

# REPUBLIC OF KENYA



COUNTY GOVERNMENT OF NAKURU

**TENDER NAME:**  
**PROPOSED PIPE LAYING AT TARAKWET WATER PROJECT IN KAMARA WARD  
KURESOI NORTH SUB COUNTY.**

**TENDER NO: CGN/WEENR/W/145/2018/2019**

**Instruction to Tenderers  
Agreement  
Annexes  
March, 2019**

**County Government of Nakuru**  
Ministry of Water, Environment, Energy and Natural Resources  
P.O. BOX 2870-20100  
**NAKURU**

## TABLE OF CONTENTS

TABLE OF CONTENTS .....	2
INTRODUCTION.....	3
SECTION I: INVITATION FOR TENDERS .....	4
SECTION II INSTRUCTIONS TO TENDERERS .....	5
SECTION III: CONDITIONS OF CONTRACT .....	16
SECTION IV: APPENDIX TO CONDITIONS OF CONTRACT .....	32
SECTION V: STANDARD FORMS.....	34

## **INTRODUCTION**

Procurement for works under public-financed projects is carried out in accordance with policies and procedures laid down in The Public Procurement and Disposal Act 2015 and The Public Procurement and Disposal Regulations 2006.

This Standard Tendering Document (SBD) for procurement of works has been prepared for use by the Procuring Entities in Kenya in the procurement of Works through National Competitive Tendering (NCB) procedures.

This SBD is mandatory for use in works contracts of a value not exceeding KShs.200 million, as defined in The Public Procurement and Disposal Act 2015 and The Public Procurement and Disposal Regulations 2006.

The following guidelines should be observed when using the document:

- (i). Specific details should be furnished in the Invitation for Tenders and in the Contract Data Sheet (where applicable). The Tender document issued to Tenderers should not have blank spaces or options;
- (ii). The Instructions to Tenderers and the General Conditions of Contract should remain unchanged. Any necessary amendments to these parts should be made through the Tender Data Sheet and Contract Data Sheet respectively;
- (iii). Information contained in the Invitation for Tenders shall conform to the data and information in the Tender documents to enable prospective Tenderers to decide whether or not to participate in the Tender and shall indicate any important Tender requirements;
- (iv). The Invitation for Tenders shall be as an advertisement in accordance with the regulations or a letter of invitation addressed to Tenderers who have been prequalified following a request for prequalification.

## SECTION I: INVITATION FOR TENDERS

Date 21<sup>st</sup> March, 2019

**TENDER REF. NO: CGN/WEERN/W/145/2018/2019**

- 1.1 **The County Government of Nakuru** invites Bidders from eligible candidate's for **PROPOSED PIPE LAYING AT TARAKWET WATER PROJECT IN KAMARA WARD KURESOI NORTH SUB COUNTY.**
- 1.2 Bidding documents with detailed specifications may be obtained from the <https://supplier.treasury.go.ke>, IFMIS Portal or from the county [website:www.nakuru.go.ke](http://www.nakuru.go.ke) free of charge.
- 1.3 Prices quoted should be net, inclusive of **all taxes**, must be in Kenya Shillings and shall remain valid for **90**days from the closing date of the tender.
- 1.4 Tenders must be accompanied by a tender security of 2% of the tender sum. The acceptable Bid Bond will be Bank Guarantee from a reputable bank and such Insurance Guarantee from Insurance Companies approved by the Public Procurement Regulatory Authority (PPRA)
- 1.5 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 **5<sup>th</sup> April, 2019.**
- 1.6 Tenders will be opened immediately thereafter.

**The County Secretary,  
Nakuru County Government**

## SECTION II: INSTRUCTIONS TO TENDERERS

INSTRUCTIONS TO TENDERERS.....	6
1. Tender Documents.....	<b>Error! Bookmark not defined.</b>
2. Preparation of Tenders.....	6
3. Submission of Tenders.....	9
4. Tender Opening and Evaluation .....	9
5. Award of Contract .....	11
6. Corrupt and Fraudulent practices.....	12
7. Evaluation of Tenders.....	14
8. Financial Evaluation Criteria.....	15

# **INSTRUCTIONS TOTENDERERS.**

## **1. Tender Documents**

The complete set of tender documents comprises the documents listed below and any addenda issued in accordance with Clause2.4.

- (a) These Instructions to Tenderers
- (b) Form of Tender and Qualification Information
- (c) Conditions of Contract
- (d) Appendix to Conditions of Contract
- (e) Specifications
- (f) Drawings
- (g) Bills of Quantities
- (h) Forms of Securities

The tenderer shall examine all Instructions, Forms to be filled and Specifications in the tender documents. Failure to furnish all information required by the tender documents, or submission of a tender not substantially responsive to the tendering documents in every respect will be at the tenderer's risk and may result in rejection of his tender.

A prospective tenderer making an inquiry relating to the tender documents may notify the Employer in writing or by cable, telex or facsimile at the address indicated in the letter of invitation to tender. The Employer will only respond to requests 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 tendering documents, including a description of the inquiry, but without identifying its source.

Before the deadline for submission of tenders, the Employer may modify the tendering documents by issuing addenda. Any addendum thus issued shall be part of the tendering documents and shall be communicated in writing or by cable, telex or facsimile to all tenderers. Prospective tenderers shall acknowledge receipt of each addendum in writing to the Employer.

To give prospective tenderers reasonable time in which to take an addendum into account in preparing their tenders, the Employer shall extend, as necessary, the deadline for submission of tenders, in accordance with Clause 4.2 here below.

## **2. Preparation of Tenders**

All documents relating to the tender and any correspondence shall be in English language.

