**STANDARD TENDER DOCUMENT FOR PROCUREMENT WORKS**

# PROPOSED BORESHA PLAZA ON PLOT NO.255 SP MARIGAT TOWNSHIP

**TENDER NO.: BDTS/RFP/04/2025**

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***INVITATION TO TENDER***

PROCURING ENTITY:**BORESHA SACCO SOCIETY LTD P.O BOX P.O BOX 80-20103 ELDAMA RAVINE**

CONTRACT NAME AND DESCRIPTION: PROPOSED BORESHA PLAZA ON PLOT NO.255 SP MARIGAT TOWNSHIP

The BORESHA SACCO SOCIETY LTD ***invites*** sealed tenders for the construction of

**the above project**

1. Tendering will be conducted under open competitive method National using a standardized tender document Tendering is open to all tenderer's with a valid business permit.

2. Qualified and interested tenderers may obtain further information and inspect the Tender Documents during office hours *0900 to 1500 hours* at the address given below.

3. A complete set of tender documents may be purchased or obtained by interested tenders at the government tender dedicated portal or upon payment of a non-refundable fees of Kshs. 1,000 in cash or Banker's Cheque and payable to the address given below.

4. Bidders after receiving the standard tender document must give their particulars immediately to Boresha Sacco facilitate any further clarification or addendum.

5. Tenders shall be quoted be in Kenya Shillings. Tenders shall remain valid for 210 days from the date of opening of tenders.

6. All Tenders must be accompanied by ***Tender-Security as appropriate***.

7. The Tenderer shall chronologically serialize all pages of the tender documents submitted in the format of1,2,3,4…… ( Including the cover page and all the attachments).

8. Completed tenders must be delivered to the address below on or before 24th Nov 2025 *at 10.00am* Electronic Tenders Not be permitted.

9. Tenders will be opened immediately after the deadline date and time specified above or any dead line date and time specified later. Tenders will be publicly opened in the presence of the Tenderers' designated representatives who choose to attend at the address below.

10. Late tenders will be rejected.

10. The addresses referred to above are:

**A. Address for obtaining further information and for purchasing tender documents**

**BORESHA SACCO HEAD OFFICE**
**TEACHERS PLAZA**
**ELDAMA RAVINE**
**MARKET ROAD**
**1st Floor(Reception)**
**OR**
**Electronicaly**
**Paybill 545500 AC/NO. 6958**
**Payment of 2,000**
**(Attarch Transaction ID)**

**B.** **Address for submission and opening of Tender**

**BORESHA SACCO HEAD OFFICE**
**TEACHERS PLAZA**
**ELDAMA RAVINE TOWN P.O. BOX 80 – 20103**
**MARKET ROAD**
**1st Floor(Reception)**

***[Authorized Official (name, designation, Signature and date)]***

Name:_____

(*Official of the Procuring Entity issuing the invitation)*

**Designation:**

**Signature:**_____

**Date:**_____

# PART 1 - TENDERING PROCEDURES

## SECTION I: INSTRUCTIONS TO TENDERERS

### A General Provisions

### 1. Scope ofTender

**1.1** The Procuring Entity as defined in the Appendix to Conditions of Contract invites tenders for Works Contract as described in the tender documents. The name, identification, and number of lots (contracts) of this Tender Document are **specified inthe TDS.**

### 2. Fraud and Corruption

2.1 The Procuring Entity requires compliance with theprovisions of the Public Procurement and Asset Disposal Act, 2015, Section 62 "Declaration not to engage in corruption". The tender submitted by a person shall include a declaration that theperson shall not engage in any corrupt or fraudulent practice and a declaration that theperson or his or her sub-contractors arenot debarred fromparticipating in public procurement proceedings.

2.2 The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. Tothis effect, Tenders shall berequired to complete and sign the "Certificate of Independent Tender Determination" annexed tothe Form of Tender.

2.3 Unfair Competitive Advantage - Fairness and transparency in the tender process require that the firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. To that end, the Procuring Entity shall indicate in the **Data Sheet** and make available to all the firms together with this tender document all information that would in that respect give such firmanyunfair competitiveadvantage over competing firms.

2.4 Unfair Competitive Advantage -Fairness and transparency in the tender process require that the Firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender being tendered for. The Procuring Entity shall indicate in the **TDS** firms (if any) that provided consulting services for the contract being tendered for. The Procuring Entity shall check whether the owners or controllers of the Tenderer are same as those that provided consulting services. The Procuring Entity shall, upon request, makeavailable to any tenderer information that would givesuch firmunfair competitiveadvantage over competing firms.

### 3. Eligible Tenderers

**3.1** ATenderer may be a firm that is a private entity, a state-owned enterprise or institution subject to ITT 3.7 or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. Public employees and their close relatives *(spouses, children, brothers, sisters and uncles and aunts)* are not eligible to participate in the tender. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the tendering process and, in the event the JV is awarded the Contract, during contract execution. The maximum number of JV members shall be specified inthe **TDS.**

3.2 Public Officers of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they havea substantial or controlling interest shall not be eligible to tender or beawarded a contract. Public Officers arealso not allowed to participate in anyprocurement proceedings.

3.3 A Tenderer shall not have a conflict of interest. Any tenderer found to have a conflict of interest shall be disqualified. Atenderer may be considered to have a conflict of interest for the purpose of this tendering process, if thetenderer:

a) Directly or indirectly controls, is controlled by or is under common control with another tenderer; or

b) Receives or has received any direct or indirect subsidy fromanother tenderer; or

c) Has thesamelegal representative as another tenderer; or

d) Has a relationship with another tenderer, directly or through common third parties, that puts it in a position

to influence the tender of another tenderer, or influencethe decisions of the Procuring Entity regarding this tenderingprocess; or

e) Any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that arethesubject of thetender; or

f) any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity as Engineer for the Contract implementation; or

g) Would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the contract specified in this Tender Document or

h) Hasa closebusiness or family relationship with a professional staff of the Procuring Entity who:

i) are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or theTender evaluation process of such contract; or

ii) would be involved in the implementation or supervision of such Contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Procuring Entitythroughout thetendering process and execution of the Contract.

3.4 Atenderer shall not beinvolved in corrupt, coercive, obstructive, collusive or fraudulent practice. Atenderer that is proven to havebeen involved any of thesepractices shall beautomatically disqualified.

3.5 A Tenderer (either individually or as a JV member) shall not participate in more than one Tender, except for permitted alternative tenders. This includes participation as a subcontractor in other Tenders. Such participation shall result in the disqualification of all Tenders in which the firm is involved. Afirm that is not a tenderer or a JV member may participate as a subcontractor in more than one tender. Members of a joint venture may not also make an individual tender, be a subcontractor in a separate tender or be part of another joint venture for the purposes of thesameTender.

3.6 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT 4.8.A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as thecase may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or sub-consultants for any part of theContract including related Services.

3.7 Tenderer that has been debarred from participating in public procurement shall be ineligible to tender or be awarded a contract. The list of debarred firms and individuals is available from the website of PPRA www.ppra.go.ke.

3.8 Tenderers that are state-owned enterprises or institutions may be eligible to compete and be awarded a Contract(s) only if they are accredited by PPRA to be (i) a legal public entity of the state Government and/or public administration, (ii) financially autonomous and not receiving any significant subsidies or budget support fromany public entity or Government, and (iii) operating under commercial law and vested with legal rights and liabilities similar to any commercial enterprise to enable it compete with firms in the private sector on an equal basis.

3.9 AFirms and individuals may be ineligible if their countries of origin (a) as a matter of law or official regulations, Kenya prohibits commercial relations with that country, or (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person, or entity in that country. Atenderer shall provide such documentary evidence of eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.

*3.10* Foreign tenderers are required to source at least forty (40%) percent of their contract inputs (in supplies, subcontractsand labor) from national suppliers and contractors. Tothis end, a foreign tenderer shall provide in its tender documentary evidence that this requirement is met. Foreign tenderers not meeting this criterion will be automatically disqualified. Information required to enablethe Procuring Entity determine if this condition is met shall be provided in for this purpose is be provided in *"SECTION III - EVALUATION AND QUALIFICATION CRITERIA, Item 9".*

3.11 Pursuant to the eligibility requirements of ITT 4.10, a tender is considered a foreign tenderer, if the tenderer is not registered in Kenya or if thetenderer is registered in Kenya and has <u>less than 51 percent</u> ownership by Kenyan

Citizens. JVs are considered as foreign tenderers if the individual member firms are not registered in Kenya or if are registered in Kenya and have less than 51 percent ownership by Kenyan citizens. The JV shall not subcontract toforeign firms morethan 10 percent of thecontract price, excluding provisional sums.

3.12 The National Construction Authority Act of Kenya requires that all local and foreign contractors be registered with the National Construction Authority and be issued with a Registration Certificate before they can undertake any construction works in Kenya. Registration shall not be a condition for tender, but it shall be a condition of contract award and signature. A selected tenderer shall be given opportunity to register before such award and signature of contract. Application for registration with National Construction Authority may be accessed from thewebsite www.nca.go.ke.

3.13 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not bea condition for tender, but it shall bea condition of contractaward and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption fromthe Competition Authority of Kenya may beaccessed from the website www.cak.go.ke

3.14 A Kenyan tenderer shall provide evidence of having fulfilled his/her tax obligations by producing a valid tax clearancecertificate or tax exemption certificateissued bythe Kenya RevenueAuthority.

**4. Eligible Goods, Equipment, and Services**

4.1 Goods, equipment and services to be supplied under the Contract may have their origin in any country that is not eligible under ITT 3.9. At the Procuring Entity's request, Tenderers may be required to provide evidence of the origin of Goods, equipment and services.

4.2 Any goods, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement.

**5. Tenderer's Responsibilities**

5.1 The tenderer shall bear all costs associated with the preparation and submission of his/her tender, and the Procuring Entity will in no case be responsible or liable for those costs.

5.2 The tenderer, at the tenderer's own responsibility and risk, is encouraged to visit and examine the Site of the Works and its surroundings, and obtain all information that may be necessary for preparing the tender and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the tenderer's own expense.

5.3 The Tenderer and any of its personnel or agents will be granted permission by the Procuring Entity to enter upon its premises and lands for the purpose of such visit. The Tenderer shall indemnify the Procuring Entity against all liability arising from death or personal injury, loss of or damage to property, and any other losses and expenses incurred as a result of the inspection.

5.4 The tenderer shall provide in the Form of Tender and Qualification Information, a preliminary description of the proposed work method and schedule, including charts, as necessary or required.

**B. <u>Contents of Tender Documents</u>**

**6. Sections of Tender Document**

6.1 The tender document consists of Parts 1, 2, and 3, which includes all the sections specified below, and which should beread inconjunction with any Addenda issued in accordance with ITT 8.

**PART 1 Tendering Procedures**

i) Section I - Instructions to Tenderers (ITT)
ii) Section II - Tender Data Sheet (TDS)
iii) Section III - Evaluation and Qualification Criteria
iv) Section IV- Tendering Forms

**PART 2 Works Requirements**

i) Section V- Drawings
ii) Section VI - Specifications
iii) Section VII - Bills of Quantities

**PART 3 Conditions of Contract and Contract Forms**

i) Section VIII - General Conditions of Contract (GCC)
ii) Section IX - Special Conditions of Contract (SC)
iii) Section X - Contract Forms

6.2 The Invitation to Tender Document (ITT) issued bythe Procuring Entity is not part of the Contract documents.

6.3 Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of the Tender document, responses to requests for clarification, the minutes of the pre-Tender meeting (if any), or Addenda to the Tender document in accordance with ITT 8. In case of any contradiction, documents obtained directly fromthe Procuring Entity shall prevail.

The Tenderer is expected to examine all instructions, forms, terms, and specifications in the Tender Document and to furnish with its Tender all information and documentation as is required by the Tender document.

**7. Site Visit**

7.1 The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine and inspect the Site of the Required Services and its surroundings and obtain all information that may be necessary for preparing the Tender and entering into a contract for the Services. Thecosts of visiting the Site shall beat the Tenderer's own expense.

**8. Pre-Tender Meeting**

8.1 The Procuring Entity shall specify in the **TDS** if a pre-tender meeting will be held, when and where. The Procuring Entity shall also specify in the **TDS** if a pre-arranged pretender site visit will be held and when. The Tenderer's designated representative is invited to attend a pre-arranged pretender visit of the site of the works. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

8.2 The Tenderer is requested to submit any questions in writing, to reach the Procuring Entity not later than the period specified inthe **TDS** beforethe meeting.

8.3 Minutes of thepre-Tender meeting and thepre-arranged pretender site visit of the site of the works, if applicable, including the text of the questions asked by Tenderers and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents inaccordance with ITT 6.3. Minutes shall not identify thesource of the questions asked.

8.4 The Procuring Entity shall also promptly publish anonym zed (*no names*) Minutes of thepre-Tender meeting and the pre-arranged pretender visit of the site of the works at the web page identified in the **TDS**. Any modification to the Tender Documents that may become necessary as a result of the pre-tender meeting and the pre-arranged pretender site visit, shall be madeby the Procuring Entity exclusively through the issueof anAddendum pursuant to ITT 8 and not through the minutes of the pre-Tender meeting. Nonattendance at the pre-Tender meeting will not bea causefor disqualification of a Tenderer.

**9. Clarificationand amendments of Tender Documents**

9.1 ATenderer requiring any clarification of the Tender Document shall contact the Procuring Entity in writing at the Procuring Entity's address specified in the **TDS** or raise its enquiries during the pre-Tender meeting and the pre-

arranged pretender visit of the site of the works if provided for in accordance with ITT 8.4. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the **TDS** prior to the deadline for submission of tenders. The Procuring Entity shall forward copies of its response to all tenderers who have acquired the Tender Documents in accordance with ITT 6.3, including a description of the inquiry but without identifying its source. If specified in the **TDS**, the Procuring Entity shall also promptly publish its response at the web page identified in the **TDS**. Should the clarification result in changes to the essential elements of the Tender Documents, the Procuring Entity shall amend the Tender Documents appropriately following theprocedureunder ITT 8.4.

**10. Amendment of Tendering Document**

10.1 At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the Tendering document by issuing addenda.

10.2 Any addendum issued shall be part of the tendering document and shall be communicated in writing to all who have obtained the tendering document from the Procuring Entity in accordance with ITT 6.3. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's web page in accordance with ITT 8.4.

**10.3** To give prospective Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity shall extend, as necessary, the deadline for submission of Tenders, in accordance with ITT 25.2 below**.**

**C. <u>Preparation of Tenders</u>**

**11. Cost ofTendering**

11.1 The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the Procuring Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

**12. Language of Tender**

12.1 The Tender, as well as all correspondence and documents relating to the tender exchanged by the tenderer and the Procuring Entity, shall be written in the English Language. Supporting documents and printed literature that are part of the Tender may be in another language provided they are accompanied by an accurate and notarized translation of therelevant passages into the English Language, in which case, for purposes of interpretation of the Tender, suchtranslation shall govern.

**13. Documents Comprising the Tender**

13.1 The Tender shall comprise the following:

a) Form of Tender prepared in accordance with ITT 14;
b) Schedules including priced Bill of Quantities, completed inaccordance with ITT 14 and ITT 16;
c) Tender Security or Tender-Securing Declaration, inaccordance with ITT 21.1;
d) AlternativeTender, if permissible, in accordance with ITT 15;
e) Authorization: written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 22.3;
f) Qualifications: documentary evidencein accordance with ITT 19establishing theTenderer's qualifications toperformthe Contract if its Tender is accepted;
g) Conformity: a technical proposal inaccordance with ITT 18;
h) Any other document required inthe**TDS**.

13.2 In addition to the requirements under ITT 11.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful Tender shall be signed by all members and submitted with the Tender,

together with a copy of theproposed Agreement. The Tenderer shall chronologically serialize pages of all tender documents submitted.

**13.3** The Tenderer shall furnish in the Form of Tender information on commissions and gratuities, if any, paid or to be paidto agents or any other partyrelating tothis Tender**.**

**14. Formof Tenderand Schedules**

14.1 The Form of Tender and Schedules, including the Bill of Quantities, shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITT 20.3. All blank spaces shall be filled in with the information requested.

**15. Alternative Tenders**

15.1 Unless otherwise specified inthe **TDS**, alternative Tenders shall not beconsidered.

15.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the **TDS**, and the method of evaluating different alternative times for completion will be described in Section III, Evaluation and Qualification Criteria.

15.3 Except as provided under ITT 13.4 below, Tenderers wishing to offer technical alternatives to the requirements of the Tender Documents must first price the Procuring Entity's design as described in the Tender Documents and shall further provide all information necessary for a complete evaluation of the alternative by the Procuring Entity, including drawings, design calculations, technical specifications, breakdown of prices, andproposed construction methodology and other relevant details. Only the technical alternatives, if any, of the Tenderer with the Winning Tender conforming to the basic technical requirements shall be considered by the Procuring Entity. When specified in the **TDS**, Tenderers are permitted to submit alternative technical solutions for specified parts of the Works, and such parts will be identified in the **TDS**, as will the method for their evaluating, and described in Section VII, Works' Requirements.

**16. Tender Prices and Discounts**

16.1 Theprices and discounts (including any price reduction) quoted by the Tenderer in the Form of Tender and in the Bill of Quantities shall conformto therequirements specified below.

16.2 The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Tenderer shall be deemed covered by the rates for other items in the Bill of Quantities and will not be paid for separately by the Procuring Entity. An item not listed in the priced Bill of Quantities shall be assumed to be not included in the Tender, and provided that the Tender is determined substantially responsive notwithstanding this omission, the average price of the item quoted by substantially responsive Tenderers will be added to the Tender price and the equivalent total cost of the Tender so determined will be used for price comparison.

16.3 The price to be quoted in the Form of Tender, in accordance with ITT 14.1, shall be the total price of the Tender, including any discounts offered.

16.4 The Tenderer shall quote any discounts and the methodology for their application in the Form of Tender, in accordance with ITT 14.1.

