by Insurance Company)

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

QUALIFICATION INFORMATION

1. Individual Tenderers or Individual Members of Joint Ventures

1.1 Constitution or legal status of tenderer (attach copy or Incorporation Certificate);
Place of registration: _____

Principal place of business _____

Power of attorney of signatory of tender _____

1.2 Total annual volume of construction work performed in the last five years

Year	Volume	
	Currency	Value

1.3 Work performed as Main Contractor on works of a similar nature and volume over the last five years. Also list details of work under way or committed, including expected completion date.

Project name	Name of client and contact person	Type of work performed and year of completion	Value of Contract

1.4 Major items of Contractor's Equipment proposed for carrying out the Works. List all information requested below.

Item of Equipment	Description, Make and age (years)	Condition(new, good, poor) and number available	Owned, leased (from whom?), or to be purchased (from whom?)
_____ _____ _____(etc.)	_____ _____ _____	_____ _____ _____	

1.5 Qualifications and experience of key personnel proposed for administration and execution of the Contract. Attach biographical data.

Position	Name	Years of experience (general)	Years of experience in proposed position

Project Manager			
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
(etc.)			

1.6 Financial reports for the last five years: balance sheets, profit and loss statements, auditor's reports, etc. List below and attach copies.

1.7 Evidence of access to financial resources to meet the qualification requirements: cash in hand, lines of credit, etc. List below and attach copies of supportive documents.

1.8 Name, address and telephone, telex and facsimile numbers of banks that may provide reference if contacted by the Employer.

1.9 Statement of compliance with the requirements of Clause 1.2 of the Instructions to Tenderers.

1.10 Proposed program (work method and schedule) for the whole of the Works.

2 Joint Ventures

2.0 The information listed in 1.1 - 2.0 above shall be provided for each partner of the joint venture.

2.1 The information required in 1.11 above shall be provided for the joint venture.

2.2 Attach the power of attorney of the signatory(ies) of the tender authorizing signature of the tender on behalf of the joint venture

2.3 Attach the Agreement among all partners of the joint venture (and which is legally binding on all partners), which shows that:

- a) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;
- b) one of the partners will be nominated as being in charge, authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture; and
- c) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

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 of tenderer;

.....

5. Name of tenderer's representative to be contacted on matters of the tender during the tender period;

.....

6. Details of tenderer's nominated agent (if any) to receive tender notices. This is essential if the tenderer does not have his registered address in Kenya (name, address, telephone, telex);

.....

.....

Signature of Tenderer

Make copy and deliver to: _____ (Name of Employer)

MANDATORY CONFIDENTIAL BUSINESS QUESTIONNAIRE

(Must be filled by all applicants who choose to participate in this Tender)

You are requested to give the particular indicated in Part 1 and either Part 2(a), 2(b), or 2(c)
Whichever applies to your type of business and part 3.

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

Name of Applicant(s).....

Part 1: General:

1.1: Business Name

1.2: Certificate of Incorporation/Registration No:.....

1.3: Location of business premises

1.4: Plot No.

1.5: Street/Road

1.6: Postal Address

1.7: Office Tel. No.

1.8: Mobile:.....

1.9: Fax No:.....

1.10: Email Address.....

1.11: Website.....

1.13: Contact Person (Full Names).....

(a) Directors Name and Mobile

Nos:.....

(b) If not Director, Title..... Power of Attorney (Yes/No) if yes, attach written document.

1.14: Maximum value of business which you can handle at any one time

Kshs.

1.15: Name of your bankers Branch.....

Part 2(a) - Sole Proprietor:

2a.1: Your name in full Age

2a.2: Nationality Country of origin

Citizenship details.....

Party 2(b) - Partnership

2b.1: Give details of partners as follows

2b.2: Name	Nationality	Citizenship Details	Shares
1.
2.
3.
4.
5.

Part 2(c) - Registered Company:

2c.1: Private or public

2c.2: State the nominal and issued capital of the company -

Nominal Kshs.

Issued Kshs.....