The tender submitted by the tenderer shall comprise the following:

- (a) These Instructions to Tenderers, Form of Tender, Conditions of Contract, Appendix to Conditions of Contract and Specifications;
- (b) Tender Security;
- (c) Priced Bill of Quantities;
- (d) Qualification Information Form and Documents;
- (e) Alternative offers where invited
- (f) Any other materials required to be completed and submitted by the tenderers.

The tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items for which no rate or price is entered by the tenderer will not be paid for when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities. All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause relevant to the Contract, as of 30 days prior to the deadline for submission of tenders, shall be included in the tender price submitted by the tenderer.

The rates and prices quoted by the tenderer shall only be subject to adjustment during the performance of the Contract if provided for in the Appendix to Conditions of Contract and provisions made in the Conditions of Contract.

The unit rates and prices shall be in Kenya Shillings.

Tenders shall remain valid for a period of Ninety (90) days from the date of submission. However in exceptional circumstances, the Employer may request that the tenderers extend the period of validity for a specified additional period. The request and the tenderers' responses shall be made in writing. A tenderer may refuse the request without forfeiting the Tender Security. A tenderer agreeing to the request will not be required or permitted to otherwise modify the tender, but will be required to extend the validity of Tender Security for the period of the extension, and in compliance with Clause 3.7 - 3.11 in all respects.

The tenderer shall furnish, as part of the tender, a Tender Security in the amount and form specified in the appendix to invitation to tenderers. This shall be in the amount not exceeding 2 percent of the tender price

The format of the Tender Security should be in accordance with the form of Tender Security included in Section G - Standard forms or any other form acceptable to the Employer. Tender Security shall be valid for 30 days beyond the validity of the tender.

Any tender not accompanied by an acceptable Tender Security shall be rejected. The Tender Security of a joint venture must define as "Tenderer" all joint venture partners and list them in the following manner: a joint venture consisting of ".....", ".....", and "...".

The Tender Security of the successful tenderer will be discharged when the tenderer has signed the Contract Agreement and furnished the required Performance Security.

The Tender Security may be forfeited

- (a) if the tenderer withdraws the tender after tender opening during the period of tender validity;
- (b) if the tenderer does not accept the correction of the tender price, pursuant to Clause 5.7;
- (c) in the case of a successful tenderer, if the tenderer fails within the specified time limit to
  - (i) sign the Agreement, or
  - (ii) Furnish the required Performance Security.

Tenderers shall submit offers that comply with the requirements of the tendering documents, including the basic technical design as indicated in the Drawings and Specifications. Alternatives will not be considered, unless specifically allowed in the invitation to tender. If so allowed, tenderers wishing to offer technical alternatives to the requirements of the tendering documents must also submit a tender that complies with the requirements of the tendering documents, including the basic technical design as indicated in the Drawings and Specifications.

In addition to submitting the basic tender, the tenderer shall provide all information necessary for a complete evaluation of the alternative, including design calculations, technical specifications, breakdown of prices, proposed construction methods and other relevant details. Only the technical alternatives, if any, of the lowest evaluated tender conforming to the basic technical requirements shall be considered.

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

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

The tender security shall be in the amount of 0.5 – 2 per cent of the tender price.

### **3. Submission of Tenders**

Tenders must be submitted online not later than **5<sup>th</sup> April, 2019**

The Procuring entity may, at its discretion, extend this deadline for the submission of tenders by amending the tender documents in which case all rights and obligations of the Procuring entity and candidates previously subject to the deadline will therefore be subject to the deadline as extended

### **4. Tender Opening and Evaluation**

The tenders will be opened (unsealed) online. The tenderers' names, the tender prices, the total amount of each tender and of any alternative tender (if alternatives have been requested or permitted), any discounts, tender modifications and withdrawals, the presence or absence of Tender Security, and such other details as may be considered appropriate, will be announced by the Employer at the opening. Minutes of the tender opening, including the information disclosed to those present will be prepared by the Employer.

Information relating to the examination, clarification, evaluation, and comparison of tenders and recommendations for the award of 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 may result in the rejection of his tender.

To assist in the examination, evaluation, and comparison of tenders, the Employer at his discretion, may ask any tenderer for clarification of the tender, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by cable, telex or facsimile but no change in the price or substance of the tender shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered in the evaluation of the tenders in accordance with Clause 5.7.

Prior to the detailed evaluation of tenders, the Employer will determine whether each tender

- a) Meets the eligibility criteria defined in Clause 1.7;
- b) Has been properly signed;
- c) Is accompanied by the required securities; and
- d) Is substantially responsive to the requirements of the tendering documents.

A substantially responsive tender is one which conforms to all the terms, conditions and specifications of the tendering documents, without material deviation or reservation. A material deviation or reservation is 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 tendering documents, the Employer's rights or the tenderer's obligations under the Contract; or (c) whose rectification would affect unfairly the competitive position of other tenderers presenting substantially responsive tenders.

If a tender is not substantially responsive, it will be rejected, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

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

- (d) where there is a discrepancy between the amount in figures and the amount in words, the amount in words will prevail; and
- (e) Where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will prevail, unless in the opinion of the Employer, there is an obvious typographical error, in which case the adjustment will be made to the entry containing that error.
- (f) In the event of a discrepancy between the tender amount as stated in the Form of Tender and the corrected tender figure in the main summary of the Bill of Quantities, the amount as stated in the Form of Tender shall prevail.
- (g) The Error Correction Factor shall be computed by expressing the difference between the tender amount and the corrected tender sum as a percentage of the corrected Builder's Work (i.e. Corrected tender sum less P.C. and Provisional Sums)
- (h) The Error Correction Factor shall be applied to all Builders' Work (as a rebate or addition as the case may be) for the purposes of valuations for Interim Certificates and valuation of variations.
- (i) the amount stated in the tender will be adjusted in accordance with the above procedure for the correction of errors and, with concurrence of the tenderer, shall be considered as binding upon the tenderer. If the tenderer does not accept the corrected amount, the tender may be rejected and the Tender Security may be forfeited in accordance with clause 3.11.