16.5 It will be specified in the **TDS** if the rates and prices quoted by the Tenderer are or are not subject to adjustment during theperformance of theContract in accordance with theprovisions of theConditions of Contract, except in cases where the contract is subject to fluctuations and adjustments, not fixed price. In such a case, the Tenderer shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data and the Procuring Entity may requiretheTenderer tojustify its proposed indices and weightings.

16.6 Where tenders are being invited for individual lots (contracts)or for any combination of lots (packages), tenderers wishing to offer discounts for the award of more than one Contract shall specify in their Tender the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITT 16.4, provided the Tenders for all lots (contracts) are opened at the same time.

16.7 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 30 days prior to the deadline for submission of Tenders, shall be included in the rates and prices and the total Tender Price submitted by the Tenderer.

**17. Currencies of Tender and Payment**

17.1 Tenderers shall quote entirely in Kenya Shillings. The unit rates and the prices shall be quoted by the Tenderer in the Bill of Quantities, entirely in Kenya shillings. A Tenderer expecting to incur expenditures in other currencies for inputs to the Works supplied from outside Kenya shall device own ways of getting foreign currency to meet those expenditures.

**18. Documents Comprising the Technical Proposal**

18.1 The Tenderer shall furnish a technical proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section IV, Tender Forms, in sufficient detail to demonstrate the adequacy of the Tenderer's proposal to meet the work's requirements and the completion time.

**19. Documents Establishing the Eligibility and Qualifications of the Tenderer**

19.1 Tenderers shall complete the Form of Tender, included in Section IV, Tender Forms, to establish Tenderer's eligibility in accordance with ITT 4.

19.2 In accordance with Section III, Evaluation and Qualification Criteria, to establish its qualifications to perform the Contract the Tenderer shall provide the information requested in the corresponding information sheets included in Section IV, Tender Forms.

19.3 A margin of preference will not be allowed. Preference and reservations will be allowed, individually or in joint ventures. Applying for eligibility for Preference and reservations shall supply all information required to satisfy the criteria for eligibility specified in accordance with ITT 33.1.

19.4 Tenderers shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a contractor or group of contractors qualifies for a margin of preference. Further the information will enable the Procuring Entity identify any actual or potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between tenderers, and thereby help to prevent any corrupt influence in relation to the procurement process or contract management.

19.5 The purpose of the information described in ITT 19.4 above overrides any claims to confidentiality which a tenderer may have. There can be no circumstances in which it would be justified for a tenderer to keep information relating to its ownership and control confidential where it is tendering to undertake public sector work and receive public sector funds. Thus, confidentiality will not be accepted by the Procuring Entity as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership and control.

19.6 The Tenderer shall provide further documentary proof, information or authorizations that the Procuring Entity may request in relation to ownership and control which information on any changes to the information which was provided by the tenderer under ITT 6.3. The obligations to require this information shall continue for the duration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.

19.7 All information provided by the tenderer pursuant to these requirements must be complete, current and accurate as at the date of provision to the Procuring Entity. In submitting the information required pursuant to these requirements, the Tenderer shall warrant that the information submitted is complete, current and accurate as at the date of submission to the Procuring Entity.

19.8 If a tenderer fails to submit the information required by these requirements, its tender will be rejected. Similarly, if the Procuring Entity is unable, after taking reasonable steps, to verify to a reasonable degree the information submitted by a tenderer pursuant to these requirements, then the tender will be rejected.

19.9 If information submitted by a tenderer pursuant to these requirements, or obtained by the Procuring Entity (whether through its own enquiries, through notification by the public or otherwise), shows any conflict of

interest which could materially and improperly benefit the tenderer in relation to the procurement or contract management process, then:

i) if theprocurement process is still ongoing, thetenderer will be disqualified fromthe procurement process,
ii) if thecontract has been awarded to that tenderer, thecontract award will beset aside,
iii) the tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other persons havecommitted anycriminal offence.

19.10 If a tenderer submits information pursuant to these requirements that is incomplete, inaccurate or out-of-date, or attempts to obstruct the verification process, then the consequences ITT 6.7 will ensue unless the tenderer can show to the reasonable satisfaction of the Procuring Entity that any such act was not material, or was due to genuine error which was not attributabletothe intentional act, negligence or recklessness of thetenderer.

**20. Period of Validity of Tenders**

20.1 Tenders shall remain valid for the Tender Validity period specified in the **TDS**. The Tender Validity period starts from the date fixed for the Tender submission deadline (as prescribed by the Procuring Entity in accordance with ITT 24). A Tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.

20.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 21.1, it shall also be extended for thirty (30) days beyond the deadline of the extended validity period. A Tenderer may refuse the request without forfeiting its Tender security. A Tenderer granting the request shall not be required or permitted to modify its Tender, except as provided in ITT 20.3.

**20.3** If the award is delayed by a period exceeding the number of days to be specified in the **TDS** days beyond the expiry of the initial tender validity period, the Contract price shall be determined as follows**:**

a) in the case of **fixed price** contracts, the Contract price shall be the tender price adjusted by the factor specified in the **TDS**;
b) in the case of **adjustable price** contracts, no adjustment shall be made; or in any case, tender evaluation shall be based on the tender price without taking into consideration the applicable correction from those indicatedabove.

**21. Tender Security**

**21.1** The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender Security as specified in the **TDS**, in original form and, in the case of a Tender Security, in the amount and currency specified in the **TDS**. A Tender-Securing Declaration shall usetheformincluded in Section IV, Tender Forms**.**

21.2 If a Tender Security is specified pursuant to ITT 19.1, the Tender Security shall be a demand guarantee in any of thefollowing forms at theTenderer's option:

a) anunconditional Bank Guarantee issued byreputablecommercial bank); or
b) anirrevocable letter of credit;
c) a Banker's chequeissued by a reputablecommercial bank; or
d) another security specified **inthe TDS**,

21.3 If an unconditional bank guarantee is issued by a bank located outside Kenya, the issuing bank shall have a correspondent bank located in Kenya to make it enforceable. The Tender Security shall be valid for thirty (30) days beyond the original validity period of the Tender, or beyond any period of extension if requested under ITT 20.2.

21.4 If a Tender Security or Tender-Securing Declaration is specified pursuant to ITT 19.1, any Tender not accompanied by a substantially responsive Tender Security or Tender-Securing Declaration shall be rejected by the Procuring Entity as non-responsive.

21.5 If a Tender Security is specified pursuant to ITT 21.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's signing the Contract and furnishing the Performance Security and any other documents required in the **TDS**. The Procuring Entity shall also promptly

return the tender security to the tenderers where the procurement proceedings are terminated, all tenders were determined nonresponsive or a bidder declines to extend tender validity period.

21.6 The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required Performance Security, and any other documents required in the **TDS**.

21.7 The Tender Security may be forfeited or the Tender-Securing Declaration executed:

e) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer onthe Form of Tender, or anyextension thereto providedby theTenderer; or

f) if thesuccessful Tenderer fails to:

i) sign theContract in accordance with ITT 50; or

ii) furnish a Performance Security and if required in the **TDS**, and any other documents required in the **TDS**.

21.8 Where tender securing declaration is executed, the Procuring Entity shall recommend to the PPRA that PPRA debars the Tenderer from participating in public procurement as provided in the law.

21.9 The Tender Security or the Tender-Securing Declaration of a JV shall be in the name of the JV that submits the Tender. If the JV has not been legally constituted into a legally enforceable JV at the time of tendering, the Tender Security or the Tender-Securing Declaration shall be in the names of all future members as named in the letter of intent referred to in ITT 4.1 and ITT 11.2.

21.10 A tenderer shall not issue a tender security to guarantee itself.

**22. Format and Signing of Tender**

22.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 13 and clearly mark it "ORIGINAL." Alternative Tenders, if permitted in accordance with ITT 15, shall be clearly marked "ALTERNATIVE." In addition, the Tenderer shall submit copies of the Tender, in the number specified in the **TDS** and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.

22.2 Tenderers shall mark as "CONFIDENTIAL" all information in their Tenders which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.

22.3 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the **TDS** and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person signing the Tender.

22.4 In case the Tenderer is a JV, the Tender shall be signed by an authorized representative of the JV on behalf of the JV, and to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.

22.5 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

**D. Submission and Opening of Tenders**

**23.** Sealing and Marking of Tenders

23.1 Depending on the sizes or quantities or weight of the tender documents, a tenderer may usean envelope, package or container. The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to the Procuring Entity and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, theTenderer shall placethefollowing separate, sealed envelopes:

a) in an envelope or package or container marked "ORIGINAL", all documents comprising the Tender, as described in ITT 11; and

b) in an envelope or package or container marked "COPIES", all required copies of the Tender; and

c) if alternative Tenders are permitted in accordance with ITT 15, and if relevant:

i) in an envelope or package or container marked "ORIGINAL –ALTERNATIVE TENDER", the alternative Tender; and

ii) in the envelope or package or container marked "COPIES- ALTERNATIVE TENDER", all required copies of the alternative Tender.

The inner envelopes or packages or containers shall:

a) bear the name and address of the Procuring Entity.

b) bear the name and address of the Tenderer; and

c) bear the name and Reference number of the Tender.

23.2 If an envelope or package or container is not sealed and marked as required, the *Procuring Entity* will assume no responsibility for the misplacement or premature opening of the Tender. Tenders that are misplaced or opened prematurely will not be accepted.

**24. Deadline for Submission of Tenders**

24.1 Tenders must be received by the Procuring Entity at the address specified in the **TDS** and no later than the date and time also specified in the **TDS**. When so specified in the **TDS**, Tenderers shall have the option of submitting their Tenders electronically. Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedures specified in the **TDS**.

24.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the Tender Documents in accordance with ITT 8, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

**25. Late Tenders**

25.1 The Procuring Entity shall not consider any Tender that arrives after the deadline for submission of tenders, in accordance with ITT 24. Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

**26. Withdrawal, Substitution, and Modification of Tenders**

26.1 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITT 22.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:

a) prepared and submitted in accordance with ITT 22 and ITT 23 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," "MODIFICATION;"and

b) received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT 24.

26.2 Tenders requested to be withdrawn in accordance with ITT 26.1 shall be returned unopened to the Tenderers.

26.3 No Tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Tenderer on the Form of Tender or any extension thereof.

**27. Tender Opening**

27.1 Except in the cases specified in ITT 23 and ITT 26.2, the Procuring Entity shall publicly open and read out all Tenders received by the deadline, at the date, time and place specified in the **TDS**, in the presence of Tenderers' designated representatives who chooses to attend. Any specific electronic Tender opening procedures required if electronic Tendering is permitted in accordance with ITT 24.1, shall be as specified in the **TDS**.

27.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelopes with the corresponding Tender shall not be opened, but returned to the Tenderer. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal

and is read out at Tender opening.

27.3 Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening.

27.4 Next, envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening.

27.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the total Tender Price, per lot (contract) if applicable, including any discounts and alternative Tenders; the presence or absence of a Tender Security or Tender-Securing Declaration, if required; and any other details as the Procuring Entity may consider appropriate.

27.6 Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further for evaluation. The Form of Tender and pages of the Bills of Quantities are to be initialed by the members of the tender opening committee attending the opening. The number of representatives of the Procuring Entity to sign shall be specified in the **TDS**.

27.7 At the Tender Opening, the Procuring Entity shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT 25.1).

**27.8** The Procuring **Entity shall prepare minutes of the Tender Opening that shall include, as a minimum:**

a) thename of theTenderer and whether there is a withdrawal, substitution, or modification;
b) theTender Price, per lot (contract) if applicable, including anydiscounts;
c) any alternativeTenders;
d) thepresence or absenceof a Tender Security, if one was required.
e) number of pages of each tender document submitted.

27.9 The Tenderers' representatives who are present shall be requested to sign the minutes. The omission of a Tenderer's signature on the minutes shall not invalidate the contents and effect of the minutes. A copy of the tender opening register shall bedistributed toall Tenderers upon request.

## E. Evaluation and Comparison of Tenders

### 28. Confidentiality

28.1 Information relating to the evaluation of Tenders and recommendation of contract award shall not be disclosed to Tenderers or any other persons not officially concerned with the Tender process until information on Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 46.

28.2 Any effort by a Tenderer to influence the Procuring Entity in the evaluation of the Tenders or Contract award decisions may result in the rejection of its tender.

**28.3** Notwithstanding ITT 28.2, from the time of tender opening to the time of contract award, if a tenderer wishes to contact the Procuring Entity on any **matter related to the tendering process, it shall do so inwriting.**

### 29. ClarificationofTenders

29.1 To assist in the examination, evaluation, and comparison of the tenders, and qualification of the tenderers, the Procuring Entity may, at its discretion, ask any tenderer for a clarification of its tender, given a reasonable time for a response. Any clarification submitted by a tenderer that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the tenders, in accordance with ITT 33.

29.2 If a tenderer does not provide clarifications of its tender by the date and time set in the Procuring Entity's request for clarification, its Tender may be rejected.

## 30. Deviations, Reservations, and Omissions

30.1 During the evaluation of tenders, thefollowing definitions apply:

a) "Deviation" is a departure fromtherequirements specified in the tender document;

b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in thetender document; and

c) "Omission" is the failure to submit part or all of the information or documentation required in the Tender document.

## 31. Determinationof Responsiveness

31.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the tender itself, as defined in ITT 13.

**31.2** A substantially responsive Tender is one that meets the requirements of the Tender document without material deviation**, reservation, or omission. Amaterial deviation, reservation, or omission is one that, if accepted, would:**

a) affect in any substantial waythescope, quality, or performance of the Works specified in the Contract; or

b) limit in any substantial way, inconsistent with the tender document, the Procuring Entity's rights or the tenderer's obligations under theproposed contract; or

c) if rectified, would unfairly affect the competitive position of other tenderers presenting substantially responsivetenders.

31.3 The Procuring Entity shall examine the technical aspects of the tender submitted in accordance with ITT 18, to confirm that all requirements of Section VII, Works' Requirements have been met without any material deviation, reservation or omission.

31.4 If a tender is not substantially responsive to the requirements of the tender document, it shall be rejected by the Procuring Entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

## 32. Non-material Non-conformities

32.1 Provided that a tender is substantially responsive, the Procuring Entity may waive any non-conformities in the tender.

32.2 Provided that a Tender is substantially responsive, the Procuring Entity may request that the tenderer submit the necessary information or documentation, within a reasonable period, to rectify nonmaterial non-conformities in the tender related to documentation requirements. Requesting information or documentation on such non- conformities shall not be related to any aspect of the price of the tender. Failure of the tenderer to comply with the request may result in the rejection of its tender.

**32.3** Provided that a tender is substantially responsive, the Procuring Entity shall rectify quantifiable nonmaterial non-conformities related to the Tender Price. To this effect, the Tender Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified in the **TDS.**

## 33. Arithmetical Errors

33.1 The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.

33.2 Provided that the Tender is substantially responsive, the Procuring Entity shall handle errors on the following basis:

a) Any error detected if considered a major deviation that affects the substance of the tender, shall lead to disqualification of thetender as non-responsive.

b) Any errors in the submitted tender arising from a miscalculation of unit price, quantity, and subtotal and total bid price shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of thetender as non-responsive. and

c) if there is a discrepancy between words and figures, theamount in words shall prevail

33.3 Tenderers shall benotified of any error detected intheir bid during the notification of a ward.

**34. Currency provisions**

34.1 Tenders will priced be in Kenya Shillings only. Tenderers quoting in currencies other than in Kenya shillings will bedetermined non-responsiveand rejected.

**35. Marginof Preference and Reservations**

35.1 No margin of preference shall be allowed on contracts for small works.

35.2 Where it is intended to reserve the contract to specific groups under Small and Medium Enterprises, or enterprise of women, youth and/or persons living with disability, who are appropriately registered as such by the authority to be specified in the **TDS**, a procuring entity shall ensure that the invitation to tender specifically indicates that only businesses/firms belonging to those specified groups are the only ones eligible to tender. Otherwise if no so stated, the invitation will be open to all tenderers.

**36. Nominated Subcontractors**

36.1 Unless otherwise stated in the **TDS**, the Procuring Entity does not intend to execute any specific elements of the Works by subcontractors selected in advance by the Procuring Entity.

36.2 Tenderers may propose subcontracting up to the percentage of total value of contracts or the volume of works as specified in the **TDS**. Subcontractors proposed by the Tenderer shall be fully qualified for their parts of the Works.

36.3 The subcontractor's qualifications shall not be used by the Tenderer to qualify for the Works unless their specialized parts of the Works were previously designated by the Procuring Entity in the **TDS** as can be met by subcontractors referred to hereafter as 'Specialized Subcontractors', in which case, the qualifications of the Specialized Subcontractors proposed by the Tenderer may be added to the qualifications of the Tenderer.

**37. Evaluation of Tenders**

37.1 The Procuring Entity shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies the Procuring Entity shall determine the Best Evaluated Tender in accordance with ITT 40.

37.2 To evaluate a Tender, the Procuring Entity shall consider the following:

a) priceadjustmentduetodiscounts offered in accordance with ITT 16;
b) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT39;
c) priceadjustment dueto quantifiable nonmaterial non-conformities in accordance with ITT 30.3; and
d) any additional evaluation factors specified **in the TDS** and Section III, Evaluation and Qualification Criteria.

37.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be considered in Tender evaluation.

**37.4** In the case of multiple contracts or lots, Tenderers shall be allowed to tender for one or more lots and the methodology to determine the lowest evaluated cost of the lot (contract) combinations, including any discounts offered in the **Formof Tender, is specified in Section III, Evaluationand Qualification Criteria.**

**38. Comparisonof Tenders**

38.1 The Procuring Entity shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 38.2 todeterminetheTender that has thelowest evaluated cost.

**39. Abnormally Low Tenders**

39.1 An Abnormally Low Tender is one where the Tender price, in combination with other elements of the Tender, appears so low that it raises material concerns as to the capability of the Tenderer in regards to the Tenderer's ability to perform the Contract for the offered Tender Price or that genuine competition between Tenderers is compromised.

