

# REPUBLIC OF KENYA



## COUNTY GOVERNMENT OF NAKURU

**Tender Name: PROPOSED CONSTRUCTION OF 2 NO. ECDE CLASSROOMS AT MOROP PRIMARY SCHOOL AND KIUNGURURIS PRIMARY SCHOOL IN GILGIL SUB-COUNTY EBURU-MBARUK WARD**

**Tender No. NCG/EVIE/T/09/2018-2019**

### Instruction to Tenderers

#### Agreement

#### Annexes

#### County Government of Nakuru

Department of Education, ICT and e-Government

P.O. BOX 2870-20100

**NAKURU**

## INSTRUCTIONS TO TENDERERS.

### 1 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) Provide valid Tax Compliance Certificate from Kenya Revenue Authority (KRA)
  - (b) Provide Valid single business permit for Nakuru county
  - (c) Provide valid Relevant NCA 6-8
  - (d) Must attach company registration certificate/incorporation certificate
  - (e) Must attach CR 12/directors declaration form
  - (f) Must dully fill form of tender
  - (g) Must dully fill confidential business questionnaire
- 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 permitted by the county business permit as contractors
  - b) Only Tenders from qualified Tenderers will be accepted.
  - c) A Tenderer debarred from participating in Public Procurement by the Public Procurement Directorate shall not be eligible to submit a Tender.
  - d) 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.
  - e) 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.

### 1.6.1 MANDATORY REQUIREMENTS (MR)

Instructions of tenderers	Particulars of appendix to instruction to tenderers	
	a. At this stage, the tenderer's submission will either be responsive or no responsive. The non responsive submissions will be eliminated from the entire evaluation process and will not be considered further.	
	MR.1	Must Submit a copy of Valid Tax Compliance certificate
	MR.2	Must submit a copy of a Valid Business Permit for Nakuru county
	MR.3	Relevant Certification e.g. valid NCA6-8
	MR.4	Must duly Fill the tender document
	MR.5	Must attach company registration certificate/incorporation
	MR.6	Must attach CR 12

	MR.7	Must dully fill form of tender	
	MR.8	Must dully fill confidential business questionnaire	

At this stage, the tenderer's submission will either be responsive or non-responsive. Failure to provide ANY of the above mandatory requirements will lead to disqualification

### 1.6.2 TECHNICAL EVALUATION CRITERIA

Instructions of tenderers	Particulars of appendix to instruction to tenderers			
	b) 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	Max score
	T.S. 1	Number of years for construction of buildings	<ul style="list-style-type: none"> <li>10years and above 10 marks</li> <li>Other prorated at <math>\frac{\text{Number of years} \times 10}{10}</math></li> </ul>	10
	T.S. 2	Provide a list of client and references to which the company has done similar works in the last ten(10 ) year	<ul style="list-style-type: none"> <li>10 clients with reference letters from the clients –20 marks</li> <li>Other prorated at <math>\frac{\text{Number of clients}' 20}{10}</math></li> </ul>	20
	T.S.3	Financial strength provide audited accounts for the last two years (2015-2016 and 2016-2017)	<ul style="list-style-type: none"> <li>Two years audited accounts 10marks</li> <li>One year audited accounts – 5marks</li> </ul>	10
	T.S. 4	Provide details of any relevant certifications and/or trainings. Such certifications/training may	<ul style="list-style-type: none"> <li>Details of at least 3 certifications and /or trainings with proof – 10 marks</li> </ul>	10

		be for your company or for your individual staff as relevant to works services <b>Attach evidence</b>	<ul style="list-style-type: none"> <li>• Other prorated at Number of certifications and/or trainings x 10 3</li> </ul>	
	T.S.5	Certificate of good conduct	<ul style="list-style-type: none"> <li>• Provide copies of goods conduct from Kenya Police, Criminal Investigations Department for at least 5 staff members <b>(2marks each)</b></li> </ul>	10
	T.S. 6	equipments and accessories owned by the firm that will be used for construction at the sites	<ul style="list-style-type: none"> <li>• Provide details/list of at least five (5) equipments and accessories and explain what they will be used for <b>(2marks for each)</b></li> </ul>	20
	T.S.7	Physical facilities <ul style="list-style-type: none"> <li>• Provide details of physical address and contacts</li> </ul> <b>Attach evidence</b>	<ul style="list-style-type: none"> <li>• Details of physical address and contacts with copy of either title, lease documents or latest utility bill</li> </ul>	10
	T.S.8	Submit the work programme schedule Document Conformity	<ul style="list-style-type: none"> <li>• Presented in a required format</li> </ul>	10

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

### **1. Financial Evaluation Criteria**

- 1. Tender shall be awarded to the lowest evaluated bidder**
- 2. There shall be no correction of arithmetic errors**