The Employer will evaluate and compare only the tenders determined to be substantially responsive in accordance with Clause 5.5.

In evaluating the tenders, the Employer will determine for each tender the evaluated tender price by adjusting the tender price as follows:

- (a) making any correction for errors pursuant to clause 5.7;
- (b) Excluding provisional sums and the provision, if any, for contingencies in the Bill of Quantities, but including Day works where priced competitively.

- (c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with clause 3.12; and
- (d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with clause 4.6

The Employer reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors which are in excess of the requirements of the tender documents or otherwise result in unsolicited benefits for the Employer will not be taken into account in tender evaluation.

The tenderer shall not influence the Employer on any matter relating to his tender from the time of the tender opening to the time the Contract is awarded. Any effort by the Tenderer to influence the Employer or his employees in his decision on tender evaluation, tender comparison or Contract award may result in the rejection of the tender.

Firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias provided that they do not sub-contract work valued at more than 50% of the Contract Price excluding Provisional Sums to non-indigenous sub-contract

## **5. Award of Contract**

Subject to Clause 6.2, the award of the Contract will be made to the tenderer whose tender has been determined to be substantially responsive to the tendering documents and who has offered the lowest evaluated tender price, provided that such tenderer has been determined to be (a) eligible in accordance with the provision of Clauses 1.2, and (b) qualified in accordance with the provisions of clause 1.7 and 1.8.

Notwithstanding clause 6.1 above, the Employer reserves the right to accept or reject any tender, and to cancel the tendering process and reject all tenders, at any time prior to the award of Contract, without thereby incurring any liability to the affected tenderer or tenderers or any obligation to inform the affected tenderer or tenderers of the grounds for the action.

The tenderer whose tender has been accepted will be notified of the award prior to expiration of the tender validity period in writing or by cable, telex or facsimile. This notification (hereinafter and in all Contract documents called the "Letter of Acceptance") will state the sum (hereinafter and in all Contract documents called the "Contract Price") that the Employer will pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract. At the same time the other tenderers shall be informed that their tenders have not been successful.

The contract shall be formed on the parties signing the contract.

The Agreement will incorporate all agreements between the Employer and the successful tenderer. Within 14 days of receipt the successful tenderer will sign the Agreement and return it to the Employer.

Within 21 days after receipt of the Letter of Acceptance, the successful tenderer shall deliver to the Employer a Performance Security in the amount stipulated in the Appendix to Conditions of Contract and in the form stipulated in the Tender documents. The Performance Security shall be in the amount and specified form

Failure of the successful tenderer to comply with the requirements of clause 6.5 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Tender Security.

Upon the furnishing by the successful tenderer of the Performance Security, the Employer will promptly notify the other tenderers that their tenders have been unsuccessful.

Preference where allowed in the evaluation of tenders shall not be allowed for contracts not exceeding one year (12months)

The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.

The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.

Contract price variations shall not be allowed for contracts not exceeding one year (12 months)

Where contract price variation is allowed, the valuation shall not exceed 15% of the original contract price.

Price variation request shall be processed by the procuring entity within 30 days of receiving the request.

The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.

The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.

A tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

## **6. Corrupt and Fraudulent practices**

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

## APPENDIX TO INSTRUCTIONS TO TENDERS

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: <b><a href="http://www.nakuru.go.ke">www.nakuru.go.ke</a></b> free of charge.7
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. There shall be a mandatory pre-bid conference /site visit, on Wednesday <b>27<sup>th</sup> March, 2019</b> at the site. Assemble at the County Government of Nakuru Ministry of Water Environment, Energy and Natural Resources at 11am to be shown. Bidders MUST attach signed site visit certificate during submission of tenders.
3.18	The Tender security shall be 2% of the tender value in the form of a bank guarantee from a reputable bank or Such insurance guarantee approved by the PRA. The tender security shall remain valid for 90 days from the date of tender opening
5.4	Correction of errors is not allowed in this tender
5.7	Price variation is not allowed under this tender

### Evaluation of fenders

Evaluation of tenders shall be carried out in accordance with the criteria set out in this tender document. The evaluation shall be as follows:

- a. Preliminary Evaluation per lot
- b. Technical and Financial Evaluation per lot

**Note: The evaluation per lot will be carried out independently.**

A.	MANDATORY REQUIREMENTS	POINTS
A1 A2 A3 A4 A5 A6 A7 A8 A9 A10 A11	Pin Number Copy of valid Tax Compliance Certificate/exemption certificate Current Business Permit/Licence (2018) Copy of Certificate of Incorporation/evidence of registration whichever is Applicable Physical location of business premises (See business questionnaire) Business questionnaire duly completed, signed and stamped. Tender form duly completed, signed and stamped. Duly signed and stamped site visit certificate Declaration of litigation history on any procurement matters Disclosure of directors and partners, attach CR12 A bid Security of 2% *All Documents should be certified by a commissioner of oaths*	
B.	<b>TECHNICAL REQUIREMENTS</b>	
B1.	<b>Capacity</b> Financial Capability (As supported by <b>certified</b> Audited Accounts for the last three (3) years 2015, 2016, 2017)	20
B2.	<b>Experience:</b> Indicate having undertaken similar assignment with at least 3 firms ( <b>Attach Proof: copies of LPOs, Letters of Award, Completion Certificates, Contracts</b> )	20
B3.	<b>Equipment:</b> Does your company have own equipment relevant to the works you are quoting for? (Attach evidence and capacity) Own equipment (show evidence) (20) Hire show evidence (10)	20
B4	Provide 2 letters of recommendation for similar works	20
B5	<b>Contractor Availability:</b> - Postal Address (2) -Telephone Number (2) - Email Address (2)	10
B6	Submit the work programme schedule Document Conformity/Presented in a required format	10
	<b>TOTAL</b>	<b>100</b>