39.2 In the event of identification of a potentially Abnormally Low Tender, the Procuring Entity shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Tender document.

39.3 After evaluation of the price analyses, in the event that the Procuring Entity determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, the Procuring Entity shall reject the Tender.

**40. Abnormally High Tenders**

40.1 An abnormally high price is one where the tender price, in combination with other constituent elements of the Tender, appears unreasonably too high to the extent that the Procuring Entity is concerned that it (the Procuring Entity) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Tenderers is compromised.

40.2 In case of an abnormally high tender price, the Procuring Entity shall make a survey of the market prices, check if the estimated cost of the contract is correct and review the Tender Documents to check if the specifications, scope of work and conditions of contract are contributory to the abnormally high tenders. The Procuring Entity may also seek written clarification from the tenderer on the reason for the high tender price. The Procuring Entity shall proceed as follows:

i) If the tender price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept thetender depending on the Procuring Entity's budget considerations.

ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, the Procuring Entity shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work andconditions of contract, as thecase maybe.

**40.3** If the Procuring Entity determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (*often due to collusion, corruption or other manipulations*), the Procuring Entity shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation onthecause of thecompromise, beforeretendering**.**

**41. Unbalanced and/or Front-Loaded Tenders**

41.1 If in the Procuring Entity's opinion, the Tender that is evaluated as the lowest evaluated price is seriously unbalanced and/or front loaded, the Procuring Entity may require the Tenderer to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the tender prices with the scope of works, proposed methodology, schedule and any other requirements of the Tender document.

41.2 After the evaluation of the information and detailed price analyses presented by the Tenderer, the Procuring Entity may as appropriate:

a) accept theTender; or

b) require that the total amount of the Performance Security be increased at the expense of the Tenderer to a level not exceeding a 30% of the Contract Price; or

c) agree on a payment mode that eliminates the inherent risk of the Procuring Entity paying too much for undelivered works;or

d) reject theTender,

**42. Qualifications ofthe Tenderer**

42.1 The Procuring Entity shall determine to its satisfaction whether the eligible Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender, meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

42.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT 19. The determination shall not take into consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates, subcontractors (other than Specialized Subcontractors if permitted in the Tender document), or any other firm(s) different from the Tenderer.

42.3 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative

determination shall result in disqualification of the Tender, in which event the Procuring Entity shall proceed to the Tenderer who offers a substantially responsive Tender with the next lowest evaluated price to make a similar determination of that Tenderer's qualifications to perform satisfactorily.

42.4 An Abnormally Low Tender is one where the Tender price, in combination with other elements of the Tender, appears so low that it raises material concerns as to the capability of the Tenderer in regards to the Tenderer's ability to perform the Contract for the offered Tender Price.

42.5 In the event of identification of a potentially Abnormally Low Tender, the Procuring Entity shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Tender document.

42.6 After evaluation of the price analyses, if the Procuring Entity determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, the Procuring Entity shall reject the Tender.

**43. Best Evaluated Tender**

43.1 Having compared the evaluated prices of Tenders, the Procuring Entity shall determine the Best Evaluated Tender. The Best Evaluated Tender is the Tender of the Tenderer that meets the Qualification Criteria and whose Tender has been determined tobe:

a) Most responsivetotheTender document; and
b) the lowest evaluated price.

**44. Procuring Entity's Right to AcceptAny Tender, and to Reject Any or All Tenders.**

44.1 The Procuring Entity reserves the right to accept or reject any Tender and to annul the Tender process and reject all Tenders at any time prior to Contract Award, without thereby incurring any liability to Tenderers. In case of annulment, all Tenderers shall be notified with reasons and all Tenders submitted and specifically, Tender securities, shall bepromptly returned totheTenderers.

**F. Award of Contract**

**45. Award Criteria**

45.1 The Procuring Entity shall award the Contract to thesuccessful tenderer whose tender has been determined to be the Lowest Evaluated Tender.

**46. Notice of Intention to enterinto a Contract**

46.1 Upon award of thecontract and Prior to the expiry of the Tender Validity Period the Procuring Entity shall issuea Notification of Intention to Enter into a Contract / Notification of award to all tenderers which shall contain, at a minimum, thefollowing information:

a) thenameand address of the Tenderer submitting thesuccessful tender;
b) the Contract priceof thesuccessful tender;
c) a statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was unsuccessful, unless theprice information in (c) abovealready reveals thereason;
d) the expiry date of the Standstill Period; and
e) instructions on howto request a debriefing and/or submit a complaint during thestandstill period;

**47. Standstill Period**

47.1 The Contract shall not be signed earlier than the expiry of a Standstill Period of 14 days to allow any dissatisfied tender to launch a complaint. Where only one Tender is submitted, the Standstill Period shall not apply.

**47.2** Where a Standstill Period applies, it shall commence when the Procuring Entity has transmitted to each Tenderer the Notification of Intention to Enter **into a Contract withthe successful Tenderer.**

## 48. Debriefing by the Procuring Entity

48.1 On receipt of the Procuring Entity's Notification of Intention to Enter into a Contract referred to in ITT 46, an unsuccessful tenderer may make a written request to the Procuring Entity for a debriefing on specific issues or concerns regarding their tender. The Procuring Entity shall provide the debriefing within five days of receipt of the request.

**48.2** Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending **such a debriefing meeting.**

## 49. Letter ofAward

49.1 Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 42.1, upon addressing a complaint that has been filed within the Standstill Period, the Procuring Entity shall transmit the Letter of Award to the successful Tenderer. The letter of award shall request the successful tenderer to furnish the Performance Security within 21days of thedateof the letter.

## 50. Signing ofContract

50.1 Upon the expiry of the fourteen days of the Notification of Intention to enter into contract and upon the parties meeting their respective statutory requirements, the Procuring Entity shall send the successful Tenderer the Contract Agreement.

50.2 Within fourteen (14) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to the Procuring Entity.

50.3 The written contract shall be entered into within the period specified in the notification of award and before expiry of the tender validity period

## 51. Appointment ofAdjudicator

51.1 The Procuring Entity proposes the person named in the **TDS** to be appointed as Adjudicator under the Contract, at the hourly fee specified in the **TDS**, plus reimbursable expenses. If the Tenderer disagrees with this proposal, the Tenderer should so state in his Tender. If, in the Letter of Acceptance, the Procuring Entity does not agree on theappointment of the Adjudicator, the Procuring Entity will request the Appointing Authority designated in the Special Conditions of Contract (SCC) pursuant to Clause 23.1 of the General Conditions of Contract (GCC), to appoint theAdjudicator.

## 52. Performance Security

52.1 Within twenty-one (21) days of the receipt of the Letter of Acceptance from the Procuring Entity, the successful Tenderer shall furnish the Performance Security and, any other documents required in the **TDS**, in accordance with the General Conditions of Contract, subject to ITT 40.2 (b), using the Performance Security and other Forms included in Section X, Contract Forms, or another form acceptable to the Procuring Entity. A foreign institution providing a bank guarantee shall have a correspondent financial institution located in Kenya, unless the Procuring Entity has agreed in writing that a correspondent bank is not required.

52.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security and other documents required in the **TDS**, or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security. In that event the Procuring Entity may award the Contract to the Tenderer offering the next Best Evaluated Tender.

**52.3** Performance security shall not be required for contracts estimated to cost less than Kenya shillings five million shillings**.**

## 53. Publicationof Procurement Contract

53.1 Within fourteen days after signing the contract, the Procuring Entity shall publish the awarded contract at its notice boards and websites; and on the Website of the Authority. At the minimum, the notice shall containthe following information:

a) nameand address of the Procuring Entity;

b) name and reference number of the contract being awarded, a summary of its scope and the selection

method used;

c) thenameof thesuccessful Tenderer, the final total contract price, thecontract duration.

d) dates of signature, commencement and completion of contract;

e) names of all Tenderers that submitted Tenders, andtheir Tender prices asread out at Tender opening.

**54. Procurement Related Complaints and Administrative Review**

54.1 Theprocedures for making Procurement-related Complaints areas specified in the **TDS**.

54.2 A request for administrative review shall be made in the form provided under contract forms.

## Section II - Tender Data Sheet (TDS)

The following specific data shall complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT). Whenever there is a conflict, the provisions herein shall prevail over those in ITT.

| ITT Reference | PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS |
|---|---|
| | **A. General** |
| **ITT 1.1** | The name of the contract is **PROPOSED CONSTRUCTION OF BORESHA PLAZA ON PLOT NO.255 SP MARIGAT TOWNSHIP**<br><br>The reference number of the Contract is |
| **ITT 2.3** | The Information made available on competing firms is as follows: **N/A** |
| **ITT 2.4** | The firms that provided consulting services for the contract being tendered for are: **N/A** |
| **ITT 3.1** | Maximum number of members in the Joint Venture (JV) shall be:2 |
| **B. Contents of Tender Document** | |
| **8.1** | (A) Pre-Tender conference *[insert "shall" or "shall not"]* take place at the following date, time and place:<br>Date: _____<br>Time: N/A _____<br>Place: _____<br><br>(B) A pre-arranged pretender visit of the site of the works *[insert "shall" or "shall not"]* take place at the following date, time and place:<br>Date: _____<br>Time: N/A _____<br>Place: _____ |
| **ITT 8.2** | The Tenderer will submit any questions in writing, to reach the Procuring Entity not later than 24th NOVEMBER , 2025 |
| **ITT 8.4** | The Procuring Entity's website where Minutes of the pre-Tender meeting and the pre-arranged pretender site visit will be published is MATA SECONDARY notice board |
| **ITT 9.1** | For Clarification of Tender purposes, for obtaining further information and for purchasing tender documents, the Procuring Entity's address is:<br>**BORESHA SACCO SOCIETY LTD P.O BOX P.O BOX 80-20103 ELDAMA RAVINE** |
| **C. Preparation of Tenders** | |
| ITP 13.1 (h) | The Tenderer shall submit the following additional documents in its Tender:<br>**1.Certificate of Incorporation by Registrar of Companies.**<br>**2. Valid Tax Compliance Certificate**<br>**3. Copies of PIN/VAT**<br>**4. Current Certificate of Registration with National Construction Authority in the Category (5) and together with a valid NCA practicing license**<br>**5. Provide certified CR 12 forms [dated within the last 6 months] from the date of tender submission**<br>**6. Valid certified Current Single Business permit** |

| ITT Reference | PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS |
|---|---|
| | **7. Chronologically Serialize all the pages (this should be sequential in the format of 1,2,3…..**<br>**8. Provide EPRA Electrician Certificate** |
| **ITT 15.1** | Alternative Tenders ***shall not be*** **considered.** |
| ITT 15.2 | Alternative times for completion ***"shall not be*** **permitted**. |
| **ITT 15.4** | Alternative technical solutions shall be permitted for the following parts of the Works: **N/A** |
| **ITT 16.5** | The prices quoted by the Tenderer shall be: **FIXED** |
| **ITT 20.1** | The Tender validity period shall be 210 ***DAYS*** |
| **ITT 20.3 (a)** | (a) The delayed to exceeding as per the contract days.<br><br>(b) The Tender price shall be adjusted by the following percentages of the tender price:<br><br>*(i)* By____N/A____% of *the local currency portion of the Contract price adjusted to reflect local inflation during the period of extension, and*<br><br>*(ii) By____N/A_____% the foreign currency portion of the Contract price adjusted to reflect the international inflation during the period of extension.* |
| **ITT 21.1** | A Tender-Securing Declaration *"**shall not be*** **required**. |
| **ITT 21.2 (d)** | The other Tender Security shall be<br>_____N/A_____ |
| **ITT 21.5** | On the Performance Security, other documents required shall be as per special condition of the contract |
| | |
| **ITT 22.1** | In addition to the original of the Tender, the number of copies is ..... N/A |
| **ITT 22.3** | The written confirmation of authorization to sign on behalf of the Tenderer shall consist of **power of Attorney** |
| **D. Submission and Opening of Tenders** | |
| **ITT 24.1** | (A) For Tender submission purposes only, the Procuring Entity's address is:<br><br>**BORESHA SACCO SOCIETY LTD P.O BOX P.O BOX 80-20103 ELDAMA RAVINE**<br><br>(4) Date and time for submission of Tenders: 24TH NOVEMBER 2025 at 10.00am<br><br>(5) Tenders shall **not submit** tenders electronically. |
| **ITT 27.1** | The Tender opening shall take place at the time and the address for Opening of Tenders provided below:<br>BORESHA SACCO SOCIETY LTD P.O BOX P.O BOX 80-20103 ELDAMA RAVINE |

| ITT Reference | PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS |
|---|---|
| | . **DATE**;- 24TH NOVEMBER 2025 **TIME**……10.00am…….. |
| **ITT 27.1** | If Tenderers are allowed to submit Tenders electronically, they shall follow the electronic tender submission procedures **specified below** *[insert a description of the electronic Tender opening procedures]***:** **N/A** |
| **ITT 27.6** | The number of representatives of the Procuring Entity to sign is_____. |
| **E. Evaluation, and Comparison of Tenders** | |
| **ITT 32.3** | The adjustment shall be based on the____*N/A*_____*[insert "average" or "highest"]* price of the item or component as quoted in other substantially responsive Tenders. If the price of the item or component cannot be derived from the price of other substantially responsive Tenders, the Procuring Entity shall use its best estimate. |
| **ITT 35.2** | The invitation to tender is extended to the following groups that qualify for Reservations_____N/A_____<br>*(These groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case may be; describe precisely which groups qualify).* |
| **ITT 36.1** | At this time, the Procuring Entity ***does not intend*** to execute certain specific parts of the Works by subcontractors selected in advance. |
| **ITT 36.2** | Contractor's may propose subcontracting: Maximum percentage of subcontracting permitted is:__*10*_____*% of the total contract amount.* Tenderers planning to subcontract more than 10% of total volume of work shall specify, in the Form of Tender, the activity (ies) or parts of the Works to be subcontracted along with complete details of the subcontractors and their qualification and experience. |
| **ITT 36.3** | *[Indicate N/A if not applicable]*<br>The parts of the Works for which the Procuring Entity permits Tenderers to propose Specialized Subcontractors are designated as follows:<br>_____N/A_____<br>For the above-designated parts of the Works that may require Specialized Subcontractors, the relevant qualifications of the proposed Specialized Subcontractors will be added to the qualifications of the Tenderer for the purpose of evaluation. |
| **ITT 37.2 (d)** | Additional requirements apply. These are detailed in the evaluation criteria in Section III, Evaluation and Qualification Criteria. |
| **ITT 51.1** | The person named to be appointed as Adjudicator is _____N/A_____of_____*(pride tel. no. full postal and email addresses)* at an hourly fee of Shs._____per day |
| **ITT 52.2** | Other documents required are AS PER THE ADVERT |
| **ITT 54.1** | The procedures for making a Procurement-related Complaints are detailed in the "Regulations" available from the PPRA Website www.ppra.go.ke or email complaints@ppra.go.ke. If a Tenderer wishes to make a Procurement-related |

| ITT Reference | PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS |
|---|---|
| | Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to:<br><br>For the attention: BORESHA SACCO SOCIETY LTD P.O BOX P.O BOX 80-20103 ELDAMA RAVINE<br><br>In summary, a Procurement-related Complaint may challenge any of the following:<br><br>**(1)** the terms of the Tender Documents; and<br><br>(ii) the Procuring Entity's decision to award the contract |

## SECTION III - EVALUATION AND QUALIFICATION CRITERIA

### 1. General Provisions

Wherever a Tenderer is required to state a monetary amount, Tenderers should indicate the Kenya Shilling equivalent using therate of exchange determined as follows:

a) For construction turnover or financial data required for each year - Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year is to be converted) was originally established.
b) Valueof single contract - Exchangerateprevailing on thedate of the contract signature.
c) Exchange rates shall be taken from the publicly available source identified in the ITT 14.3. Any error in determining the exchangerates in theTender maybecorrected bythe Procuring Entity.

This section contains the criteria that the Employer shall use to evaluate tender and qualify tenderers. No other factors, methods or criteria shall be used other than specified in this tender document. The Tenderer shall provide all the information requested in the forms included in Section IV, Tendering Forms. The Procuring Entity should use **the Standard Tender Evaluation Document for Goods and Works** for evaluating Tenders.

**Evaluationand contract award Criteria**

The Procuring Entity shall use the criteria and methodologies listed in this Section to evaluate tenders and arrive at the Lowest Evaluated Tender. The tender that (i) meets the qualification criteria, (ii) has been determined to be substantially responsive to the Tender Documents, and (iii) is determined to have the Lowest Evaluated Tender priceshall beselected for award of contract.

### 2. Preliminary examination for Determinationof Responsiveness

The Procuring Entity will start by examining all tenders to ensure they meet in all respects the eligibility criteria and other requirements in the ITT, and that the tender is complete in all aspects in meeting the requirements of "Part 2 – Procuring Entity's Works Requirements", including checking for tenders with unacceptable errors, abnormally low tenders, abnormally high tenders and tenders that are front loaded. The Standard Tender Evaluation Report Document for Goods and Works for evaluating Tenders provides very clear guide on how to deal with review of these requirements. Tenders that do not pass the Preliminary Examination will be considered irresponsiveand will not beconsidered further.