2c.3: Give details of all directors as follows

Name	Nationality	Citizenship Details	Shares
1.
2.

- 3.
- 4.
- 5.

Date..... Signature of Tenderer

If a citizen, indicate under “Citizenship Details” whether by Birth, Naturalization or Registration

Part 3 - Eligibility Status

3.1 Are you related to an Employee who works in the Finance or Procurement Departments, or, is a member of the Tender Committee of Nakuru County Government?

Yes..... No:.....

3.2: If answer in ‘3.1’ is YES give the relationship:.....

3.3: Does an Employee as in “3.1” above, sit in the Board of Directors or Management of your Organisation Subsidiaries or Joint Ventures?

Yes..... No.....

3.4: If answer in ‘3.3’ above is YES give details.....

.....

3.5: Has your Organisation, Subsidiary Joint Venture or Sub-contractor been involved in the past directly or indirectly with a firm or any of its affiliates that have been engaged by Nakuru County Government to provide consulting services for preparation of design,

specifications and other documents to be used for procurement or the goods or services under this invitation? Yes..... No.....

3.6: If answer in '3.5' above is YES give details.....

.....
.....

3.7: Are you under a declaration of ineligibility for corrupt and fraudulent practices?

Yes..... No.....

3.8: If answer in '3.7' above is YES give details.....

.....
.....

3.9: Have you offered or given anything of value to influence the procurement process?

Yes..... No.....

3.10: If answer in '3.9' above is YES give details.....

.....
.....

I DECLARE that the information given on this form is correct to the best of my knowledge and belief.

Date:..... Signature of Candidate:.....

If a Kenyan Citizen, indicate under "Citizenship Details" whether by Birth, Naturalization or registration.

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 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:

.....

[Signature of Tenderer]

Date

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

AGREEMENT

BETWEEN

NAKURU COUNTY GOVERNMENT-DEPARTMENT OF HEALTH

AND

This Contract is made this.....day of.....20.....

between County Government of Nakuru, represented by the Governor Nakuru County of P.O. Box 2870 - 20100(Hereinafter called the Employer) acting through his representative **Chief Officer, Ministry of HEALTH ,of P.O. Box 2870 Nakuru** of the one part and also of.....(Hereinafter referred to as “the Contractor”) of the other part. Whereas the Employer is desirous of maintaining the road network as described,

and has accepted the Offer of the Contractor to execute road maintenance Works as defined hereinafter, AND

Whereas the Contractor represented to the Employer that he has the required capacity and ability, and has agreed to execute the Works on the Terms and Conditions set forth in this Contract,for the Tender Sum of Kshs.....(words).....(figures)

NOW THEREFORE the Parties hereto agree as follows:

PART I: GENERAL CONDITIONS OF CONTRACT

The General Conditions of Contract are the FIDIC Short Form of Contract, First Edition, 1999, published by the International Federation of Consulting Engineers (FIDIC).

The General Conditions of Contract are linked with the Conditions of Particular Application, referred to as Part II, by the consecutive numbering of the Clauses, so that Part I and II together comprise the Conditions governing the rights and obligations of the Parties. In case of any inconsistency between the Conditions contained in Part I and those in Part II, the Conditions contained in Part II shall prevail.

The Tenderer is deemed to have read and fully complied with the General Conditions of Contract.

PART II: CONDITIONS OF PARTICULAR - APPLICATION

Article 1: GENERAL PROVISIONS

1.1. The documents forming the Contract are to be taken as mutually explanatory. If ambiguity or discrepancy is found in the documents the Employer shall issue necessary instructions to the Contractor.

1.2 The language of the Contract shall be English. The law of the Contract is the Republic of Kenya.

Article 2: OBLIGATIONS OF THE EMPLOYER

2.1 The Employer shall provide the Site and right of access thereto at the date of Commencement.

2.2 The Employer shall ensure that the Contractor's claims for payment are settled timeously.

2.3 The Employer shall inspect the Contractor's work regularly.

- 2.4 No approval or consent or absence of comment by the Employer shall affect the Contractor's obligations.