A. 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

B. Only bidders who score 70% and above will be 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

## **7. Financial Evaluation Criteria**

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

## SECTION III: CONDITIONS OF CONTRACT

CONDITIONS OF CONTRACT .....	17
1. Definitions .....	17
2. Interpretation .....	19
3. Language and Law .....	19
4. Project Manager's Decisions .....	20
5. Delegation .....	20
6. Communications .....	20
7. Subcontracting .....	20
8. Other Contractors .....	20
9. Personnel .....	20
10. Works .....	20
11. Safety and Temporary Works .....	21
12. Discoveries .....	21
13. Work Program .....	14.
Possession of Site .....	22
15. Access to Site .....	22
16. Instructions .....	22
17. Extension or Acceleration of Completion Date .....	22
18. Management Meetings .....	19.
Early Warning .....	20.
Defects .....	23
21. Bills of Quantities .....	23
22. Variations .....	24
23. Payment Certificates, Currency of Payments and Advance Payments ...	24
24. Price Adjustment .....	<b>Error! Bookmark not defined.</b>
25. Retention .....	26
26. Liquidated Damages .....	<b>Error! Bookmark not defined.</b>
27. Securities .....	26
28. Day works .....	<b>Error! Bookmark not defined.</b>
29. Liability and Insurance .....	28
30. Completion and taking over .....	29
31. Final Account .....	<b>Error! Bookmark not defined.</b>
32. Termination .....	29
33. Payment Upon Termination .....	30
34. Release from Performance .....	30
35. Corrupt gifts and payments of commission .....	31
36. Settlement Of Disputes .....	31

## CONDITIONS OF CONTRACT

### 1. Definitions

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

**“Bill of Quantities”** means the priced and completed Bill of Quantities forming part of the tender.

**“Compensation Events”** are those defined in Clause 24 hereunder.

**“The Completion Date”** means the date of completion of the Works as certified by the Project Manager, in accordance with Clause 31.

**“The Contract”** means the agreement entered into between the Employer and the Contractor as recorded in the Agreement Form and signed by the parties including all attachments and appendices thereto and all documents incorporated by reference therein to execute, complete, and maintain the Works,

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

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

**“The Contract Price”** is the price stated in the Letter of Acceptance and thereafter as adjusted in accordance with the provisions of the Contract.

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

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

**“The Defects Liability Certificate”** is the certificate issued by Project Manager upon correction of defects by the Contractor.

**“The Defects Liability Period”** is the period named in the Contract Data and calculated from the Completion Date.

**“Drawings”** include calculations and other information provided or approved by the Project Manager for the execution of the Contract.

**“Day works”** are Work inputs subject to payment on a time basis for labour and the associated materials and plant.

**“Employer”**, or the **“Procuring entity”** as defined in the Public Procurement Regulations (i.e. Central or Local Government administration, Universities, Public Institutions and Corporations, etc) is the party who employs the Contractor to carry out the Works.

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

**“The Intended Completion Date”** is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.

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

**“Plant”** is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.

**“Project Manager”** is the person named in the Appendix to Conditions of Contract (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract and shall be an “Architect” or a “Quantity Surveyor” registered under the Architects and Quantity Surveyors Act Cap 525 or an “Engineer” registered under Engineers Registration Act Cap530.

**“Site”** is the area defined as such in the Appendix to Condition of Contract.

**“Site Investigation Reports”** are those reports that may be included in the tendering documents which are factual and interpretative about the surface and subsurface conditions at the Site.

**“Specifications”** means the Specifications of the Works included in the Contract and any modification or addition made or approved by the Project Manager.

**“Start Date”** is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with the Site possession date(s).

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

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

**“A Variation”** is an instruction given by the Project Manager which varies the Works.

“**The Works**” are what the Contract requires the Contractor to construct, install, and turnover to the Employer, as defined in the Appendix to Conditions of Contract.

## **2. Interpretation**

In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning in English Language unless specifically defined. The Project Manager will provide instructions clarifying queries about these Conditions of Contract.

If sectional completion is specified in the Appendix to Conditions of Contract, reference in the Conditions of Contract to the Works, the Completion Date and the Intended Completion Date apply to any section of the Works (other than references to the Intended Completion Date for the whole of the Works).

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

- (1) Agreement,
- (2) Letter of Acceptance,
- (3) Contractor’s Tender,
- (4) Appendix to Conditions of Contract,
- (5) Conditions of Contract,
- (6) Bill of Quantities,
- (7) Any other documents listed in the Appendix to Conditions of Contract as forming part of the Contract.

Immediately after the execution of the Contract, the Project Manager shall furnish both the Employer and the Contractor with two copies each of all the Contract documents. Further, as and when necessary the Project Manager shall furnish the Contractor [always with a copy to the Employer] with three [3] copies of such further drawings or details or descriptive schedules as are reasonably necessary either to explain or amplify the Contract drawings or to enable the Contractor to carry out and complete the Works in accordance with these Conditions.

## **3. Language and Law**

Language of the Contract and the law governing the Contract shall be English language and the Laws of Kenya respectively unless otherwise stated.

#### **4. Project Manager's Decisions**

Except where otherwise specifically stated, the Project Manager will decide contractual matters between the Employer and the Contractor in the role representing the Employer.

#### **5. Delegation**

The Project Manager may delegate any of his duties and responsibilities to others after notifying the Contractor.

#### **6. Communications**

Communication between parties shall be effective only when in writing. A notice shall be effective only when it is delivered.

#### **7. Subcontracting**

The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations.