*[The Procuring Entity will provide the preliminary evaluation criteria. To facilitate, a template may be attached or clearly described all information and list of documentation to be submitted by Tenderers to enable preliminary evaluation of the Tender]*

| S/No | Evaluation Criteria | Responsiveness | |
|---|---|---|---|

| | | |
|---|---|---|
| 1 | Certificate of incorporation/registration (certified by commissioner of oaths) | |
| 2 | Current Certificate of Registration with National Construction Authority in the Category (5) together with a valid NCA practicing license Builders works | |
| 3 | Copy PIN/VAT Registration Certificate | |
| 4 | Copy Valid Tax Compliance Certificate | |
| 5 | Form of tender dully filled, signed and stamped | |
| 6 | Tender Questionnaire dully filled signed and stamped | |
| 7 | Confidential Business Questionnaire dully stamped and sealed signed by authorized personnel | |
| 8 | certificate of independent tender determination dully signed | |
| 9 | The self-declaration of the tenderer dully signed | |
| 10 | Anti corruption Self-Declaration form | |
| 11 | Declaration and commitment to the Code of Ethics | |
| 12 | Valid CR12 from Registrar of companies (issued within the last 6 months of the tendering period) | |
| 13 | Copy of Identification cards of company Directors /Pass ports. | |
| 14 | The bid document should be Serialized in the format1, 2, 3,4……. | |
| 15 | EPRA Electrician Certificate | |
| 16 | Tape bound documents | |
| 17 | Litigation history | |
| 18 | Letter of authority granting permission to seek references from the tenderer's bankers | |
| 19 | Valid Single business permit (2025) | |

**3. Tender Evaluation (ITT 35) Price evaluation**: inaddition to thecriteria listed in ITT 35.2 (a)– (c)

thefollowingcriteria shall apply:

**i) Alternative Completion Times, i**f permitted under ITT 13.2, will be evaluated as follows: ……N/A……

**ii) Alternative Technical Solutions** for specified parts of the Works, if permitted under ITT 13.4, will be evaluated as follows: ……N/A……

**iii) Other Criteria; i**f permitted under ITT 35.2(d): ……

**4. Multiple Contracts**

Multiple contracts will be permitted in accordance with ITT 35.4. Tenderers are evaluated on basis of Lots and

the lowest evaluated tenderer identified for each Lot. The Procuring Entity will select one Option of the two Options listedbelowfor award of Contracts.

**OPTION 1**

i) If a tenderer wins only one Lot, the tenderer will be awarded a contract for that Lot, provided the tenderer meets the Eligibility and Qualification Criteria for that Lot.

ii) If a tenderer wins more than one Lot, the tender will be awarded contracts for all won Lots, provided the tenderer meets the aggregate Eligibility and Qualification Criteria for all the Lots. The tenderer will be awarded the combination of Lots for which the tenderer qualifies and the others will be considered for award to second lowest thetenderers.

**OPTION 2**

The Procuring Entity will consider all possible combinations of won Lots [contract(s)] and determine the combinations with the lowest evaluated price. Tenders will then be awarded to the Tenderer or Tenderers in the combinations provided the tenderer meets the aggregate Eligibility and Qualification Criteria for all the won Lots.

**5. Alternative Tenders (ITT 13.1)**

*An alternative if permitted under ITT 13.1, will be evaluated as follows:*

The Procuring Entity shall consider Tenders offered for alternatives as specified in Part 2- Works Requirements. Only the technical alternatives, if any, of the Tenderer with the Best Evaluated Tender conforming to the basic technical requirements shall beconsidered by the Procuring Entity.

**6. Marginof Preference** is not applicable

**7. Post qualificationand Contract ward (ITT 39), more specifically,**

a) In case the tender was subject to post-qualification, the contract shall be awarded to the lowest evaluated tenderer, subject toconfirmation of pre-qualification data, if sorequired.

b) In case the tender was not subject to post-qualification, the tender that has been determined to be the lowest evaluated tenderer shall be considered for contract award, subject to meeting each of the following conditions.

i) The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance pay ment) sufficient to meet the construction cash flow of Kenya Shillings _____.

ii) Minimum average annual construction turnover of Kenya Shillings_____*[insert amount]*, equivalent calculated as total certified payments received for contracts in progress and/or completed within the last_____*[insert of year]* years.

iii) At least_____(*insert number)* of contract(s) of a similar nature executed within Kenya, or the East African Community or abroad, that have been satisfactorily and substantially completed as a prime contractor, or joint venture member or sub-contractor each of minimum value Kenya shillings_____equivalent.

iv) Contractor's Representativeand Key Personnel, which are specified as _____

*v)* Contractors key equipment listed on the table "Contractor's Equipment" below and more specifically listed as *[specifyrequirements for each lot as applicable]* _____

vi) Other conditions depending on their seriousness.

a) **History of non-performing contracts**:
Tenderer and each member of JV in case the Tenderer is a JV, shall demonstrate that Non-performance of a contract did not occur because of the default of the Tenderer, or the member of a JV in the last_____(*specify years*). The required information shall be furnished intheappropriateform.

**b) Pending Litigation**
Financial position and prospective long-term profitability of the Single Tenderer, and in the case the Tenderer is a JV, of each member of the JV, shall remain sound according to criteria established with respect to Financial Capability under Paragraph (i) above if all pending litigation will be resolved against the Tenderer. Tenderer shall provide information on pending litigations intheappropriateform.

**c) Litigation History**
There shall be no consistent history of court/arbitral award decisions against the Tenderer, in the last_____(*specify years*). All parties to the contract shall furnish the information in the appropriate form about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the years specified. A consistent history of awards against theTenderer or any member of a JVmay result in rejection of thetender.

## 8. QUALIFICATION FORM SUMMARY

| 1 | 2 | 3 | *4* | *5* |
|---|---|---|---|---|
| **Item No.** | **Qualification Subject** | **Qualification Requirement** | ***Document To be Completed by Tenderer*** | ***For Procuring Entity's Use (Qualification met or Not Met)*** |
| 1 | Nationality | Nationality in accordance with ITT 3.6 | Forms ELI – 1.1 and 1.2, with attachments | |
| 2 | Tax Obligations for Kenyan Tenderers | Has produced a current tax clearance certificate or tax exemption certificate issued by the the Kenya Revenue Authority in accordance with ITT 3.14. | Form of Tender | |
| 3 | Conflict of Interest | No conflicts of interest in accordance with ITT 3.3 | Form of Tender | |
| 4 | PPRA Eligibility | Not having been declared ineligible by the PPRA as described in ITT 3.8 | Form of Tender | |
| 5 | State- owned Enterprise | Meets conditions of ITT 3.7 | Forms ELI – 1.1 and 1.2, with attachments | |
| 6 | Goods, equipment and services to be supplied under the contract | To have their origin in any country that is not determined ineligible under ITT 4.1 | Forms ELI – 1.1 and 1.2, with attachments | |
| 7 | History of Non-Performing Contracts | Non-performance of a contract did not occur as a result of contractor default since 1st January […….]. | Form CON-2 | |
| 8 | Suspension Based on Execution of Tender/Proposal Securing Declaration by the Procuring Entity | Not under suspension based on-execution of a Tender/Proposal Securing Declaration pursuant to ITT 19.9 | Form of Tender | |
| 9 | Pending Litigation | Tender's financial position and prospective long-term profitability still sound according to criteria established in 3.1 and assuming that all pending litigation will NOT be resolved against the Tenderer. | Form CON – 2 | |
| 10 | Litigation History | No consistent history of court/arbitral award decisions against the Tenderer since 1st January *[insert year]* | Form CON – 2 | |
| 11 | Financial Capabilities | (i) The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated as Kenya Shillings *[insert amount]* equivalent for the subject contract(s) net of the Tenderer's other commitments.<br><br>(ii) The Tenderers shall also demonstrate, to the satisfaction of the Procuring Entity, that it has adequate sources of | Form FIN – 3.1, with attachments | |

| 1 | 2 | 3 | *4* | *5* |
|---|---|---|---|---|
| **Item No.** | **Qualification Subject** | **Qualification Requirement** | ***Document To be Completed by Tenderer*** | ***For Procuring Entity's Use (Qualification met or Not Met)*** |
| | | finance to meet the cash flow requirements on works currently in progress and for future contract commitments.<br><br>(iii) The audited balance sheets or, if not required by the laws of the Tenderer's country, other financial statements acceptable to the Procuring Entity, for the last *[insert number of years]* years shall be submitted and must demonstrate the current soundness of the Tenderer's financial position and indicate its prospective long-term profitability. | | |
| 12 | Average Annual Construction Turnover | Minimum average annual construction turnover of Kenya Shillings *[insert amount]*, equivalent calculated as total certified payments received for contracts in progress and/or completed within the last *[insert of year]* years, divided by *[insert number of years]* years | Form FIN – 3.2 | |
| 13 | General Construction Experience | Experience under construction contracts in the role of prime contractor, JV member, sub-contractor, or management contractor for at least the last *[insert number of years]* years, starting 1st January *[insert year]*. | Form EXP – 4.1 | |
| | Specific Construction & Contract Management Experience | A minimum number of *[state the number]* similar contracts specified below that have been satisfactorily and substantially completed as a prime contractor, joint venture member, management contractor or sub-contractor between 1st January [*insert year*] and tender submission deadline i.e. …. (number) contracts, each of minimum value Kenya shillings…….....equivalent.<br>[*In case the Works are to be tender as individual contracts under multiple contract procedure, the minimum number of contracts required for purposes of evaluating qualification shall be selected from the options mentioned in ITT 35.4]*<br><br>The similarity of the contracts shall be based on the following: [*Based on Section VII, Scope of Works, specify the minimum key requirements in terms of physical size, complexity, construction method, technology and/or other characteristics including part of the requirements that may* | Form EXP 4.2(a) | |

| 1 | 2 | 3 | *4* | *5* |
|---|---|---|---|---|
| **Item No.** | **Qualification Subject** | **Qualification Requirement** | ***Document To be Completed by Tenderer*** | ***For Procuring Entity's Use (Qualification met or Not Met)*** |
| | | *be met by specialized subcontractors, if permitted in accordance with ITT 34.3]* | | |

2TECHNICAL EVALUATION

| S / N | EVALUATION CRITERIA | EVALUATION ATTRIBUTE | WEIGHT NO SCORE | MAXIMU M SCORE |
|---|---|---|---|---|
| A | Presentation | Table of Content provided | 5 marks | 10 |
| | | Binding the documents and neat presentation | 2 marks | |
| | | Separation and arrangement of requested information and in the order requested | 3 marks | |
| 1 | Experience of the company in Building Works | No of years in construction – building works (calculated from the date of first LPO/completion certificate – attach copies) | 3years and above = 10 marks<br><br>Others prorated at no. of years x 10/5 | 10 |
| | | Magnitude of construction – building works done in the last 8 years per project (attach completion certificate) | 20 million and above = 10 marks<br><br>(Others– contract sum less marks/5marks) | 10 |

| | | | | |
|---|---|---|---|---|
| | | Similar magnitude of construction works in the last 8years | 20 million and above | 5 |
| | | | | |
| 2 | Financial Capacity of the company | 1. Audited Accounts 2020/2021 - 2022/2023 OR 2024/2025<br>Avarage Liquidity ratio<br><br>**quick ratio** = current assets divided by current liabilities<br><br>**acid test ratio =** current assets less stock divided by current liabilities<br><br>2. Access to credit ( attach a letter of access to credit from a financial institution | A ratio of 1-1 & above = 10 marks<br><br>Others prorated are the ratio x marks divide by 1 ratio<br><br>For others =<br><br>The ratio x 10 marks divide by 1-1 ratio<br><br>1 -2 and above = 10 marks<br><br>Others prorated as the ratio x 10 marks divide by 2-1<br><br>4 million and above = 10 marks | 15<br><br>10<br><br>10 |

| | | | | |
|---|---|---|---|---|
| 3 | Qualification of the Staff of the Company | Project manager/ Foreman (attach cv, professional certificates) | Degree & above =15 marks<br><br>Diploma =10 marks<br><br>Certificate = 5 marks<br><br>KCSE = 2 mark | 15 |
| 4 | Equipment Holding | Owned = 8 marks<br><br>Leased = 5 mark<br><br>(attach copies of logbook, leased agreement or receipts | 1. Lorry<br>2. Pick up<br>3. Water boozer<br>4. Mixer<br>5. Vibrator | 10 |
| 5 | Litigation and Arbitration History | Provide affidavit | Provided and satisfactorily | 5 |

**Pass mark to proceed to financial stage is 70 Marks**

**FINANCIAL EVALUATION**

Tenders shall be checked for unacceptable arithmetic errors, abnormally low tenders, abnormally high tenders and tenders that are front loaded.

**Arithmetic errors**

-Tenders with arithmetic errors shall be disqualified.

**DUE DILIGENCE**

A due diligence will only be carried out for the lowest evaluated tender to verify information provided in their tenders.Any false information provided will lead to disqualification

## QUALIFICATION FORMS

### 1. FORM EQU: EQUIPMENT

The Tenderer shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III, Evaluation and Qualification Criteria. Aseparate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed bytheTenderer.

| Item of equipment | | |
|---|---|---|
| Equipment information | Name of manufacturer | Model and power rating |
| | Capacity | Year of manufacture |
| Current status | Current location | |
| | Details of current commitments | |
| Source | Indicate source of the equipment<br>☐ Owned ☐ Rented ☐ Leased ☐ Specially manufactured | |

Omit the following information for equipment owned by the Tenderer.

| Owner | Name of owner | |
|---|---|---|
| | Address of owner | |
| | Telephone | Contact name and title |
| | Fax | Telex |
| Agreements | Details of rental / lease / manufacture agreements specific to the project | |
| | | |
| | | |

## 2. FORM PER -1

**Contractor's Representative and Key Personnel Schedule**

Tenderers should provide the names and details of the suitably qualified Contractor's Representative and Key Personnel to perform the Contract. The data on their experience should be supplied using the Form PER-2 below for each candidate.

**Contractor' Representative and Key Personnel**

| | | |
|---|---|---|
| **1.** | **Title of position: Contractor's Representative** | |
| | **Name of candidate:** | |
| | **Duration of appointment:** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
| | **Time commitment: for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |
| | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Gantt chart*] |
| **2.** | **Title of position:** *[_____]* | |
| | **Name of candidate:** | |
| | **Duration of appointment:** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
| | **Time commitment: for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |
| | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Gantt chart*] |
| **3.** | **Title of position:** *[_____]* | |
| | **Name of candidate:** | |
| | **Duration of appointment:** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
| | **Time commitment: for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |
| | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Gantt chart*] |
| **4.** | **Title of position:** *[_____]* | |
| | **Name of candidate:** | |
| | **Duration of appointment:** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
| | **Time commitment: for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |
| | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Gantt chart*] |
| **5.** | **Title of position:** *[insert title]* | |
| | **Name of candidate** | |
| | **Duration of appointment:** | [*insert the whole period (start and end dates) for which this position will be engaged*] |
| | **Time commitment: for this position:** | [*insert the number of days/week/months/ that has been scheduled for this position*] |
| | **Expected time schedule for this position:** | [*insert the expected time schedule for this position (e.g. attach high level Gantt chart*] |

## 3. FORM PER-2:

Resume and Declaration - Contractor's Representative and Key Personnel.

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

| **Name of Tenderer** |
|---|
| |

| Position [*#1*]: [*title of position from Form PER-1*] | | |
|---|---|---|
| Personnel information | Name: | Date of birth: |
| | Address: | E-mail: |
| | | |
| | Professional qualifications: | |
| | Academic qualifications: | |
| | Language proficiency: *[language and levels of speaking, reading and writing skills]* | |
| Details | | |
| | Address of Procuring Entity: | |
| | Telephone: | Contact (manager / personnel officer): |
| | Fax: | |
| | Job title: | Years with present Procuring Entity: |

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

| **Project** | **Role** | **Duration of involvement** | **Relevant experience** |
|---|---|---|---|
| *[main project details]* | *[role and responsibilities on the project]* | *[time in role]* | *[describe the experience relevant to this position]* |
| | | | |
| | | | |
| | | | |

## Declaration

I, the undersigned *[insert either "Contractor's Representative" or "Key Personnel" as applicable]*, certify that to the best of my knowledge and belief, the information contained in this Form PER-2 correctly describes myself, my qualifications and my experience.

I confirm that I am available as certified in the following table and throughout the expected time schedule for this position as provided in the Tender:

| **Commitment** | **Details** |
|---|---|
| Commitment to duration of contract: | *[insert period (start and end dates) for which this Contractor's Representative or Key Personnel is available to work on this contract]* |
| Time commitment: | *[insert period (start and end dates) for which this Contractor's Representative or Key Personnel is available to work on this contract]* |

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

a) betaken into consideration during Tender evaluation;
b) result in my disqualification fromparticipating in theTender;
c) result in my dismissal fromthecontract.

Name of Contractor's Representative or Key Personnel: [*insert name*]

Signature: _____

Date: (day month year):_____Countersignature

of authorized representative of theTenderer:

Signature:_____Date: (day month

year): _____

## 4. TENDERER'S QUALIFICATIONWITHOUTPRE-QUALIFICATION

To establish its qualifications to perform the contract in accordance with Section III, Evaluation and Qualification Criteria the Tenderer shall provide the information requested in the corresponding Information Sheets included hereunder.