Article 4: CONTRACTOR'S OBLIGATIONS

- 4.1 The Contractor shall carry out the Works described in Annex 1 and the Work Plan Annex 3 properly and in accordance with the Contract. The Contractor shall provide all supervision, labour and tools which may be required.
- 4.2 The Contractor shall submit to the Employer for consent the name and particulars of the person authorized to receive instructions on behalf of the Contractor.
- 4.3 The Contractor shall comply with all instructions given by the Employer in respect of the Works.
- 4.4 The Contractor shall not subcontract any part of the Works without the consent of the Employer.
- 4.5 The Contractor shall, in the implementation of this contract, use labour based methods whenever possible.
- 4.6 The Contractor shall recruit labour for the Works from the local communities and shall take particular note of the Government policy on the recruitment of women and youth. The target for each group shall be 30% of the labour force, which the Contractor shall take all possible measures to attain.
- 4.7 The Contractor shall comply with the Kenya Labour Laws in respect of the rights working conditions and wages for the labour force. The task rates set for labour shall be approved by the Engineer.
- 4.8 In the event of the failure of the Contractor to pay the labour the Employer shall be entitled to pay directly and to deduct the appropriate amount, plus a 10% administrative charge, from any monies due to the Contractor under the Contract.
- 4.9 The Contractor shall maintain records of time worked and remuneration paid to his/her employees and shall avail these records to the Employer for inspection when so requested.

4.10 The Contractor shall set fair and manageable task rates to each labourer, in consultations with the Employer.

Article 5: DESIGN BY CONTRACTOR

5.1 The Contractor shall not be responsible for any Works design.

Article 6: EMPLOYER'S RISKS

6.1 Any failure by the Employer and any delay or disruption caused by any Variation are the relevant Employer's Risks.

Article 7: TIME FOR COMPLETION

7.1 The Contractor shall commence the Works within 1 week upon order to commence and shall proceed expeditiously and without delay and shall complete the Works within the Time for Completion, given as..... weeks.

7.2 The Contractor shall be entitled to an extension of the Time for Completion where delay is caused by an action, or failure of action of the Employer and/or any other unforeseen circumstance. All such extension of time must be requested by the contractor timeously and approved by the Employer

Article 8: TAKING OVER

8.1 The Contractor may notify the Employer when the Works are considered to be complete.

8.2 The Employer shall notify the Contractor when he considers that the Contractor has completed the Works and stating the date accordingly. Alternatively the Employer may notify the Contractor that the Works, although not fully complete, are ready for taking over, stating the date accordingly. The Contractor shall promptly complete any outstanding work.

Article 9: REMEDYING DEFECTS

- 9.1.1 The Employer may, within one month after the Completion date in 8.2, notify the Contractor of any defects. The Contractor shall remedy at no cost to the Employer any defects due to the Contractor's workmanship not being in accordance with the Contract.

Article 10 VARIATIONS AND CLAIMS

- 10.1 The Employer may instruct Variations
- 10.2 The Employer shall value the Variations using appropriate rates within the Contract or by a lump sum price agreed between the Parties, or by new rates which the Engineer considers appropriate.

Article 11: CONTRACT PRICE AND PAYMENT

- 11.1 At not less than monthly intervals, the Contractor shall measure the Works in accordance with the Bill of Quantities and shall submit a statement to the Road Supervisor. No Payment shall be made for Mobilisation and Establishment of the Site. The Road Supervisor shall certify on the statement to the Engineer that the Works have been completed satisfactorily.
- 11.2 The Employer shall pay the Contractor, upon the Engineer's approval of the Contractor's statement, within 30 days of the date of the certification of the statement. If the Employer disagrees with any part of the Contractor's statement, he shall specify his reasons for disagreement when making payment. The Employer shall not be bound by any sum previously considered by him to be due to the Contractor.