#### **8. Other Contractors**

The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities etc. as listed in the Appendix to Conditions of Contract and also with the Employer, as per the directions of the Project Manager. The Contractor shall also provide facilities and services for them. The Employer may modify the said List of Other Contractors etc., and shall notify the Contractor of any such modification.

#### **9. Personnel**

The Contractor shall employ the key personnel named in the Qualification Information, to carry out the functions stated in the said Information or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Qualification Information. If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the Work in the Contract.

#### **10. Works**

The Contractor shall construct and install the Works in accordance with the Specifications and Drawings. The Works may commence on the Start Date and shall be carried out in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.

## **11. Safety and Temporary Works**

The Contractor shall be responsible for the design of temporary works. However before erecting the same, he shall submit his designs including specifications and drawings to the Project Manager and to any other relevant third parties for their approval. No erection of temporary works shall be done until such approvals are obtained.

The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary works and all drawings prepared by the Contractor for the execution of the temporary or permanent Works, shall be subject to prior approval by the Project Manager before they can be used.

The Contractor shall be responsible for the safety of all activities on the Site.

## **12. Discoveries**

Anything of historical or other interest or of significant value unexpectedly discovered on Site shall be the property of the Employer. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.

## **13. Work Program**

Within the time stated in the Appendix to Conditions of Contract, the Contractor shall submit to the Project Manager for approval a program showing the general methods, arrangements, order, and timing for all the activities in the Works.

An update of the program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining Work, including any changes to the sequence of the activities.

The Contractor shall submit to the Project Manager for approval an updated program at intervals no longer than the period stated in the Appendix to Conditions of Contract. If the Contractor does not submit an updated program within this period, the **Project Manager may** withhold the amount stated in the said Appendix from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue program has been submitted. The Project Manager's approval of the program shall not alter the Contractor's obligations. The Contractor may revise the program and submit it to the Project Manager again at any time. A revised program shall show the effect of Variations and Compensation Events.

#### **14. Possession of site**

The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the Appendix to Conditions of Contract, the Employer will be deemed to have delayed the start of the relevant activities, and this will be a Compensation Event.

#### **15. Access to Site**

The Contractor shall allow the Project Manager and any other person authorized by the Project Manager, access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

#### **16. Instructions**

The Contractor shall carry out all instructions of the Project Manager which are in accordance with the Contract.

#### **17. Extension or Acceleration of Completion Date**

The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a variation is issued which makes it impossible for completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining Work, which would cause the Contractor to incur additional cost. The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager in writing for a decision upon the effect of a Compensation Event or variation and submitting full supporting information.

If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay caused by such failure shall not be considered in assessing the new (extended) Completion Date.

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

#### **18. Management Meetings**

A Contract management meeting shall be held monthly and attended by the Project Manager and the Contractor. Its business shall be to review the plans for the remaining Work and to deal with matters raised in accordance with the early warning procedure. The Project Manager shall record the minutes of management meetings and provide copies of the same to those attending the meeting and the Employer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

## **19. Early Warning**

The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the Work increase the Contract Price or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.

The Contractor shall cooperate with the Project Manager in making and considering proposals on how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the Work and in carrying out any resulting instructions of the Project Manager.

## **20. Defects**

The Project Manager shall inspect the Contractor's work and notify the Contractor of any defects that are found. Such inspection shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a defect and to uncover and test any Work that the Project Manager considers may have a defect. Should the defect be found, the cost of uncovering and making good shall be borne by the Contractor, However, if there is no defect found, the cost of uncovering and making good shall be treated as a variation and added to the Contract Price.

The Project Manager shall give notice to the Contractor of any defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the Appendix to Conditions of Contract. The Defects Liability Period shall be extended for as long as defects remain to be corrected.

Every time notice of a defect is given, the Contractor shall correct the notified defect within the length of time specified by the Project Manager's notice.

If the Contractor has not corrected a defect within the time specified in the Project Manager's notice, the Project Manager will assess the cost of having the defect corrected by other parties and such cost shall be treated as a variation and be deducted from the Contract Price.

## **21. Bills of Quantities**

The Bills of Quantities shall contain items for the construction, installation, testing and commissioning of the Work to be done by the Contractor. The Contractor will be paid for the quantity of the Work done at the rate in the Bills of Quantities for each item.

If the final quantity of the Work done differs from the quantity in the Bills of Quantities for the particular item by more than 25 percent and provided the change exceeds 1 percent of the Initial Contract price, the Project Manager shall adjust the rate to allow for the change.

If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bills of Quantities.

## **22. Variations**

All variations shall be included in updated programs produced by the Contractor.

The Contractor shall provide the Project Manager with a quotation for carrying out the variations when requested to do so. The Project Manager shall assess the quotation, which shall be given within seven days of the request or within any longer period as may be stated by the Project Manager and before the Variation is ordered.

If the work in the variation corresponds with an item description in the Bills of Quantities and if in the opinion of the Project Manager, the quantity of work is not above the limit stated in Clause 21.2 or the timing of its execution does not cause the cost per unit of quantity to change, the rate in the Bills of Quantities shall be used to calculate the value of the variation. If the cost per unit of quantity changes, of the nature or timing of the work in the variation does not correspond with items in the Bills of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of Work.

If the Contractor's quotation is unreasonable, the Project Manager may order the variation and make a change to the Contract price, which shall be based on the Project Manager's own forecast of the effects of the variation on the Contractor's costs.

If the Project Manager decides that the urgency of varying the Work would prevent a quotation being given and considered without delaying the Work, no quotation shall be given and the variation shall be treated as a Compensation Event.

The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.

When the Program is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast.

## **23. Payment Certificates, Currency of Payments and Advance Payments**

The Contractor shall be paid after the full value of the works on completion less the certified value for retention which shall be released after the defects liability period.