### 4.1 FORM ELI -1.1

**Tenderer Information Form**

Date: _____

ITT No. and title: _____

| |
|---|
| Tenderer's name |
| In case of Joint Venture (JV), name of each member: |
| Tenderer's actual or intended country of registration:<br>*[indicate country of Constitution]* |
| Tenderer's actual or intended year of incorporation: |
| Tenderer's legal address [in country of registration]: |
| Tenderer's authorized representative information<br>Name:_____<br>Address:_____<br>Telephone/Fax numbers: _____<br>E-mail address: _____ |
| 1. Attached are copies of original documents of<br>☐ Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity namedabove, in accordance with ITT 3.6<br>☐ In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 3.5<br>☐ In case of state-owned enterprise or institution, in accordance with ITT 3.8, documents establishing:<br>• Legal and financial autonomy<br>• Operation under commercial law<br>• Establishing that the Tenderer is not under the supervision of the Procuring Entity<br>2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. |

## 4.2 FORM ELI -1.2

**Tenderer's JV Information Form**
**(to be completed for each member of Tenderer's JV)**
Date: _____

ITT No. and title:_____

| |
|---|
| Tenderer's JV name: |
| JV member's name: |
| JV member's country of registration: |
| JV member's year of constitution: |
| JV member's legal address in country of constitution: |
| JV member's authorized representative information<br>Name:_____<br>Address: _____<br>Telephone/Fax numbers: _____<br>E-mail address: _____ |
| 1. Attached are copies of original documents of<br>☐ Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITT 3.6.<br>☐ In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not under the supervision of the Procuring Entity, in accordance with ITT 3.8.<br><br>2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership. |

## 4.3 FORM CON – 2

### Historical Contract Non-Performance, Pending Litigation and Litigation History

Tenderer's Name: _____
Date: _____
JV Member's Name_____
ITT No. and title: _____

| Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria | | | |
|---|---|---|---|
| ☐ Contract non-performance did not occur since 1st January *[insert year]* specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.1.<br><br>☐ Contract(s) not performed since 1st January *[insert year]* specified in Section III, Evaluation and Qualification Criteria, requirement 2.1 | | | |
| **Year** | **Non- performed portion of contract** | **Contract Identification** | **Total Contract Amount (current value, currency, exchange rate and Kenya Shilling equivalent)** |
| *[insert year]* | *[insert amount and percentage]* | Contract Identification: *[indicate complete contract name/ number, and any other identification]*<br>Name of Procuring Entity: *[insert full name]*<br>Address of Procuring Entity: *[insert street/city/country]*<br>Reason(s) for nonperformance: *[indicate main reason(s)]* | *[insert amount]* |
| Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria | | | |
| ☐ No pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.<br>☐ Pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3 as indicated below. | | | |

| **Year of dispute** | **Amount in dispute (currency)** | **Contract Identification** | **Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)** |
|---|---|---|---|
| | | Contract Identification: _____<br>Name of Procuring Entity: _____<br>Address of Procuring Entity: _____<br>Matter in dispute: _____<br>Party who initiated the dispute: Status of dispute: _____ | |
| | | Contract Identification:<br>Name of Procuring Entity:<br>Address of Procuring Entity:<br>Matter in dispute:<br>Party who initiated the dispute:<br>Status of dispute: | |
| Litigation History in accordance with Section III, Evaluation and Qualification Criteria | | | |
| ☐ No Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4.<br>☐ Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4 | | | |

| as indicated below. | | | |
|---|---|---|---|
| **Year of award** | **Outcome as percentage of Net Worth** | **Contract Identification** | **Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)** |
| *[insert year]* | *[insert percentage]* | Contract Identification: [indicate complete contract name, number, and any other identification]<br>Name of Procuring Entity: *[insert full name]*<br>Address of Procuring Entity: *[insert street/city/country]*<br>Matter in dispute: *[indicate main issues in dispute]*<br>Party who initiated the dispute: *[indicate "Procuring Entity" or "Contractor"]*<br>Reason(s) for Litigation and award decision *[indicate main reason(s)]* | *[insert amount]* |

## 4.4 FORM FIN – 3.1:

**Financial Situation and Performance**

Tenderer's Name: _____
Date: _____
JV Member's Name_____
ITT No. and title: _____

### 4.4.1. Financial Data

| **Type of Financial information in_____ (currency)** | **Historic information for previous_____*years*, (amount in currency, currency, exchange rate*, USD equivalent)** | | | | |
|---|---|---|---|---|---|
| | **Year 1** | **Year 2** | **Year 3** | **Year 4** | **Year 5** |
| Statement of Financial Position (Information from Balance Sheet) | | | | | |
| Total Assets (TA) | | | | | |
| Total Liabilities (TL) | | | | | |
| Total Equity/Net Worth (NW) | | | | | |
| Current Assets (CA) | | | | | |
| Current Liabilities (CL) | | | | | |
| Working Capital (WC) | | | | | |
| Information from Income Statement | | | | | |
| Total Revenue (TR) | | | | | |

| **Type of Financial information in_____ (currency)** | **Historic information for previous_____*years*, (amount in currency, currency, exchange rate*, USD equivalent)** | | | | |
|---|---|---|---|---|---|
| | **Year 1** | **Year 2** | **Year 3** | **Year 4** | **Year 5** |
| Profits Before Taxes (PBT) | | | | | |
| Cash Flow Information | | | | | |
| Cash Flow from Operating Activities | | | | | |

*Refer to ITT 15 for the exchange rate

#### 4.4.2 Sources of Finance

Specify sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.

| **No.** | **Source of finance** | **Amount (Kenya Shilling equivalent)** |
|---|---|---|
| 1 | | |
| 2 | | |
| 3 | | |

### 4.4.3 Financial documents

The Tenderer and its parties shall provide copies of financial statements for_____years pursuant Section III, Evaluation and Qualifications Criteria, Sub-factor 3.1. The financial statements shall:

(a) reflect the financial situation of the Tenderer or in case of JV member, and not an affiliated entity (such as parent company or group member).

(b) be independently audited or certified in accordance with local legislation.

(c) be complete, including all notes to the financial statements.

(d) correspond to accounting periods already completed and audited.

☐ Attached are copies of financial statements[1] for the_____years required above; and complying with the requirements

[1] If the most recent set of financial statements is for a period earlier than 12 months from the date of Tender, the reason for this should be justified.

**Average Annual Construction Turnover**

Tenderer's Name: _____
Date: _____
JV Member's Name_____
ITT No. and title: _____

| | Annual turnover data (construction only) | | |
|---|---|---|---|
| **Year** | **Amount Currency** | **Exchange rate** | **Kenya Shilling equivalent** |
| *[indicate year]* | *[insert amount and indicate currency]* | | |
| | | | |
| | | | |
| | | | |
| | | | |
| Average Annual Construction Turnover * | | | |

* See Section III, Evaluation and Qualification Criteria, Sub-Factor 3.2.

## 4.6 FORM FIN – 3.3:

**Financial Resources**

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cash flow demands of the subject contract or contracts as specified in Section III, Evaluation and Qualification Criteria

| **Financial Resources** | | |
|---|---|---|
| **No.** | **Source of financing** | **Amount (Kenya Shilling equivalent)** |
| 1 | | |
| 2 | | |
| 3 | | |
| | | |

**Current Contract Commitments / Works in Progress**

Tenderers and each member to a JV should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

| Current Contract Commitments | | | | | |
|---|---|---|---|---|---|
| | **Name of Contract** | **Procuring Entity's Contact Address, Tel,** | **Value of Outstanding Work [Current Kenya Shilling /month Equivalent]** | **Estimated Completion Date** | **Average Monthly Invoicing Over Last Six Months [Kenya Shilling /month)]** |
| 1 | | | | | |
| 2 | | | | | |
| 3 | | | | | |
| 4 | | | | | |
| 5 | | | | | |
| | | | | | |

## 4.8 8 FORM EXP - 4.1

### General Construction Experience

Tenderer's Name: _____
Date: _____
JV Member's Name_____
ITT No. and title: _____

Page_____of_____pages

| Starting Year | Ending Year | Contract Identification | Role of Tenderer |
|---|---|---|---|
| | | Contract name: _____<br>Brief Description of the Works performed by the Tenderer:_____<br>Amount of contract: _____<br>Name of Procuring Entity: _____<br>Address: _____ | |
| | | Contract name: _____<br>Brief Description of the Works performed by the Tenderer:_____<br>Amount of contract: _____<br>Name of Procuring Entity: _____<br>Address: _____ | |
| | | Contract name: _____<br>Brief Description of the Works performed by the Tenderer:_____<br>Amount of contract: _____<br>Name of Procuring Entity: _____<br>Address: _____ | |

## 4.9 FORM EXP - 4.2(a)

**Specific Construction and Contract Management Experience**

Tenderer's Name: _____
Date: _____
JV Member's Name_____
ITT No. and title: _____

| **Similar Contract No.** | **Information** | | | |
|---|---|---|---|---|
| Contract Identification | | | | |
| Award date | | | | |
| Completion date | | | | |
| Role in Contract | Prime Contractor ☐ | Member in JV ☐ | Management Contractor ☐ | Sub-contractor ☐ |
| TotalContract Amount | | | **Kenya Shilling** | |
| If member in a JV or sub-contractor, specify participation in total Contract amount | | | | |
| Procuring Entity's Name: | | | | |
| Address:<br>Telephone/fax number<br>E-mail: | | | | |

## 4.10 FORM EXP - 4.2 (a) (cont.)

**Specific Construction and Contract Management Experience (cont.)**

| **Similar Contract No.** | **Information** |
|---|---|
| Description of the similarity in accordance with Sub-Factor 4.2(a) of Section III: | |
| 1. Amount | |
| 2. Physical size of required works items | |
| 3. Complexity | |
| 4. Methods/Technology | |
| 5. Construction rate for key activities | |
| 6. Other Characteristics | |

## 4.11 1 FORM EXP - 4.2(b)

**Construction Experience in Key Activities**

Tenderer's Name: _____
Date: _____
Tenderer's JV Member Name: _____
Sub-contractor's Name[2] (as per ITT 34): _____
ITT No. and title:_____

All Sub-contractors for key activities must complete the information in this form as per ITT 34 and Section III, Evaluation and Qualification Criteria, Sub-Factor 4.2.

*1.* Key Activity No One: _
_____

| | **Information** | | | |
|---|---|---|---|---|
| Contract Identification | | | | |
| Award date | | | | |
| Completion date | | | | |
| Role in Contract | Prime Contractor ☐ | Member in JV ☐ | Management Contractor ☐ | Sub-contractor ☐ |
| Total Contract Amount | | | **Kenya Shilling** | |
| Quantity (Volume, number or rate of production, as applicable) performed under the contract per year or part of the year | Total quantity in the contract (i) | Percentage participation (ii) | | Actual Quantity Performed (i) x (ii) |
| Year 1 | | | | |
| Year 2 | | | | |
| Year 3 | | | | |
| Year 4 | | | | |
| Procuring Entity's Name: | | | | |
| Address:<br>Telephone/fax number<br>E-mail: | | | | |

| | **Information** |
|---|---|
| Description of the key activities in accordance with Sub-Factor 4.2(b) of Section III: | |
| | |
| | |

[2] If applicable

| | |
|---|---|
| | |
| | |
| | |

*2*. Activity No. Two
3. ……

**OTHER FORMS**

## 5. FORM OFTENDER

*INSTRUCTIONS TO TENDERERS*

*i) The Tenderer must preparethis Form of Tenderon stationery with its letterhead clearly showing the Tenderer's complete name and business address.*

*ii) All italicized text is tohelp Tendererin preparing this form.*

*iii) Tenderer must complete and sign CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELFDECLARATION OF THETENDERERattachedtothis Form of Tender.*

*iv) The Formof Tendershall include the following Formsduly completed and signedbythe Tenderer.*

- *Tenderer's Eligibility- Confidential Business Questionnaire*
- *Certificate of Independent Tender Determination*
- *Self-Declaration of the Tenderer*

**Date of this Tendersubmission**: *[insert date (as day, month and year) of Tendersubmission]*

…….

**Request for Tender No.:** *[insert identification*] ……

**Name and description of Tender** *[Insert as per ITT)* ……

**Alternative No.:** [*insert identification Noif this is a Tender for an alternative*]…….

**To:……**

[*insert completename of Procuring Entity*]

Dear Sirs,

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 and complete the Works and remedy any defects therein for the sum of Kenya Shillings [*[Amount in figures]*_____Kenya Shillings *[amountinwords]*_____.

   The above amount includes foreign currency amount (s) of [*state figure or a percentage and currency*] [figures]_____[words]_____.

   The percentage or amount quoted above does not include provisional sums, and only allows not more than two foreign currencies.

2. We undertake, if our tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Project Manager's notice to commence, and to complete the whole of the Works comprised in the Contract withinthetimestated inthe Special Conditions of Contract.

3. Weagree to adhere by this tender until_____*[Insert date]*, and it shall remain binding upon us and may beaccepted atany time beforethat 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. We further understand that you are not bound to accept thelowest or anytender you may receive.

5. We, theundersigned, further declarethat:
   i) *No reservations:* We have examined and have no reservations to the tender document, including Addenda issued in accordance with ITT 28;
   ii) *Eligibility:* We meet the eligibility requirements and have no conflict of interest in accordance with ITT 3 and 4;

iii) *Tender-Securing Declaration:* We have not been suspended nor declared ineligible by the Procuring Entity based on execution of a Tender-Securing or Proposal-Securing Declaration in the Procuring Entity's Country inaccordance with ITT 19.8;

*iv)* *Conformity:* We offer to execute in conformity with the tendering documents and in accordance with the implementation and completion specified in the construction schedule, the following Works: *[insert a brief description of the Works];*

*v)* *Tender Price:* The total price of our Tender, excluding any discounts offered in item 1 above is: *[Insert one of theoptions belowas appropriate]*

vi Option 1, in case of one lot: Total price is: [*insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies*]; Or

Option 2, in case of multiple lots:

a) Total price of each lot [*insert the total price of each lot in words and figures, indicating the various amounts andtherespective currencies*]; and

b) Total price of all lots (sum of all lots) [*insert the total price of all lots in words and figures, indicating the various amountsand therespective currencies*];

vii) *Discounts:*Thediscounts offered andthe methodology for their application are:

viii) Thediscounts offered are: [*Specify in detail each discount offered.*]

ix) The exact method of calculations to determine the net price after application of discounts is shown below: [*Specify in detail the methodthat shall be used toapply the discounts*];

x) *Tender Validity Period:* Our Tender shall be valid for the period specified in TDS 18.1 (as amended, if applicable) from the date fixed for the Tender submission deadline specified in TDS 22.1 (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

xi) *Performance Security:* If our Tender is accepted, we commit to obtain a Performance Security in accordance with theTendering document;

xii) *One Tender Per Tender:* We are not submitting any other Tender(s) as an individual Tender, and we are not participating in any other Tender(s) as a Joint Venture member or as a subcontractor, and meet the requirements of ITT 3.4, other thanalternativeTenders submitted in accordance with ITT 13.3;

xiii) *Suspension and Debarment:* We, along with any of our subcontractors, suppliers, Project Manager, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the Public Procurement Regulatory Authority or any other entity of the Government of Kenya, or any international organization.

xiv) *State-owned enterprise or institution:* [*select the appropriate option and delete the other*] [*We are not a state-owned enterprise or institution*] / [*We are a state-owned enterprise or institution but meet the requirements of ITT 3.8*];

*xv)* *Commissions, gratuities, fees:* We have paid, or will pay the following commissions, gratuities, or fees with respect to the tender process or execution of the Contract: *[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity]*.

| Name of Recipient | Address | Reason | Amount |
|---|---|---|---|
| | | | |
| | | | |
| | | | |

*(If none has been paid or is to be paid, indicate "none.")*

xvi) Binding Contract: We understand that this Tender, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is preparedand executed;

xvii) Not Bound to Accept: Weunderstand that you are not bound to accept the lowest evaluated cost Tender, the Most Advantageous Tender or any other Tender that you may receive;

xviii) Fraud and Corruption: We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages inany typeof Fraudand Corruption;

xix) Collusive practices: We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the "Certificate of Independent Tender Determination" attachedbelow.

xx) We undertake to adhere by the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal, copyavailable from_____(*specify website*) during the procurement process and the execution of anyresulting contract.

xxi) We, theTenderer, havecompleted fully andsigned the following Forms as part of our Tender:
   a) Tenderer's Eligibility; Confidential Business Questionnaire – to establish we are not in any conflict tointerest.
   b) Certificate of Independent Tender Determination – to declare that we completed the tender without colluding with other tenderers.
   c) Self-Declaration of the Tenderer – to declare that we will, if awarded a contract, not engage in any form of fraud andcorruption.
   d) Declaration and commitment to the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal

Further, we confirm that we have read and understood the full content and scope of fraud and corruption as informed in **"Appendix 1- Fraud and Corruption**" attached to the Form of Tender.

**Name of the Tenderer: ……**
[*insert complete name of person signing the Tender*]

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

**Title ofthe personsigning the Tender**:…….

[*insert completetitle of theperson signing the Tender*]

**Signature of the person named above**:……

[*insert signature of person whose name and capacity are shown above*]

**Datesigned……..**

[*insert dateof signing*] day of [*insert month*], [*insert year*]

Datesigned_____day of_____, _____

***Notes***
** In the case of the Tender submitted by joint venture specify the name of the Joint Venture as Tenderer*
*** Person signing the Tender shall have the power of attorney given by the Tenderer to be attached with the Tender.*

## A. TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE

**Instruction to Tenderer**

Tender is instructed to complete theparticulars required in this Form, *oneform for each entity if Tender is a JV*. Tenderer is further reminded that it is an offenceto give false information on this Form.

(a) **Tenderer's details**

| | **ITEM** | **DESCRIPTION** |
|---|---|---|
| 1 | Name of the Procuring Entity | |
| 2 | Reference Number of the Tender | |
| 3 | Date and Time of Tender Opening | |
| 4 | Name of the Tenderer | |
| 5 | Full Address and Contact Details of the Tenderer. | 1. Country<br>2. City<br>3. Location<br>4. Building<br>5. Floor<br>6. Postal Address<br>7. Name and email of contact person. |
| 6 | Current Trade License Registration Number and Expiring date | |
| 7 | Name, country and full address (*postal and physical addresses, email, and telephone number*) of Registering Body/Agency | |
| 8 | Description of Nature of Business | |
| 9 | Maximum value of business which the Tenderer handles. | |
| 10 | State if Tenders Company is listed in stock exchange, give name and full address (*postal and physical addresses, email, and telephone number*) of<br><br>state which stock exchange | |

**General and Specific Details**

**b) Sole Proprietor,** provide the following details.

Name in full_____Age_____Nationality_ _____Country of Origin_____Citizenship ___ _____

**c) Partnership,** provide the following details.

| | Names of Partners | Nationality | Citizenship | % Shares owned |
|---|---|---|---|---|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |

**d) Registered Company,** provide the following details.

i) Private or public Company_____

ii) State the nominal and issued capital of the Company_____

Nominal Kenya Shillings (Equivalent) ..... Issued

Kenya Shillings (Equivalent).....

iii) Give details of Directors as follows.

| | Names of Director | Nationality | Citizenship | % Shares owned |
|---|---|---|---|---|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |

**(e) DISCLOSURE OFINTEREST- Interest ofthe Firminthe Procuring Entity.**

i) Arethereany person/persons in..... (*Name of Procuring Entity)* who has/have an interest or relationship in this firm? Yes/No……

If yes, provide details as follows.

| | Names of Person | Designation in the Procuring Entity | Interest or Relationship with Tenderer |
|---|---|---|---|
| 1 | | | |
| 2 | | | |
| 3 | | | |

**ii) Conflict of interest disclosure**

| | Type of Conflict | Disclosure YES OR NO | If YES provide details of the relationship with Tenderer |
|---|---|---|---|
| 1 | Tenderer is directly or indirectly controls, is controlled by or is under common control with another tenderer. | | |
| 2 | Tenderer receives or has received any direct or indirect subsidy from another tenderer. | | |
| 3 | Tenderer has the same legal representative as another tenderer | | |
| 4 | Tender has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process. | | |

| | Type of Conflict | Disclosure YES OR NO | If YES provide details of the relationship with Tenderer |
|---|---|---|---|
| 5 | Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender. | | |
| 6 | Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract specified in this Tender Document. | | |
| 7 | Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract. | | |
| 8 | Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision of the such Contract. | | |
| 9 | Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract. | | |

**f) Certification**

On behalf of the Tenderer, I certify that the information given above is complete, current and accurate as at the date of submission.