Article 12: DEFAULT

- 12.1 The Employer shall give notice to the Contractor where he considers the Contractor to be in default of the Contract. If the Contractor fails to remedy the default within a stated period the Employer may give notice of the termination of the Contract.

- 12.2. After termination the Contractor shall be entitled to payment of any unpaid balance of the value of the Works executed.

Article 13: RISK AND RESPONSIBILITY

- 13.1 The Contractor shall take responsibility for the care of the Works from the Commencement Date to the date of Take Over.

Article 14: INSURANCES

- 14.1 The Contractor, prior to commencing the Works, shall effect Third Party and Workers Compensation Insurances and provide evidence to the Employer that the required policies are in force.

Article 15: RESOLUTION OF DISPUTES

- 15.1 The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with the Contract.
- 15.2 Any dispute not resolved under 15.1 shall be referred to a single Arbitrator nominated by **Chief Officer, Ministry of HEALTH**, whose Area the Contract is located in accordance with, and subject to the provision of the Arbitration Act of Kenya or any Statutory Modification thereof.

Article 16 CONDITIONS OF CONTRACT

- 16.1 It is understood that these Conditions of Contract follow the FIDIC Short Form of Contract which shall be referred to for any necessary clarification
- 16.2 It is hereby understood that the Annexes to the Contract shall be read together with the Contract and shall form an integral part of it.

In witness whereof of the duly authorised representatives of the Parties hereto have signed this Contract the day and the year first written atKenya.

for and on behalf of the
County Government of Nakuru

Contractor

.....

Witness

.....

Witness

APPENDIX TO FORM OF AGREEMENT

This Appendix to Form of Agreement forms part of the Agreement.

(Note: with the exception of the items for which the Employer's requirements have been inserted, the Contractor shall complete the following information before submitting his offer.)

Item	Sub-clause	Data
Time for Completion	7.1	1 Months after contract signing,
Priority of Documents		The documents forming the Contract shall be interpreted in the following order of priority: <ul style="list-style-type: none">• the Contract Agreement and Appendix• the Letter of Acceptance• the Form of Tender• the Conditions of Contract, Part II - Conditions of Particular Application• the Conditions of Contract, Part I - General Conditions of Contract• the Specifications• the Drawings,• the Priced Bill of Quantities
Law of Contract	1.2	Laws of the Republic of Kenya
Language	1.2	English
Provision of Site	2.1	On Commencement Date

Item	Sub-clause	Data
Authorised Person	3.1
Name and Address of Employer's Representative	3.2	The Executive Member Transport & Infrastructure P. O. Box 2870-20100 NAKURU.
Penalty to the Contractor for Employer paying workers on his behalf	7.1	10% of the amount paid to the workers.
Performance Security Amount Form		Nil Bank Guarantee/ Insurance Bond Approved by PPOA
Requirements of Contractors Design		Not applicable
Programme ⇒ Time of Submission		Within 14 days of Commencement Date

Item	Sub-clause	Data
⇒ Form of Programme ⇒ Interval Updates	* *
Liquidated Damages Amount payable due to failure to complete		0.01% of Contract Price per Day to a limit of 1% of Contract Price.
Period of notifying defects	9.1.1	5 days calculated from the date stated in the notice under sub clause 8.2*
Percentage of Retention		Nil
Maximum Amount of Advance Payment		Nil
Form of Guarantee for Advance Payment		Nil
Valuation of Works		Nil
Repayment Schedule for Advance Payment		Nil
Minimum Amount of Interim Payment		Nil
Currency of Payment		Kenya Shilling
Rate of Interest		
Insurance	14.1	Not Required
Insurance ⇒ The Works, materials plants & fees ⇒ Contractor's Equipment ⇒ Third party injury to persons and damage to property ⇒ Workers compensation		Nil *

Item	Sub-clause	Data
⇒ Other cover		<p>.....*</p> <p>.....**</p>
Arbitration ⇒ Rules ⇒ Appointing Authority ⇒ Place of Arbitration		Nil

.....*

Employer to fill as appropriate

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Contractor to fill as appropriate