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

resubmitted, the Employer's Representative shall decide on the amount payable to the Contractor and issue a Final Payment Certificate. The Employer shall pay the Contractor the amount so certified within 60 days of the issue of the final Payment Certificate.

## **24. Price Adjustment**

The Project Manager shall adjust the Contract Price if taxes, duties and other levies are changed between the date 30 days before the submission of tenders for the Contract and the date of Completion. The adjustment shall be the change in the amount of tax payable by the Contractor.

The Contract Price shall be deemed to be based on exchange rates current at the date of tender submission in calculating the cost to the Contractor of materials to be specifically imported (by express provisions in the Contract Bills of Quantities or Specifications) for permanent incorporation in the Works. Unless otherwise stated in the Contract, if at any time during the period of the Contract exchange rates shall be varied and this shall affect the cost to the Contractor of such materials, then the Project Manager shall assess the net difference in the cost of such materials. Any amount from time to time so assessed shall be added to or deducted from the Contract Price, as the case maybe.

Unless otherwise stated in the Contract, the Contract Price shall be deemed to have been calculated in the manners set out below and in sub-clauses 25.4 and 25.5 and shall be subject to adjustment in the events specified there under;

- (i) The prices contained in the Contract Bills of Quantities shall be deemed to be based upon the rates of wages another emoluments and expenses as determined by the Joint Building Council of Kenya (J.B.C.) and set out in the schedule of basic rates issued 30 days before the date for submission of tenders. A copy of the schedule used by the Contractor in his pricing shall be attached in the Appendix to Conditions of Contract.
- (ii) Upon J.B.C. determining that any of the said rates of wages or other emoluments and expenses are increased or decreased, then the Contract Prices shall be increased or decreased by the amount assessed by the Project Manager based upon the difference, expressed as a percentage, between the rate set out in the schedule of basic rates issued 30 days before the date for submission of tenders and the rate published by the J.B.C. and applied to the quantum of labour incorporated within the amount of Work remaining to be executed at the date of publication of such increase or decrease.
- (iii) No adjustment shall be made in respect of changes in the rates of wages and other emoluments and expenses which occur after the date of Completion except during such other period as may be granted as an extension of time under clause 17.0 of these Conditions.

The prices contained in the Contract Bills of Quantities shall be deemed to be based upon the basic prices of materials to be permanently incorporated in the Works as determined by the J.B.C. and set out in the schedule of basic rates issued 30 days before the date for submission of tenders. A copy of the schedule used by the Contractor in his pricing shall be attached in the Appendix to Conditions of Contract.

Upon the J.B.C. determining that any of the said basic prices are increased or decreased then the Contract Price shall be increased or decreased by the amount to be assessed by the Project Manager based upon the difference between the price set out in the schedule of basic rates issued 30 days before the date for submission of tenders and the rate published by the J.B.C. and applied to the quantum of the relevant materials which have not been taken into account in arriving at the amount of any interim certificate under clause 23 of these Conditions issued before the date of publication of such increase or decrease.

No adjustment shall be made in respect of changes in basic prices of materials which occur after the date for Completion except during such other period as may be granted as an extension of time under clause 17.0 of these Conditions.

The provisions of sub-clause 25.1 to 25.2 herein shall not apply in respect of any materials included in the schedule of basic rates.

## **25. Retention**

The Employer shall retain from each payment due to the Contractor the proportion stated in the Appendix to Conditions of Contract until Completion of the whole of the Works. On Completion of the whole of the Works, half the total amount retained shall be repaid to the Contractor and the remaining half when the Defects Liability Period has passed and the Project Manager has certified that all defects notified to the Contractor before the end of this period have been corrected.

## **26. Liquidated Damages**

The Contractor shall pay liquidated damages to the Employer at the rate stated in the Appendix to Conditions of Contract for each day that the actual Completion Date is later than the Intended Completion Date. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not alter the Contractor's liabilities.

If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rate specified in Clause 23.30

## **27. Securities**

The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount and form and by a reputable bank acceptable to the Employer, and denominated in Kenya Shillings. The Performance

Security shall be valid until a date 30 days beyond the date of issue of the Certificate of Completion.

## **28. Day works**

If applicable, the Day works rates in the Contractor's tender shall be used for small additional amounts of Work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.

All work to be paid for as Day works shall be recorded by the Contractor on Forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the Work being done.

The Contractor shall be paid for Day works subject to obtaining signed Day works forms.

## **29. Liability and Insurance**

From the Start Date until the Defects Correction Certificate has been issued, the following are the Employer's risks:

- (a) The risk of personal injury, death or loss of or damage to property (excluding the Works, Plant, Materials and Equipment), which are due;
  - (i) use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works, or
  - (ii) Negligence, breach of statutory duty or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor.
- (b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of the Employer or in Employer's design, or due to war or radioactive contamination directly affecting the place where the Works are being executed.

From the Completion Date until the Defects Correction Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is the Employer's risk except loss or damage due to;

- (a) A defect which existed on or before the Completion Date.
- (b) An event occurring before the Completion Date, which was not itself the Employer's risk
- (c) The activities of the Contractor on the Site after the Completion Date.

From the Start Date until the Defects Correction Certificate has been issued, the risks of personal injury, death and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Employer's risk are Contractor's risks.

The Contractor shall provide, in the joint names of the Employer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts stated in the Appendix to Conditions of Contract for the following events;

- (a) loss of or damage to the Works, Plant, and Materials;
- (b) loss of or damage to Equipment;
- (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract, and
- (d) Personal injury or death.

Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation required to rectify the loss or damage incurred.

If the Contractor does not provide any of the policies and certificates required, the Employer may affect the insurance which the Contractor should have provided and recover the premiums from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.