Full Name_____ Title or

Designation_____

_____ _____

*(Signature)* *(Date)*

## B. CERTIFICATEOFINDEPENDENTTENDERDETERMINATION

I, the undersigned, in submitting the accompanying Letter of Tender to the_____[Name of Procuring Entity] for:_____[Name and number of tender] in responseto the request for tenders made by:_____[Name of Tenderer] do hereby make the following statements that I certify tobe trueand completein every respect:

I certify, on behalf of_____[Name of Tenderer] that:

1. I have read and I understand the contents of this Certificate;

2. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;

3. I amtheauthorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender onbehalf of theTenderer;

4. For the purposes of this Certificate and the Tender, I understand that the word "competitor" shall include any individual or organization, other thantheTenderer, whether or not affiliated with theTenderer, who:
   a) has beenrequestedtosubmit a Tender in responsetothis request for tenders;
   b) could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;

5. TheTenderer discloses that [check one of thefollowing, as applicable:
   a) The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
   b) the Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, suchconsultations, communications, agreements or arrangements;

6. In particular, without limiting the generality of paragraphs (5)(a) or (5)(b) above, there has been no consultation, communication, agreement or arrangement with anycompetitor regarding:
   a) prices;
   b) methods, factors or formulas used tocalculate prices;
   c) the intention or decision to submit, or not tosubmit, a tender; or
   d) the submission of a tender which does not meet the specifications of the request for Tenders; except as specifically disclosed pursuant toparagraph (5)(b) above;

7. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this request for tenders relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant toparagraph (5)(b) above;

8. the terms of the Tender have not been, and will not be, knowingly disclosed by the Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official tender opening, or of the awarding of the Contract, whichever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph (5)(b) above.

Name_____

Title……..Date _____

*[Name, title and signature of authorized agent of Tenderer and Date].*

## C. SELF - DECLARATION FORMS

### FORM SD1

**SELF DECLARATION THAT THE PERSON/TENDERER IS NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENTAND ASSET DISPOSALACT 2015.**

I, ……., of Post Office Box ..... being a resident of …….. in the Republic of ..... do hereby make a statement as follows: -

**1.** THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Director of ……...…….. *(insert name of the Company)* who is a Bidder in respect of Tender No.
…….. for ……. *(insert tender title/description)* for ..... *(insert name of the Procuring entity)* and duly authorized and competent to make this statement.

**2.** THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.

**3.** THAT what is deponedto herein above is trueto thebest of my knowledge, information and belief.

……. ……. …… (Title)
(Signature) (Date)

Bidder Official Stamp

## FORM SD2

## SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE

I, ……. of P. O. Box ..... being a resident of …….. in the Republic of ..... do hereby make a statement as follows: -

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of ..... *(insert name of the Company)* who is a Bidder in respect of Tender No .....for …….. *(insert tender title/description)* for ..... *(insert nameofthe Procuring entity)* and duly authorized and competent to makethis statement.

2. THAT the aforesaid Bidder, its servants and/or agents /subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/or agents of..... *(insert name of the Procuring entity)* which is the procuring entity.

3. THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of.....(name of the procuring entity)

4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in thesubject tender

5. THAT what is deponed toherein above is trueto thebest of my knowledge information and belief.

| …… | ……..…… | .....…… |
|---|---|---|
| (Title) | (Signature) | (Date) |

Bidder's Official Stamp

## DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

I ……..……. (person) on behalf of *(Name of the Business/ Company/Firm*) .....declare that I have read and fully understood the contents of the Public Procurement & Asset Disposal Act, 2015, Regulations and the Code of Ethics for persons participating in Public Procurement and Asset Disposal and my responsibilities under the Code.

I do hereby commit to abideby theprovisions of the Code of Ethics for persons participating in Public Procurement and Asset Disposal.

Name of Authorized signatory……..... Sign…….....

Position…….....…….....

Office address……. Telephone…….....……

E-mail…….....….....…

Name of the Firm/Company…….....……

Date..... (Company Seal/ Rubber

Stamp where applicable)

Witness

Name ……..... Sign.....

Date……

## D. APPENDIX 1- FRAUDAND CORRUPTION

*(Appendix 1 shall not be modified)*

### 1. Purpose

**2.** The Government of Kenya's Anti-Corruption and Economic Crime laws and their sanction's policies and procedures, Public Procurement and Asset Disposal Act *(no. 33 of 2015)* and its Regulation, and any other Kenya's Acts or Regulations related to Fraud and Corruption, and similar offences, shall apply with respect to Public Procurement Processes and Contracts thataregoverned bythelaws of Kenya.

### 3. Requirements

The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged inprocurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurementprocess, selection and contract execution of all contracts, and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1 above.

Kenya's public procurement and asset disposal act *(no. 33 of 2015)* under Section 66 describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted below highlight Kenya's policy of notolerance for such practices andbehavior: -

1) a person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in anyprocurement or asset disposal proceeding;
2) A person referred to under subsection (1) who contravenes the provisions of that sub-section commits an offence;
3) Without limiting the generality of thesubsection (1) and (2), theperson shall be: -
   a) disqualified fromentering into a contract for a procurement or asset disposal proceeding; or
   b) if a contract hasalready been entered into with theperson, thecontract shall bevoidable;
4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect toa procurement: -
   a) shall not takepart in theprocurement proceedings;
   b) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and

c) shall not be a subcontractor for the bidder to whom was awarded contract, or a member of the group of bidders to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.

6) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest totheprocuring entity;
7) If a person contravenes subsection (1) with respect to a conflict of interest described in subsection (5)(a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good bytheawarding officer. Etc.

In compliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:

a) Defines broadly, for thepurposes of theaboveprovisions, the terms set forth below as follows:
   i) “corrupt practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of valueto influence improperly theactions of another party;
   ii) “fraudulent practice” is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;

iii) "collusivepractice" is an arrangement between two or moreparties designed to achieve an improper purpose, including to influenceimproperly theactions of another party;

iv) "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, anyparty or theproperty of theparty toinfluenceimproperly theactions of a party;

v) "obstructivepractice" is:

- deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
- acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspectionand audit rights provided for under paragraph 2.3 e. below.

b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusivepractices as follows:

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of freeand opencompetition.

c) Rejects a proposal for award[1] of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructivepractices incompeting for thecontract in question;

d) Pursuant to the Kenya's above stated Acts and Regulations, may sanction or recommend to appropriate authority (ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;

e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect[2] all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Governmentof Kenya; and

f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a "Self-Declaration Form" as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in anycorrupt or fraudulent practices.

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[1] *For the avoidance of doubt, a party's ineligibility to be awarded a contract shall include, without limitation, (i) applying for pre-qualification, expressing interest in a consultancy, and tendering, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of suchcontract, and (ii) entering into an addendumor amendment introducing a material modificationtoanyexisting contract.*

[2] *Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Investigating Authority or persons appointed by the Procuring Entity to address specific matters related to investigations/audits, such as evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing and examining a firm's or individual's financial records and information, and making copies thereof as relevant; accessingand examining any other documents, data and information (whether in hard copy or electronic format) deemed relevant for the investigation/audit, and making copies thereof as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.*

## 7. FORM OFTENDER SECURITY - DEMANDBANK GUARANTEE

Beneficiary:_____

Request forTenders No: _____

Date:_____

TENDER GUARANTEENo.: _____

Guarantor: _____

1. Wehave been informed that_____(hereinafter called "the Applicant") has submitted or will submit to the Beneficiary its Tender (hereinafter called "the Tender") for the execution of _____
2. under Request for Tenders No._____("the ITT").

3. Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.

4. At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of_____(_____) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying thedemand, stating that either theApplicant:

(a) has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Applicant; or

b) having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension thereto provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish thePerformance.

5. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of theTendering process; or (ii)twenty-eight days after the end of theTender Validity Period.

6. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or beforethat date.

*[signature(s)]*

## FORM OF TENDER SECURITY (TENDER BOND)

*[The Surety shall fill in this Tender Bond Form in accordance with the instructions indicated.]*

BOND NO. _____

1. BY THIS BOND *[name of tenderer]* as Principal (hereinafter called "the Principal"), and *[name, legal title, and address of surety],* **authorized to transact business in** *[name of country of* Procuring Entity*],* as Surety (hereinafter called "the Surety"), are held and firmly bound unto *[name of* Procuring Entity*]* as Obligee (hereinafter called "the Procuring Entity") in the sum of *[amount of Bond][amount in words],* for the payment of which sum, well and truly to be made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

2. WHEREAS the Principal has submitted or will submit a written Tender to the Procuring Entity dated the .....day of _____, 21 , for the supply of *[name of Contract]* (hereinafter called the "Tender").

3. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal:
   a) has withdrawn its Tender during the period of Tender validity set forth in the Principal's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Principal; or
   b) having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity Period or any extension thereto provided by the Principal; (i) failed to execute the Contract agreement; or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to tenderers ("ITT") of the Procuring Entity's Tendering document.

   Then the Surety undertakes to immediately pay to the Procuring Entity up to the above amount upon receipt of the Procuring Entity's first written demand, without the Procuring Entity having to substantiate its demand, provided that in its demand the Procuring Entity shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.

4. The Surety hereby agrees that its obligation will remain in full force and effect up to and including the date 30 days after the date of expiration of the Tender Validity Period set forth in the Principal's Letter of Tender or any extension thereto provided by the Principal.

5. IN TESTIMONY WHEREOF, the Principal and the Surety have caused these presents to be executed in their respective names this _____ day of _____ 21 _____.

Principal: _____ Corporate Seal (where appropriate)

Surety: _____

*(Signature)* *(Signature)*

*(Printed name and title)* *(Printed name and title)*

## TENDER-SECURING DECLARATION FORM

*[The Bidder shall complete this Form in accordance with the instructions indicated]*

Date.....*[insert date (as day, month and year) of Tender Submission]*
Tender No ..... *[insert number of tendering process]*
To: .....

*[insert completenameof Purchaser]* I/We, theundersigned, declare that:

1. I/Weunderstand that, according to your conditions, bids must besupported bya Tender-Securing Declaration.

2. I/We accept that I/we will automatically be suspended from being eligible for tendering in any contract with the Purchaser for the period of time of [insert number of months or years] starting on [insert date], if we are in breach of our obligation(s) under the bid conditions, because we – (a) have withdrawn our tender during the period of tender validity specified by us in the Tendering Data Sheet; or (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refusetofurnish the Performance Security, inaccordance with the instructions to tenders.

3. I/We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer(s), upon the earlier of:
   a) our receipt of a copy of your notification of thename of thesuccessful Tenderer; or
   b) thirty days after theexpiration of our Tender.

4. I/Weunderstand that if I am/we are/in a Joint Venture, the Tender Securing Declaration must be in the name of the Joint Venture that submits the bid, and the Joint Venture has not been legally constituted at the time of bidding, theTender Securing Declaration shall beinthenames of all futurepartners as named inthe letter of intent.

Signed:……..…….....…..

Capacity / title (director or partner or soleproprietor, etc.) …….…….....……

Name: ……..

Duly authorized to sign thebidfor and onbehalf of: *[insert complete name of Tendere*……

Dated on ……. day of ..... *[Insert date of signing]*

Seal or stamp

## Appendix to Tender

### Schedule of Currency requirements

Summary of currencies of the Tender for_____*[insert name of Section of the Works]*

| ***Name of currency*** | ***Amounts payable*** |
|---|---|
| Local currency: _____ | |
| Foreign currency #1: _____ | |
| Foreign currency #2: _____ | |
| Foreign currency #3: _____ | |
| Provisional sums expressed in local currency | [To be entered by the Procuring Entity] |

# PART II - WORK REQUIREMENTS

## SECTION V - DRAWINGS

A list of drawings should be inserted here. The actual drawings including Site plans should be annexed in a separate booklet.

## SECTION VI - SPECIFICATIONS

Notes for preparing Specifications

1. Specifications must be drafted to present a clear and precise statement of the required standards of materials, and workmanship for tenderers to respond realistically and competitively to the requirements of the Procuring Entity and ensure responsiveness of tenders. The Specifications should require that all materials, plant, and other supplies to be permanently incorporated in the Works be new, unused, of the most recent or current models, and incorporating all recent improvements in design and materials unless provided otherwise in the Contract. Where the Contractor is responsible for the design of any part of the permanent Works, the extent of his obligations must bestated.

2. Specifications from previous similar projects are useful and may not be necessary to re-write specifications for everyWorks Contract.

3. There are considerable advantages in standardizing **General Specifications** for repetitive Works in recognized public sectors, such as highways, urban housing, irrigation and water supply. The General Specifications should cover all classes of workmanship, materials and equipment commonly involved in constructions, although not necessarily to be used in a particular works contract. Deletions or addenda should then adapt the General Specifications totheparticular Works.

4. Care must be taken in drafting Specifications to ensure they are not restrictive. In the Specifications of standards for materials, plant and workmanship, existing Kenya Standards should be used as much as possible, otherwise recognized international standards may also beused.

5. The Procuring Entity should decide whether technical solutions to specified parts of the Works are to be permitted. Alternatives are appropriate in cases where obvious (and potentially less costly) alternatives are possible to the technical solutions indicated in tender documents for certain elements of the Works, taking into consideration thecomparativespecialized advantage of potential tenderers.

6. The Procuring Entity should provide a description of the selected parts of the Works with appropriate reference to Drawings, Specifications, Bills of Quantities, and Design or Performance criteria, stating that the alternative solutions shall be at least structurally and functionally equivalent to the basic design parameters and Specifications.

1. Such alternative solutions shall be accompanied by all information necessary for a complete evaluation by the Procuring Entity, including drawings, design calculations, technical specifications, breakdown of prices, proposed construction methodology, and other relevant details. Technical alternatives permitted in this manner shall be considered by the Procuring Entity each on its own merits and independently of whether the tenderer has priced the itemas described inthe Procuring Entity's design included with thetender documents.

## SECTION VII- BILLS OF QUANTITIES

### 1. Objectives

The objectives of the Bill of Quantities are:

a) to provide sufficient information on the quantities of Works to be performed to enable tenders to be prepared efficiently andaccurately; and

b) when a Contract has been entered into, to provide a priced Bill of Quantities for use in the periodic valuationof Works executed.

In order to attain these objectives, Works should be itemized in the Bill of Quantities in sufficient detail to distinguish between the different classes of Works, or between Works of the same nature carried out in different locations or in other circumstances which may give rise to different considerations of cost. Consistent with these requirements, the layout and contents of the Bill of Quantities should beas simpleandbrief as possible.

### 2. Day workSchedule

ADay work Schedule should be included only if the probability of unforeseen work, outside the items included in the Bill of Quantities, is high. To facilitate checking by the Procuring Entity of the realism of rates quoted by the Tenderers, the Day work Scheduleshould normally comprisethefollowing:

a) A list of the various classes of labor, materials, and Constructional Plant for which basic day work rates or prices are to be inserted by the Tenderer, together with a statement of the conditions under which the Contractor shall bepaid for work executed ona day work basis.

b) Nominal quantities for each item of day work, to be priced by each Tenderer at day work rates as Tender. The rate to be entered by the Tenderer against each basic day work item should include the Contractor's profit, overheads, supervision, and other charges.

### 3. Provisional Sums

A general provision for physical contingencies (quantity overruns) may be made by including a provisional sum in the Summary Bill of Quantities. Similarly, a contingency allowance for possible price increases should be provided as a provisional sum in the Summary priced Bill of Quantities. The inclusion of such provisional sums often facilitates budgetary approval by avoiding the need to request periodic supplementary approvals as the future need arises. Where such provisional sums or contingency allowances are used, the Special Conditions of Contract should state the manner in which they shall be used, and under whose authority (usually the Project Manager's).

The estimated cost of specialized work to be carried out, or of special goods to be supplied, by other contractors should be indicated in the relevant part of the Bill of Quantities as a particular provisional sum with an appropriate brief description. A separate procurement procedure is normally carried out by the Procuring Entity to select such specialized contractors. To provide an element of competition among the Tenderers in respect of any facilities, amenities, attendance, etc., to be provided by the successful Tenderer as prime Contractor for the use and convenience of the specialist contractors, each related provisional sum should be followed by an item in the Bill of Quantities inviting theTenderer toquotea sumfor suchamenities, facilities, attendance, etc.

These Notes for Preparing a Bill of Quantities are intended only as information for the Procuring Entity or the person drafting thetendering document. They should not beincluded in the final tendering document.

### 4. The Bills of Quantities

The Bills of Quantities should be divided generally into the following sections:

a) Preambles
b) Preliminary items
c) WorkItems
c) Daywork Schedule;and
d) Provisional items
e) Summary.