## **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 shall;-

- (a) be submitted through the **Kenya Supplier Portal**; and
- (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 TENDERS

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 APPENDIX TO INSTRUCTIONS TO TENDERS
1.1	Tender is open to local or Local Contractors registered with National Construction Authority Class 6 and above
1.12	Tenderer to provide a declaration on oath that neither the company nor the directors are subject to investigation or litigation on corruption and/or fraudulent practices. The Declaration must be signed with the Confidential Business Questionnaire
2.1	Bidding documents with detailed specifications may be obtained from the <a href="https://supplier.treasury.go.ke">https://supplier.treasury.go.ke</a> , IFMIS Portal or from the county website: <a href="http://www.nakuru.go.ke">www.nakuru.go.ke</a> free of charge.
2.3	The request for clarification and the response shall be in writing through the: The Director Supply Chain P.O Box 2870-20100, Nakuru Tel; 051-2214142 <a href="http://www.nakuru.go.ke">www.nakuru.go.ke</a> <a href="mailto:supply_chain@nakuru.go.ke">Email: supply_chain@nakuru.go.ke</a>
3.6	Tenders shall remain valid for a period of Ninety (90) days from the date of submission. However in exceptional circumstances, the Employer may request in writing that the Tenderers extend the period of validity for a specified additional period
3.17	The County Government of Nakuru shall only send to all prospective tenderers that have received the tender document, written copies of responses to the queries relevant to the bid document or specifications that necessitate additional information for the clarification of the documents.
5.4	Correction of errors is not allowed in this tender
5.7	Price variation is not allowed under this tender

## STANDARD FORMS

### List of Standard Forms

- (i) Form of Invitation for Tenders
- (ii) Form of Tender
- (iii) Letter of Acceptance
- (iv) Form of Agreement
- (v) Form of Tender Security
- (vi) Performance Bank Guarantee
- (vii) Performance Bond
- (viii) Bank Guarantee for Advance Payment
- (ix) Qualification Information
- (x) Tender Questionnaire
- (xi) Confidential Business Questionnaire
- (xii) Litigation history form
- (xii) Details of Sub-Contractors
- (xiii) Request for Review Form

## 1.1 SECTION I: INVITATION FOR TENDERS

### 16.1 SECTION I: INVITATION FOR TENDERS

Date: 28<sup>TH</sup> JANUARY 2019

TENDER REF. NO: **NCG/EVIE/T/09/2018-2019**

**PROPOSED CONSTRUCTION OF 2 NO. ECDE CLASSROOMS AT MOROP PRIMARY SCHOOL AND KIUNGURURIS PRIMARY SCHOOL IN GILGIL SUB-COUNTY EBURU-MBARUK WARD**

The County Government of Nakuru invites **tenders** from eligible candidates **PROPOSED CONSTRUCTION OF 2 NO. ECDE CLASSROOMS AT MOROP PRIMARY SCHOOL AND KIUNGURURIS PRIMARY SCHOOL IN GILGIL SUB-COUNTY EBURU-MBARUK WARD**

Bidding documents with detailed specifications may be obtained from the Kenya Supplier Portal; [supplier.treasury.go.ke](http://supplier.treasury.go.ke) or from the county website; [www.nakuru.go.ke](http://www.nakuru.go.ke) free of charge.

- 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 online through the Government Integrated Financial Management Information System (IFMIS) so as to be received on or before 11<sup>TH</sup> FEBRUARY 2019
- 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  
th Contract documents.

Authorized Signature .....

Name and Title of Signatory .....

Attachment: Agreement

## **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 of .....20.....

THE CONDITIONS of this obligation are:

If after tender opening the tenderer withdraws his tender during the period of tender validity specified in the instructions to tenderers

Or

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;



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.

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*[date]*

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*[signature of the Bank]*

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*[witness]*

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*[seal]*

## 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 recognised 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 civil or argument, any sum or sums within the limits of Kenya Shillings \_\_\_\_\_ (amount of Guarantee in words) as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

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

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

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

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

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

Address \_\_\_\_\_

Date \_\_\_\_\_

(Amend accordingly if provided by Insurance Company)

## PERFORMANCE BOND

By this Bond, We \_\_\_\_\_ of (or whose registered office is situated at) \_\_\_\_\_

as Principal (hereinafter called "the Contractor") and \_\_\_\_\_

\_\_\_\_\_ of [or whose registered office is situated at] \_\_\_\_\_

as Surety (hereinafter called "the Surety"), are held and firmly bound unto

\_\_\_\_\_ of [or whose registered office is situated at] \_\_\_\_\_

As Obligee (hereinafter called "the Employer") in the amount of Kshs. \_\_\_\_\_ [*amount of Bond in figures*] Kenya Shillings