Alterations to the terms of insurance shall not be made without the approval of the Project Manager. Both parties shall comply with any conditions of insurance policies.

### **30. Completion and taking over**

Upon deciding that the Works are complete, the Contractor shall issue a written request to the Project Manager to issue a Certificate of Completion of the Works. The Employer shall take over the Site and the Works within seven [7] days of the Project Manager are issuing a Certificate of Completion.

### **31. Final Account**

The Contractor shall issue the Project Manager with a detailed account of the total amount that the Contractor considers payable to him by the Employer under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 30 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 30 days a schedule that states the scope of the corrections or additions that are necessary.

### **32. Termination**

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

- a) The Contractor stops Work for 60 days continuously without reasonable cause or authority from the Employer's Representative;
- b) the Contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
- c) If the Contract is terminated, the Contractor shall stop Work immediately, and leave the Site as soon as reasonably possible. The Employer's Representative shall immediately thereafter arrange for a meeting for the purpose of taking record of the Works executed and materials, goods, equipment and temporary buildings on Site.

### **33. Payment upon Termination**

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

The Contractor shall, during the execution or after the completion of the Works under this clause, remove from the Site as and when required within such reasonable time as the Employer's Representative may in writing specify, any temporary buildings, plant, machinery, appliances, goods or materials belonging to him, and in default thereof, the Employer may (without being responsible for any loss or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor.

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

### **34. Release from Performance**

If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop Work as quickly as possible after receiving this certificate and shall be paid for all Work carried out before receiving it.

### **35. Corrupt gifts and payments of commission**

The Contractor shall not;

- (a) Offer or give or agree to give to any person in the service of the

Employer any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other Contract for the Employer or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract for the Employer.

- (b) Enter into this or any other contract with the Employer in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Employer.

Any breach of this Condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) shall be an offence under the provisions of the Public Procurement Regulations issued under The Exchequer and Audit Act Cap 412 of the Laws of Kenya.

### **36. Settlement of Disputes**

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

## SECTION IV: APPENDIX TO CONDITIONS OF CONTRACT

### SPECIAL CONDITIONS OF CONTRACT

Tender Security	<b>2% of the tender sum</b>
Tender closing date	<b>5<sup>th</sup> April,2019</b>
Performance Bond	<b>The qualified bidder shall be required to submit- performance Bond of 10% of the contract sum before signing of the contract</b>

### Notes on Bills of Quantities

Plant and materials on site		
Plant		
A.	It should be stated that the contractor to provide all plant and equipment, scaffolding necessary to complete the works and the engineer to approve the size and type of plant to be used.	
Measurement of works		
B.	The contractor to provide a qualified site agent and trained person to work with a building inspector during the valuation for the final account. Additional work must be measured and approved by the engineer at the time of commencing of work as appropriate.	
Protection of works		
C.	The contractor must protect all the work from either:-  Damage from other trade Weather Theft – This includes fencing, lighting, watching, temporary stores etc. All this is done at the contractor’s expenses. To provide /erect warning signs.	
Demolition		
Safety		
D.	The County Engineer must approve the method and plan of demolition/blustering to ensure no damage to other occupant of site/residents. Avoid danger to neighboring buildings and make sure that the equipment used is sound.	
Noise, dust and disturbance to existing		
E.	The contractor shall note that the project is surrounded or next to existing properties (offices ), and is to take all reasonable precautions for keeping noise, dust and disturbances to a minimum	
Progress Chart		
F.	The contractor shall allow for providing within two weeks of the date of possession of the site and in agreement with County Engineer a progress chart for the whole of the work, including works to the sub-contractors should any circumstances arise affecting the programme or progress, that chart shall be modified as necessary and the County Engineer informed.	
Labour camp		

## SECTION V: STANDARD FORMS

FORM OF TENDER.....	36
LETTER OF ACCEPTANCE.....	37
FORM OF AGREEMENT.....	38
FORM OF TENDER SECURITY.....	40
PERFORMANCE BANK GUARANTEE.....	41
BANK GUARANTEE FOR ADVANCE PAYMENT.....	42
QUALIFICATION INFORMATION.....	44
TENDER QUESTIONNAIRE.....	48
CONFIDENTIAL BUSINESS QUESTIONNAIRE.....	49
Part 1 – General.....	49
Part 2 (a) – Sole Proprietor.....	49
Part 2(b) – Partnership.....	49
Part 2 (c) – Registered Company.....	49
LITIGATION HISTORY.....	51
STATEMENT OF FOREIGN CURRENCY REQUIREMENTS.....	52
DETAILS OF SUB-CONTRACTORS.....	53
LETTER OF NOTIFICATION OF AWARD.....	54

## FORM OF INVITATION FOR TENDERS

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

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

\_\_\_\_\_ *[Address]*

\_\_\_\_\_

\_\_\_\_\_

Dear Sirs:

*Reference:[Contract Name]*

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

\_\_\_\_\_  
*[mailing address].*

All tenders must be accompanied by \_\_\_\_\_ number of copies of the same and a security in the form and amount specified in the tendering documents, and must be delivered to

\_\_\_\_\_  
*[address and location]*

at or before \_\_\_\_\_ *(time and date)*. Tenders will be opened immediately thereafter, in the presence of tenderers' representatives who choose to attend.

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

Yours faithfully,

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
*Name and Title*

## FORM OF TENDER

TO: \_\_\_\_\_ [Name of Employer] \_\_\_\_\_ [Date]  
\_\_\_\_\_ [Name of Contract]

Dear Sir,

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

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

Duly authorized to sign tenders for and on behalf of

\_\_\_\_\_ [Name of Tenderer]

of \_\_\_\_\_ [Address of Tenderer]

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

Address \_\_\_\_\_

Signature .....

Date.....