**5. The Summary to the Bills of Quantities** will take this form or some other form but including these items.

| **SUMMARY ITEMS** | *Page* | *Amount* |
|---|---|---|
| Bill No. 1: Preliminary Items | | |
| Bill No. 2: Work Items | | |
| Bill No 3: Daywork Summary | | |
| Bill No 4: Provisional Sums | | |
| Subtotal of Bills No 1-4 | | |
| Allow for any Discounts [i] | | |
| **TOTAL TENDER PRICE Carried forward to Form of Tender** | | |

# PART III - CONDITIONS OF CONTRACT AND CONTRACT FORMS

## SECTION VIII - GENERAL CONDITIONS OF CONTRACT

These General Conditions of Contract (GCC), read in conjunction with the Special Conditions of Contract (SCC) and other documents listed therein, should be a complete document expressing fairly the rights and obligations of both parties.

These General Conditions of Contract have been developed on the basis of considerable international experience in the drafting and management of contracts, bearing in mind a trend in the construction industry towards simpler, more straightforward language.

The GCC can be used for both smaller admeasurement contracts and lump sum contracts.

**General Conditions of Contract**

**A. General**

**1. Definitions**

1.1 Bold facetype is used toidentify defined terms.

a) **The Accepted Contract** Amount means theamount accepted in the Letter of Acceptance for the execution and completion of the Works andtheremedying of any defects.

b) **The Activity Schedule** is a schedule of the activities comprising the construction, installation, testing, and commissioning of the Works in a lump sum contract. It includes a lump sum price for each activity, which is used for valuations and for assessing the effects of Variations and Compensation Events.

c) **The Adjudicator** is the person appointed jointly by the Procuring Entity and the Contractor to resolve disputes inthe first instance, as providedfor in GCC 23.

d) **Bill of Quantities** means thepriced and completed Bill of Quantities forming part of the Bid.

e) **Compensation Events** arethose defined in GCC Clause42 hereunder.

f) **The Completion Date** is the date of completion of the Works as certified by the Project Manager, in accordance with GCC Sub-Clause 53.1.

g) **The Contract** is the Contract between the Procuring Entity and the Contractor to execute, complete, and maintain theWorks. It consists of thedocuments listed in GCC Sub-Clause 2.3 below.

h) **The Contractor** is theparty whose Bid tocarry out theWorks has been accepted by the Procuring Entity.

i) **The Contractor's Bid** is the completed bidding document submitted by the Contractor to the Procuring Entity.

j) **The Contract Price** is the Accepted Contract Amount stated in the Letter of Acceptance and thereafter as adjusted in accordance with the Contract.

k) **Days** arecalendar days; months arecalendar months.

l) **Day work**s are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.

m) **ADefect** is anypart of theWorks not completed in accordance with the Contract.

n) **The Defects** Liability Certificate is thecertificate issued by Project Manager upon correction of defects by the Contractor.

o) **The Defects Liability Period** is theperiod **named inthe SCC** pursuant to Sub-Clause 34.1 and calculated fromthe Completion Date.

p) **Drawings** means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Procuring Entity in accordance with the Contract, include calculations and other information provided or approved by the Project Manager for the execution of the Contract.

q) **The Procuring Entity** is theparty who employs the Contractor to carry out the Works, **as specified inthe SCC,** who is also the Procuring Entity.

r) **Equipmen**t is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.

s) **"In writing" or "written"** means hand-written, type-written, printed or electronically made, and resulting in a permanent record;

t) The Initial Contract Price is the Contract Price listed in the Procuring Entity's Letter of Acceptance.

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

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

w) **Plant i**s any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.

x) **The Project Manager** is the person **named in the SCC** (or any other competent person appointed by the Procuring Entity 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.

y) **SCC** means Special Conditions of Contract.

z) **The Site** is the area of the works as **defined as such in the SCC**.

aa) **Site Investigation Reports** are those that were included in the bidding document and are factual and interpretative reports about the surface and subsurface conditions at the Site.

bb) **Specification** means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.

cc) **The Start Date** is **given in the SCC**. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.

dd) **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.

ee) **Temporary Works** are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.

ff) **A Variation** is an instruction given by the Project Manager which varies the Works.

gg) **The Works** are what the Contract requires the Contractor to construct, install, and turn over to the Procuring Entity, **as defined in the SCC**.

## 2. Interpretation

21 In interpreting these GCC, words indicating one gender include all genders. Words indicating the singular also include the plural and words indicating the plural also include the singular. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager shall provide instructions clarifying queries about these GCC.

22 If sectional completion is specified in the SCC, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).

23 The documents forming the Contract shall be interpreted in the following order of priority:

a) Agreement,
b) Letter of Acceptance,
c) Contractor's Bid,
d) Special Conditions of Contract,
e) General Conditions of Contract, including Appendices,
f) Specifications,
g) Drawings,
h) Bill of Quantities[6], and
i) any other document **listed in the SCC** as forming part of the Contract.

[6] *In lump sum contracts, delete "Bill of Quantities" and replace with "Activity Schedule."*

## 3. Language andLaw

3.1 The language of the Contract is English Language and the law governing the Contract are the Laws of Kenya.

3.2 Throughout the execution of the Contract, the Contractor shall comply with the import of goods and services prohibitions in the Procuring Entity's Country when

a) asa matter of law or official regulations, Kenya prohibits commercial relations with that country; or

b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods from that country or any payments toany country, person, or entity in that country.

## 4. Project Manager's Decisions

4.1 Except where otherwise specifically stated, the Project Manager shall decide contractual matters between the Procuring Entity andthe Contractor in therolerepresenting the Procuring Entity.

## 5. Delegation

5.1 Otherwise **specified inthe SCC,** the Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may revoke any delegation after notifying the Contractor.

## 6. Communications

6.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A noticeshall be effective only when it is delivered.

## 7. Subcontracting

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

## 8. Other Contractors

8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Procuring Entity between the dates given in the Schedule of Other Contractors, as **referred to in the SCC.** The Contractor shall also provide facilities and services for them as described in the Schedule. The Procuring Entity may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.

## 9. Personnel andEquipment

9.1 The Contractor shall employ the key personnel and use the equipment identified in its Bid, to carry out the Works or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.

9.2 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.

9.3 If the Procuring Entity, Project Manager or Contractor determines, that any employee of the Contractor be determined to have engaged in Fraud and Corruption during the execution of the Works, then that employee shall beremoved inaccordance with Clause 9.2 above.

## 10. Procuring Entity's and Contractor's Risks

10.1 The Procuring Entity carries the risks which this Contract states are Procuring Entity's risks, and the Contractor carries therisks which this Contract states are Contractor's risks.

## 11. Procuring Entity's Risks

11.1 From the Start Date until the Defects Liability Certificate has been issued, the following are Procuring Entity's risks:

a) Therisk of personal injury, death, or loss of or damage to property (excluding the Works, Plant, Materials, and Equipment), which aredueto

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 Procuring Entity or byany person employed by or contracted tohim except the Contractor.

b) Therisk of damage to the Works, Plant, Materials, and Equipment to the extent that it is dueto a fault of the Procuring Entity or in the Procuring Entity's design, or due to war or radioactive contamination directly affecting thecountry wheretheWorks aretobeexecuted.

11.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to theWorks, Plant, and Materials is a Procuring Entity's risk except loss or damage dueto

aa) a Defect which existed on the Completion Date,

bb) anevent occurring beforethe Completion Date, which was not itself a Procuring Entity's risk, or

cc) theactivities of the Contractor onthe Siteafter the Completion Date.

## 12. Contractor's Risks

12.1 From the Starting Date until the Defects Liability 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 arenot Procuring Entity's risks are Contractor's risks.

## 13. Insurance

13.1 The Contractor shall provide, in the joint names of the Procuring Entity and the Contractor, insurance cover from the Start Dateto the end of the Defects Liability Period, in theamounts and deductibles **stated in the SCC** for the following events which aredueto theContractor's risks:

a) loss of or damageto the Works, Plant, and Materials;

b) loss of or damageto 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.

13.2 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 to be payable in the types andproportions of currencies required torectify the loss or damage incurred.

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

13.4 Alterations to the terms of an insurance shall not be made without the approval of the Project Manager.

13.5Both parties shall comply with any conditions of the insurance policies.

## 14. Site Data

14.1 The Contractor shall be deemed to have examined any Site Data **referred to in the SCC**, supplemented by any information availabletothe Contractor.

## 15. Contractor to Construct the Works

15.1 The Contractor shall construct and install theWorks in accordance with the Specifications and Drawings.

**16.** The Works to Be Completed by the Intended Completion Date

16.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works 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.

**17.** Approval by the Project Manager

17.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, for his approval.

17.2 The Contractor shall be responsible for design of Temporary Works.

17.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.

17.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.

17.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.

**18. Safety**

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

**19. Discoveries**

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

**20. Possession of the Site**

20.1 The Procuring Entity 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 SCC,** the Procuring Entity shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.

**21. Access to the Site**

21.1 The Contractor shall allow the Project Manager and any 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.

**22. Instructions, Inspections and Audits**

22.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.

22.2 The Contractor shall keep, and shall make all reasonable efforts to cause its Subcontractors and sub-consultants to keep, accurate and systematic accounts and records in respect of the Works in such form and details as will clearly identify relevant time changes and costs.

22.3 The Contractor shall permit and shall cause its subcontractors and sub-consultants to permit, the Procuring Entity and/or persons appointed by the Public Procurement Regulatory Authority to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by the Public Procurement Regulatory Authority. The Contractor's and its Subcontractors' and sub-consultants' attention is drawn to Sub-Clause 25.1 (Fraud and Corruption) which provides, inter alia, that acts intended to materially impede the exercise of the Public Procurement Regulatory Authority's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Public Procurement Regulatory Authority's prevailing sanctions procedures).

## 23. Appointment ofthe Adjudicator

23.1 The Adjudicator shall be appointed jointly by the Procuring Entity and the Contractor, at the time of the Procuring Entity's issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the Procuring Entity does not agree on the appointment of the Adjudicator, the Procuring Entity will request the Appointing Authority designated in the SCC, to appoint the Adjudicator within 14 days of receipt of such request.

23.2 Should the Adjudicator resign or die, or should the Procuring Entity and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by the Procuring Entity and the Contractor. In case of disagreement between the Procuring Entity and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority designated in the SCC at the request of either party, within 14 days of receipt of such request.

## 24. Settlement of Claims and Disputes

### 24.1Contractor's Claims

24.1.1 If the Contractor considers itself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give Notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 30 days after the Contractor became aware, or should havebecomeaware, of the event or circumstance.

24.1.2 If the Contractor fails to give notice of a claim within such period of 30 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Procuring Entity shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub- Clause shall apply.

24.1.3 The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

24.1.4 The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Project Manager. Without admitting the Procuring Entity's liability, the Project Manager may, after receiving any notice under this Sub-Clause, monitor the record- keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.

24.1.5 Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Project Manager, the Contractor shall send to the Project Manager a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

a) this fully detailed claimshall beconsidered as interim;
b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Project Manager may reasonably require; and
c) the Contractor shall send a final claim within 30 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Project Manager.

24.1.6 Within 42 days after receiving a Notice of a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the Project Manager shall respond with approval, or with disapproval and detailed comments.He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within theabovedefined timeperiod.

24.1.7 Within the above defined period of 42 days, the Project Manager shall proceed in accordance with Sub-Clause

24.1.8 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or

after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

24.1.9 Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

24.1.10 If the Project Manager does not respond within the timeframe defined in this Clause, either Party may consider that the claim is rejected by the Project Manager and any of the Parties may refer to Arbitration in accordance with Sub-Clause 24.4 [Arbitration].

24.1.11 The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to whichthe failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause 24.3.

**242 Amicable Settlement**

24.2.1 Where a notice of a claim has been given, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a notice of a claim in accordance with Sub-Clause 24.1 above should move to commence arbitration after the fifty-sixth day from the day on which a notice of a claim was given, even if no attempt at an amicablesettlement has been made.

**243 Matters that may be referred to arbitration**

24.3.1 Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Works or abandonment of the Works or termination of the Contract by either party:

a) Theappointment of a replacement Project Manager upon thesaid person ceasing to act.
b) Whether or not the issue of an instruction by the Project Manager is empowered by these Conditions.
c) Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.
e) Any disputearising inrespect of war risks or war damage.
f) All other matters shall only be referred to arbitration after the completion or alleged completion of the Works or termination or alleged termination of the Contract, unless the Procuring Entity and the Contractor agreeotherwise in writing.

**244 Arbitration**

24.4.1 Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicably inaccordance with Sub-Clause 24.3 shall be finally settled byarbitration.

24.4.2 No arbitration proceedings shall be commenced on any claim or dispute where notice of a claim or dispute has not been given by the applying party within ninety days of the occurrence or discovery of the matter or issue giving rise to the dispute.

24.4.3 Notwithstanding the issue of a notice as stated above, the arbitration of such a claim or dispute shall not commence unless an attempt has in the first instance been made by the parties to settle such claim or dispute amicably with or without the assistance of third parties. Proof of such attempt shall be required.

24.4.4 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.

24.4.5 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision requirement or notice had been given.

24.4.6 The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Project Manager from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

24.4.7 Neither Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction.

24.4.8 Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, and the Project Manager shall not be altered by reason of any arbitration being conducted during the progress of

the Works.

24.4.9 The terms of the remuneration of each or all the members of Arbitration shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

**24.5 Arbitration with National Contractors**

24.5.1 If the Contract is with national contractors, arbitration proceedings will be conducted in accordance with the Arbitration Laws of Kenya. In case of any claim or dispute, such claim or dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The disputeshall be referred 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, on the request of the applying party, by the Chairman or Vice Chairman of any of thefollowing professional institutions;

i) Architectural Association of Kenya
ii) Institute of Quantity Surveyors of Kenya
iii) Association of Consulting Engineers of Kenya
iv) Chartered Institute of Arbitrators (Kenya Branch)
v) Institution of Engineers of Kenya

24.5.2 The institution written to first by theaggrieved party shall takeprecedence over all other institutions.

**24.6 Alternative Arbitration Proceedings**

24.6.1 Alternatively, the Parties may refer the matter to the Nairobi Centre for International Arbitration (NCIA) which offers a neutral venue for the conduct of national and international arbitration with commitment to providing institutional support to the arbitral process.

**24.7 Failure to Comply with Arbitrator's Decision**

24.7.1 The award of such Arbitrator shall be final and binding upon the parties.

24.7.2 In the event that a Party fails to comply with a final and binding Arbitrator's decision, then the other Party may, without prejudicetoany other rights it may have, refer the matter toa competent court of law.

**24.8 Contract operations to continue**

24.8.1 Notwithstanding any reference to arbitration herein,

a) theparties shall continue to performtheir respective obligations under the Contract unless they otherwise agree; and
b) the Procuring Entity shall pay the Contractor any monies duethe Contractor.

## 25. Fraud and Corruption

25.1 The Government requires compliance with the country's Anti-Corruption laws and its prevailing sanctions policies and procedures as set forth in the Constitution of Kenya and its Statutes.

25.2 The Procuring Entity requires the Contractor to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the bidding process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, andthepurposeof thecommission, gratuity or fee.

## B. Time Control

## 26. Program

26.1 Within the time stated in the SCC, after the date of the Letter of Acceptance, 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. In the case of a lump sum contract, the activities in the Program shall be consistent with those in the Activity Schedule.

26.2 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.

26.3 The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer

the period stated in the SCC. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount stated in the SCC 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. In the case of a lump sum contract, the Contractor shall provide an updated Activity Schedule within 14 days of being instructed to by the Project Manager.

26.4 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.

**27. Extensionofthe Intended Completion Date**

27.1 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.

27.2 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 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 by this failure shall not be considered in assessing the new Intended Completion Date.

**28. Acceleration**

28.1 When the Procuring Entity wants the Contractor to finish before the Intended Completion Date, the Project Manager shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If the Procuring Entity accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both the Procuring Entity and the Contractor.

28.2 If the Contractor's priced proposals for an acceleration are accepted by the Procuring Entity, they are incorporated in the Contract Priceandtreated as a Variation.

**29. Delays Ordered by the Project Manager**

29.1 The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.

**30. Management Meetings**

30.1 Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.

30.2 The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to the Procuring Entity. 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 meetingandstated in writing to all whoattended the meeting.

**31. Early Warning**

31.1 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.

31.2 The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carryingout any resulting instruction of the Project Manager.

## C. Quality Control

**32. Identifying Defects**

32.1 The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking 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 havea Defect.

### 33. Tests

33.1 If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, thetest shall bea Compensation Event.

### 34. Correctionof Defects

34.1 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 SCC. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

34.2 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.

### 35. Uncorrected Defects

35.1 If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.

## D. Cost Control

### 36. Contract Price[7]

36.1 The Bill of Quantities shall contain priced items for the Works to be performed by the Contractor. The Bill of Quantities is used to calculate the Contract Price. The Contractor will be paid for the quantity of the work accomplishedat therate in the Bill of Quantities for each item.

### 37. Changes inthe Contract Price[8]

37.1 If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds 1 percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change. The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of the Procuring Entity.

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

### 38. Variations

38.1 All Variations shall be included in updated Programs[9] produced by the Contractor.

38.2 The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven (7) days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.

38.3 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.

38.4 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.

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[7] *In lump sum contracts, replace GCC Sub-Clauses 36.1 as follows:*

*36.1 The Contractor shall provide updated Activity Schedules within 14 days of being instructed to by the Project Manager. The Activity Schedule shall contain the priced activities for the Works to be performed by the Contractor. The Activity Schedule is used to monitor and control the performance of activities on which basis the Contractor will be paid. If payment for materials on site shall be made separately, the Contractor shall show delivery of Materials to the Site separately on the Activity Schedule.*

[8] *In lump sum contracts, replace entire GCC Clause 37 with new GCC Sub-Clause 37.1, as follows:*
*The Activity Schedule shall be amended by the Contractor to accommodate changes of Program or method of working made at the Contractor's own discretion. Prices in the Activity Scheduleshall notbealtered when the Contractor makes such changes to the Activity Schedule.*

[9] *In lumpsumcontracts, add "and Activity Schedules" after "Programs."* [10] *Inlumpsum contracts, delete this paragraph.*

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

38.6 If the work in the Variation corresponds to an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in Sub-Clause 39.1 or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work

38.7 Value Engineering: The Contractor may prepare, at its own cost, a value engineering proposal at any time during the performance of the contract. The value engineering proposal shall, at a minimum, include the following;

a) theproposed change(s), and a description of the differenceto the existing contract requirements;
b) a full cost/benefit analysis of the proposed change(s) including a description and estimate of costs (including life cycle costs) the Procuring Entity may incur in implementing the value engineering proposal;and
c) a description of any effect(s) of thechange onperformance/functionality.