\_\_\_\_\_ [*amount of Bond in words*], for the payment of which sum well and truly, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Contractor has entered into a Contract with the Employer dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ for the execution of \_\_\_\_\_

[*name of Contract*] in accordance with the Contract documents, 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 Employer to be, in default under the Contract, the Employer having performed the Employer'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 Employer for completing the Contract in accordance with its terms and conditions, and upon determination by the Employer and the Surety of the lowest responsive tenderer, arrange for a Contract between such tenderer and Employer and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; 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 Contract Price", as used in this paragraph, shall mean the total amount payable by the Employer to the Contractor under the

Contract, less the amount properly paid by the Employer to the Contractor; or

- (3) pay the Employer the amount required by the Employer 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 issuance of the Certificate of Completion.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Employer named herein or the heirs, executors, administrators, successors and assigns of the Employer.

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 \_\_\_\_\_ SIGNED ON \_\_\_\_\_

On behalf of \_\_\_\_\_ On behalf of \_\_\_\_\_  
*[name of Contractor]* *[name of Surety]*

By \_\_\_\_\_ By \_\_\_\_\_

In the capacity of \_\_\_\_\_ In the capacity of \_\_\_\_\_

In the presence of;Name \_\_\_\_\_ In the presence of;Name \_\_\_\_\_

Address \_\_\_\_\_ Address \_\_\_\_\_  
\_\_\_\_\_

Signature \_\_\_\_\_ Signature \_\_\_\_\_

Date \_\_\_\_\_ Date \_\_\_\_\_

## **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 thereunder or of any of the Contract documents which may be made between \_\_\_\_\_[*name of Employer*] and the Contractor, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

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

This guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until

\_\_\_\_\_ (*name of Employer*) receives full payment of the same amount from the Contract.

Yours faithfully,

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

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

Address \_\_\_\_\_

Date \_\_\_\_\_

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



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

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

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

# 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

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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.

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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.

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

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

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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 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 EDUCATION, VOCATIONAL TRAINING, ICT  
AND e-GOVERNMENT**

**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 EDUCATION, VOCATIONAL TRAINING, ICT AND e-GOVERNMENT** 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.
- 4.11 The contractor

**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 13 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 EDUCATION, VOCATIOAL TRAINING, ICT AND E-GOVERNMENT, 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 SPECIAL CONDITIONS OF CONTRACT**

<b>TENDER CLOSE DATE</b>	<b>11<sup>TH</sup> FEB 2019</b>
<b>PERFORMANCE BOND</b>	<b>THE QUALIFIED BIDDER SHALL BE REQUIRED TO SUBMIT A PERFORMANCE BOND OF 10% OF THE CONTRACT SUM BEFORE SIGNING OF THE CONTRACT</b>

**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.)

<b>Item</b>	<b>Sub-clause</b>	<b>Data</b>
Time for Completion	7.1	<b>3 Months after contract signing,</b>
Priority of Documents		The documents forming the Contract shall be interpreted in the following order of priority:

Item	Sub-clause	Data
		<ul style="list-style-type: none"> <li>• the Contract Agreement and Appendix</li> <li>• the Letter of Acceptance</li> <li>• the Form of Tender</li> <li>• the Conditions of Contract, Part II - Conditions of Particular Application</li> <li>• the Conditions of Contract, Part I - General Conditions of Contract</li> <li>• the Specifications</li> <li>• the Drawings,</li> <li>• the Priced Bill of Quantities</li> </ul>
Law of Contract	1.2	Laws of the Republic of Kenya
Language	1.2	English
Provision of Site	2.1	On Commencement Date
Authorised Person	3.1	.....
Name and Address of Employer's Representative	3.2	<p>The CHIEF OFFICER</p> <p>DEPARTMENT OF EDUCATION, VOCATIONAL TRAINING, ICT AND E-GOVERNMENT</p> <p>P. O. Box 2870-20100</p> <p>NAKURU.</p>
Penalty to the Contractor for Employer paying workers on his behalf	7.1	10% of the amount paid to the workers.



Item	Sub-clause	Data
Performance Security  Amount   Form		The qualified bidder shall be required to submit a performance bond of 10% of the contract sum before signing of the contract   Bank Guarantee/ Insurance Bond Approved by PPOA
Requirements of Contractors Design		Not applicable
Programme ⇒ Time of Submission  ⇒ Form of Programme  ⇒ Interval Updates		Within 14 days of Commencement Date   .....*   .....*
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

Item	Sub-clause	Data
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		50 % OF THE WORKS DONE AS PER THE STATEMNT OF WORKS ISSUED BY PROJECT MANAGER
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  ⇒ Other cover		Nil .....*  .....*  .....**
Arbitration ⇒ Rules ⇒ Appointing Authority ⇒ Place of Arbitration		Nil

.....\* Employer to fill as appropriate

.....\*\* Contractor to fill as appropriate