# LETTER OF ACCEPTANCE

\_\_\_\_\_ [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 here by accepted.

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

Authorized Signature.....

Name and Title of Signatory.....

Attachment : Agreement

## FORM OF AGREEMENT

THIS AGREEMENT, made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
between \_\_\_\_\_ of or \_\_\_\_\_ whose  
registered office is situated at] \_\_\_\_\_  
(Hereinafter called "the Employer") of the one part

AND

\_\_\_\_\_ of [or \_\_\_\_\_ whose  
registered office is situated at] \_\_\_\_\_  
(Hereinafter called "the Contractor") of the other part.

WHEREAS THE Employer is desirous that the Contractor executes

\_\_\_\_\_

(*name and identification number of Contract*) (Hereinafter called "the Works") located  
at \_\_\_\_\_ [*Place/location of the Works*] and the Employer has  
accepted the tender submitted by the Contractor for the execution and completion of such Works  
and the remedying of any defects therein for the Contract Price of  
Kshs \_\_\_\_\_ [*Amount in figures*], Kenya  
Shillings \_\_\_\_\_ [*Amount in words*].

NOW THIS AGREEMENT WITNESSETH as follows:

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

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

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

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

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

Signed Sealed, and Delivered by the said

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

Binding Signature of Witness \_\_\_\_\_

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

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

Address \_\_\_\_\_

Signature \_\_\_\_\_

## FORM OF TENDER SECURITY

WHEREAS ..... (Hereinafter called “the Tenderer”) has submitted his tender dated .....

..... (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 successor and assigns by these presents sealed with the Common Seal of the said Bank this ..... Day of ..... 20.....

THE CONDITIONS of this obligation are:

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

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.

\_\_\_\_\_  
[Date]

\_\_\_\_\_  
[signature of the Bank]

\_\_\_\_\_  
[Witness]

\_\_\_\_\_  
[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 recognized bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

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

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of KShs. \_\_\_\_\_ (amount of Guarantee in figures) Kenya Shillings \_\_\_\_\_ (amount of Guarantee in words), and we undertake to pay you, upon your first written demand and without cavil argument, any sum or sums within the limits of Kenya Shillings

\_\_\_\_\_ (amount of Guarantee in words) as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

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

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

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

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

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

Address \_\_\_\_\_

Date \_\_\_\_\_

## BANK GUARANTEE FOR ADVANCE PAYMENT

To: \_\_\_\_\_ (Date)

[name of Employer]

\_\_\_\_\_  
[address of Employer]

Gentlemen,

Ref: \_\_\_\_\_ [name of Contract]

In accordance with the provisions of the Conditions of Contract of the above-mentioned  
~~Contract~~, and Address of

We,..... Contractor] [name of

(hereinafter called "the Contractor") shall deposit with

Employer] a bank guarantee to guarantee his proper and faithful performance under the said  
Contract in an amount of Kshs. \_\_\_\_\_ [amount of Guarantee in figures]  
Kenya Shillings \_\_\_\_\_ [amount of Guarantee in words].

We, \_\_\_\_\_ [bank or financial institution], as instructed by the Contractor, agree

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

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

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

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

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

Yours faithfully,

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

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

Address \_\_\_\_\_

Date \_\_\_\_\_

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

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

Signature: Date:.....

## QUALIFICATION INFORMATION

### 1. Individual Tenderers or Individual Members of Joint Ventures

Constitution or legal status of tenderer (attach copy or Incorporation Certificate);

Place of registration: \_\_\_\_\_

Principal place of business \_\_\_\_\_

Power of attorney of signatory oftener \_\_\_\_\_

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

Year	Volume	
	Currency	Value

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
_____	_____	_____	_____
_____	_____	_____	_____

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.)			

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.)	_____	_____	_____

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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

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

## **2 Joint Ventures**

The information listed in 1.1 – 1.10 above shall be provided for each partner of the joint venture.

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

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

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

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2. Full address of tenderer to which tender correspondence is to be sent (unless an agent has been appointed below)

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3. Telephone number (s) oftenderer

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4. Telex address of tenderer

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

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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 delive rto: \_\_\_\_\_(*Name of Employer*)

## CONFIDENTIAL BUSINESS QUESTIONNAIRE

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

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

### Part 1 – General

Business Name.....  
Location of business premises; Country/Town.....  
Plot No. ....Street/Road.....  
Postal Address.....  
Tel.No.....  
Nature of Business.....  
Current Trade Licence No. ....Expiring  
date.....  
Maximum value of business which you can handle at any time: K. pound.....  
Name of your bankers .....  
Branch.....

### *Part 2 (a) – Sole Proprietor*

Your name in full  
.....Age.....  
Nationality ..... Country of Origin.....  
Citizenship details .....

### *Part 2(b) – Partnership*

Give details of partners as follows:

Name in full shares	Nationality	Citizenship	Details
1.....			
2.....			
3.....			

### *Part 2 (c) – Registered Company*

Private or public.....  
State the nominal and issued capital of the  
company – Nominal  
Kshs.....  
Issued Kshs.....  
Give details of the entire director as follows:

Name in full Nationality

Citizenship Details\*

Shares

1.....

2.....

3.....

4.....



**STATEMENT OF FOREIGN CURRENCY REQUIREMENTS**

(See Clause 23] of the Conditions of Contract)

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

(Figures)..... (Words).....of the Contract Sum,  
(Less Fluctuations) to be paid in foreign currency. Currency in which foreign exchange element  
is required:

.....  
Date: The ..... Day of ..... 20.....  
Enter 0% (zero percent) if no payment will be made in foreign currency.

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

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

## 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 year 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.

*(FULLPARTICULARS)* \_\_\_\_\_

\_\_\_\_\_

**SIGNED FOR ACCOUNTING OFFICER**