38.8 The Procuring Entity may accept the value engineering proposal if the proposal demonstrates benefits that:

a) acceleratethecontract completion period; or
b) reducethe Contract Price or the lifecycle costs to the Procuring Entity; or
c) improvethe quality, efficiency, safety or sustainability of the Facilities; or
d) yield any other benefits tothe Procuring Entity, without compromising thefunctionality of the Works.

38.9 If the value engineering proposal is approved by the Procuring Entity and results in:

a) a reduction of the Contract Price; the amount to be paid to the Contractor shall be the **percentage specified inthe SCC** of thereduction inthe Contract Price; or
b) an increase in the Contract Price; but results in a reduction in life cycle costs due to any benefit described in (a) to (d) above, theamount to bepaid to the Contractor shall bethefull increase in the Contract Price.

## 39. Cash FlowForecasts

39.1 When the Program[11], is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary usingthe Contract exchangerates.

## 40. Payment Certificates

40.1 The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.

40.2 The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.

40.3 The value of work executed shall be determined by the Project Manager.

40.4 The value of work executed shall comprise the value of the quantities of work in the Bill of Quantities that have been completed12.

40.5 The value of work executed shall include the valuation of Variations and Compensation Events.

40.6 The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.

40.7 Where the contract price is different from the corrected tender price, in order to ensure the contractor is not paid less or more relative to the contract price (which would be the tender price), payment valuation certificates and variation orders on omissions and additions valued based on rates in the Bill of Quantities or schedule of rates in the Tender, will be adjusted by a plus or minus percentage. The percentage already worked out during tender evaluation is worked out as follows: *(corrected tender price – tender price)/tenderprice X 100*.

## 41. Payments

41.1 Payments shall be adjusted for deductions for advance payments and retention. The Procuring Entity shall pay the Contractor the amounts certified by the Project Manager within 30 days of the date of each certificate. If the Procuring Entity makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made.

41.2 If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.

41.3 Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.

41.4 Items of the Works for which no rate or price has been entered in shall not be paid for by the Procuring Entity and shall be deemed covered by other rates and prices in the Contract.

## 42. Compensation Events

42.1 The following shall be Compensation Events:

d) The Procuring Entity does not giveaccess to a part of the Siteby the Site Possession Datepursuant to GCC Sub-Clause 20.1.

e) The Procuring Entity modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.

f) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of theWorks ontime.

g) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is thenfound to have no Defects.

h) The Project Manager unreasonably does not approvea subcontract tobelet.

i) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to bidders (including the Site Investigation Reports), frominformation availablepublicly and froma visual inspection of the Site.

j) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Procuring Entity, or additional work required for safety or other reasons.

k) Other contractors, public authorities, utilities, or the Procuring Entity does not work within the dates and other constraints stated in the Contract, andtheycausedelay or extra cost tothe Contractor.

l) Theadvance payment is delayed.

m) Theeffects on the Contractor of any of the Procuring Entity's Risks.

n) The Project Manager unreasonably delays issuing a Certificate of Completion.

42.2 If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.

42.3 As soon as information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager shall assume that the Contractor shall react competently and promptly to the event.

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[11] *In lump sum contracts, add "or Activity Schedule" after "Program."*

[12] *In lump sum contracts, replace this paragraph with the following: "The value of work executed shall comprise the value of completed activities in the Activity Schedule."*

42.4 The Contractor shall not be entitled to compensation to the extent that the Procuring Entity's interests are adversely affected by the Contractor's not having given early warning or not having cooperated with the Project Manager.

## 43. Tax

43.1 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 bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of GCC Clause 44.

## 44. Currency y of Payment

44.1 All payments under the contract shall be made in Kenya Shillings

## 45. Price Adjustment

45.1 Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC.** If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type specified below applies:

**P = A + B Im/Io**

where: P is the adjustment factor for the portion of the Contract Price payable.

A and B are coefficients[13] **specified in the SCC,** representing the non-adjustable and adjustable portions, respectively, of the Contract Price payable and Im is the index prevailing at the end of the month being invoiced and IOC is the index prevailing 30 days before Bid opening for inputs payable.

45.2 If the value of the index is changed after it has been used in a calculation, the calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

## 46. Retention

46.1 The Procuring Entity shall retain from each payment due to the Contractor the proportion stated in the **SCC** until Completion of the whole of the Works.

46.2 Upon the issue of a Certificate of Completion of the Works by the Project Manager, in accordance with GCC 53.1, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected. The Contractor may substitute retention money with an "on demand" Bank guarantee.

## 47. Liquidated Damages

47.1 The Contractor shall pay liquidated damages to the Procuring Entity at the rate per day stated in the **SCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the SCC. The Procuring Entity may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

47.2 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 rates specified in GCC Sub-Clause 41.1.

## 48. Bonus

48.1 The Contractor shall be paid a Bonus calculated at the rate per calendar day **stated in the SCC** for each day (less any days for which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Project Manager shall certify that the Works are complete, although they may not be due to be complete.

**49. Advance Payment**

49.1 The Procuring Entity shall make advance payment to the Contractor of the amounts stated in the **SCC** by the date stated in the **SCC**, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Procuring Entity in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest shall not be charged on the advance payment.

49.2 The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.

49.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

**50. Securities**

50.1 The Performance Security shall be provided to the Procuring Entity no later than the date specified in the Letter of Acceptance and shall be issued in an amount **specified in the SCC,** by a bank or surety acceptable to the Procuring Entity, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 day from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one year from the date of issue of the Completion Certificate in the case of a Performance Bond.

**51. Dayworks**

51.1 If applicable, the Dayworks rates in the Contractor's Bid shall be used only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.

51.2 All work to be paid for as Dayworks 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.

51.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

**52. Cost of Repairs**

52.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

**E. Finishing the Contract**

**53. Completion**

53.1 The Contractor shall request the Project Manager to issue a Certificate of Completion of the Works, and the Project Manager shall do so upon deciding that the whole of the Works is completed.

**54. Taking Over**

54.1 The Procuring Entity shall take over the Site and the Works within seven days of the Project Manager's issuing a certificate of Completion.

**55. Final Account**

55.1 The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable 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 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 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 Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

[13] *The sum of the two coefficients A and B should be 1 (one) in the formula for each currency. Normally, both coefficients shall be the same in the formulae for all currencies, since coefficient A, for the non-adjustable portion of the payments, is a very approximate figure (usually 0.15) to take account of fixed cost elements or other non-adjustable components. The sum of the adjustments for each currency are added to the Contract Price.*

## 56. Operating and Maintenance Manuals

56.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the SCC.

56.2 If the Contractor does not supply the Drawings and/or manuals by the dates stated in the SCC pursuant to GCC Sub-Clause 56.1, or they do not receive the Project Manager's approval, the Project Manager shall withhold theamount **stated in the SCC** frompayments dueto theContractor.

## 57. Termination

57.1 The Procuring Entity or the Contractor may terminate the Contract if the other party causes a fundamental breach of theContract.

57.2 Fundamental breaches of Contract shall include, but shall not belimited to, thefollowing:

a) the Contractor stops work for 30 days when no stoppage of work is shown on the current Program and the stoppagehas not beenauthorized bythe Project Manager;
b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 30 days;
c) the Procuring Entity or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction oramalgamation;
d) a payment certified by the Project Manager is not paid by the Procuring Entity to the Contractor within 84 days of thedate of the Project Manager's certificate;
e) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
f) theContractor does not maintain a Security, which is required;
g) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages canbepaid, as **defined inthe SCC**; or
h) if the Contractor, in the judgment of the Procuring Entity has engaged in Fraud and Corruption, as defined in paragraph 2.2 a of the Appendix A to the GCC, in competing for or in executing the Contract, then the Procuring Entity may, after giving fourteen (14) days written notice to the Contractor, terminate the Contract and expel himfromthe Site.

57.3 Notwithstanding the above, the Procuring Entity may terminate the Contract for convenience.

57.4 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.

57.5 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under GCC Sub-Clause 56.2 above, the Project Manager shall decide whether the breach is fundamental or not.

## 58. Payment uponTermination

58.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as specified in the SCC. Additional Liquidated Damages shall not apply. If the total amount due to the Procuring Entity exceeds any payment due to the Contractor, the difference shall be a debt payable to the Procuring Entity.

58.2 If the Contract is terminated for the Procuring Entity's convenience or because of a fundamental breach of Contract by the Procuring Entity, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, andless advance payments received up tothe date of thecertificate.

## 59. Property

59.1 All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of the Procuring Entity if the Contract is terminated because of the Contractor's default.

## 60. Release from Performance

60.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Procuring Entity 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 and for any work carried out afterwards to which a commitment wasmade.

## SECTION IX - SPECIAL CONDITIONS OF CONTRACT

*Except where otherwise specified, all* Special *Conditionsof Contract should be filled in by the Procuring Entity prior to issuance of the biddingdocument. Schedules andreportstobe provided bythe Procuring Entityshouldbe annexed.*

| Number of GC Clause | Amendments of, and Supplements to, Clauses in the General Conditions of Contract |
|---|---|
| | **A. General** |
| **GCC 1.1 (q)** | The Procuring Entity is BORESHA SACCO SOCIETY LTD |
| **GCC 1.1 (u)** | The Intended Completion Date for the whole of the Works 24 Weeks |
| **GCC 1.1 (x)** | The Project Manager is EMPLOYER:BORESHA SACCO |
| **GCC 1.1 (z)** | The Site is located at MARIGAT TOWN |
| **GCC 1.1 (cc)** | The Start Date shall be communicated after award |
| **GCC 1.1 (gg)** | The Works consist of ***CONSTRUCTION WORKS*** |
| **GCC 2.2** | Sectional Completions are: *[insert nature and dates, if appropriate]* |
| **GCC 5.1** | The Project manager *[may ]* delegate any of his duties and responsibilities. |
| **GCC 8.1** | Schedule of other contractors: *N/A* |
| **GCC 9.1** | **Key Personnel**<br>GCC 9.1 is replaced with the following:<br><br>9.1 Key Personnel are the Contractor's personnel named in this GCC 9.1 of the Special Conditions of Contract. The Contractor shall employ the Key Personnel and use the equipment identified in its Bid, to carry out the Works or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of Key Personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.<br><br>[insert the name/s of each Key Personnel agreed by the Procuring Entity prior to Contract signature.] |
| **GCC 13.1** | The minimum insurance amounts and deductibles shall be:<br><br>(a) for loss or damage to the Works, Plant and Materials: *[insert amounts]*.<br><br>(b) For loss or damage to Equipment: *[insert amounts]*.<br><br>(c) for loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract *[insert amounts]*.<br><br>(d) for personal injury or death:<br><br>(i) of the Contractor's employees: *[amount]*.<br><br>(ii) of other people: *[amount]*. |
| **GCC 14.1** | Site Data are: *[list Site Data]* |
| **GCC 20.1** | The Site Possession Date(s) shall be: *AGREED AFTER CONTRACT SIGNING* |
| **GCC 23.1 &** | |
| | Hourly rate and types of reimbursable expenses to be paid to the Adjudicator: *[insert hourly fees* |

| Number of GC Clause | Amendments of, and Supplements to, Clauses in the General Conditions of Contract |
|---|---|
| | *and reimbursable expenses].* |
| **B. Time Control** | |
| **GCC 26.1** | The Contractor shall submit for approval a Program for the Works within *[7]* days from the date of the Letter of Acceptance. |
| **GCC 26.3** | The period between Program updates is *[insert number]* days.<br><br>The amount to be withheld for late submission of an updated Program is *[insert amount].* |
| **C. Quality Control** | |
| **GCC 34.1** | The Defects Liability Period is: *[6MONTHS]* days.<br><br>*[The Defects Liability Period is usually limited to 12 months, but could be less in very simple cases]* |
| **D. Cost Control** | |
| **GCC 38.9** | If the value engineering proposal is approved by the Procuring Entity the amount to be paid to the Contractor shall be___% *(insert appropriate percentage. The percentage is normally up to 50%)* of the reduction in the Contract Price. |
| **GCC 44.1** | The currency of the Procuring Entity's Country is: *[insert name of currency of the* Procuring Entity's Country*].* |
| **GCC 45.1** | The Contract *[insert "is" or "is not"]* subject to price adjustment in accordance with GCC Clause 45, and the following information regarding coefficients *[specify "does" or "does not"]* apply.<br><br>*[Price adjustment is mandatory for contracts which provide for time of completion exceeding 18 months]*<br><br>The coefficients for adjustment of prices are:<br><br>(a) *[insert percentage]* percent nonadjustable element (coefficient A).<br><br>(ib) *[insert percentage]* percent adjustable element (coefficient B).<br><br>(c) The Index I for shall be *[insert index].* |
| **GCC 46.1** | The proportion of payments retained is: *[insert percentage]*<br><br>*[The retention amount is usually close to 5 percent and in no case exceeds 10 percent.]* |
| **GCC 47.1** | The liquidated damages for the whole of the Works are *[insert percentage of the final Contract Price]* per day. The maximum amount of liquidated damages for the whole of the Works is *[insert percentage]* of the final Contract Price.<br><br>*[Usually liquidated damages are set between 0.05 percent and 0.10 percent per day, and the total amount is not to exceed between 5 percent and 10 percent of the Contract Price. If Sectional Completion and Damages per Section have been agreed, the latter should be specified here]* |
| **GCC 48.1** | The Bonus for the whole of the Works is *[insert percentage of final Contract Price]* per day. The maximum amount of Bonus for the whole of the Works is *[insert percentage]* of the final Contract Price.<br><br>*[If early completion would provide benefits to the* Procuring Entity*, this clause should remain; otherwise delete. The Bonus is usually numerically equal to the liquidated damages.]* |
| **GCC 49.1** | The Advance Payments shall be: *[insert amount(s)]* and shall be paid to the Contractor no later |

| Number of GC Clause | Amendments of, and Supplements to, Clauses in the General Conditions of Contract |
|---|---|
| | than *[insert date(s)]*. |
| **GCC 50.1** | The Performance Security amount is *[insert amount(s) denominated in the types and proportions of the currencies in which the Contract Price is payable, or in a freely convertible currency acceptable to the* Procuring Entity*]*<br><br>(a) Performance Security – Bank Guarantee: in the amount(s) of *[insert related figure(s)]* percent of the Accepted Contract Amount and in the same currency(ies) of the Accepted Contract Amount.<br><br>(b) Performance Security – Performance Bond: in the amount(s) of *[insert related figure(s)]* percent of the Accepted Contract Amount and in the same currency(ies) of the Accepted Contract Amount. |
| **E. Finishing the Contract** | |
| **GCC 56.1** | The date by which operating and maintenance manuals are required is *[insert date]*.<br><br>The date by which "as built" drawings are required is *[insert date]*. |
| **GCC 56.2** | The amount to be withheld for failing to produce "as built" drawings and/or operating and maintenance manuals by the date required in GCC 58.1 is *[insert amount in local currency]*. |
| **GCC 57.2 (g)** | The maximum number of days is: *[insert number; consistent with Clause 47.1 on liquidated damages]*. |
| **GCC 58.1** | The percentage to apply to the value of the work not completed, representing the Procuring Entity's additional cost for completing the Works, is *[insert percentage]*. |

**FORM No 1: NOTIFICATION OF INTENTION TO AWARD**

This Notification of Intention to Award shall be sent to each Tenderer that submitted a Tender. Send this Notification to theTenderer's Authorized Representative named intheTender Information Formontheformat below.

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**FORMAT**

1. For the attention of Tenderer's Authorized Representative
   - *i)* Name: *[insert Authorized Representative's name]*……
   - *ii)* Address: *[insert Authorized Representative's Address]*……
   - *iii)* Telephone: *[insert Authorized Representative's telephone/fax numbers]*……
   - *iv)* Email Address: *[insert Authorized Representative's email address]*……

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

2. Date of transmission: [*email*] on [*date*] (local time)

   This Notification is sent by (*Name and designation*) _____

3. Notification of Intention to Award

   - *i)* Procuring Entity: *[insert the name of the Procuring Entity]*……
   - *ii)* Project: *[insert name of project]*……
   - *iii)* Contract title: *[insert the name of the contract]*……
   - *iv)* Country: *[insert country where ITT is issued]*……
   - *v)* ITT No: *[insert ITT reference number from Procurement Plan]*……

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

4. Request a debriefing in relation to the evaluation of your tender

   Submit a Procurement-related Complaint in relation to the decision to award the contract.

   a) The successful tenderer

      i) Name of successful Tender _____

      ii) Address of the successful Tender _____

      iii) Contract price of the successful Tender Kenya Shillings _____
      (in words _____)

   b) Other Tenderers

   Names of all Tenderers that submitted a Tender. If the Tender's price was evaluated include the evaluated price as well as the Tender price as read out. For Tenders not evaluated, give one main reason the Tender was unsuccessful.

| SNo | Name of Tender | Tender Price as read out | Tender's evaluated price (Note a) | One Reason Why not Evaluated |
|---|---|---|---|---|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| | | | | |

*(Note a) State NE if not evaluated*

5. Howto request a debriefing

a) DEADLINE: Thedeadlinetorequest a debriefing expires at midnight on [*insert date*] (*local time*).

b) You may request a debriefing in relation to the results of the evaluation of your Tender. If you decide to request a debriefing your written request must be made within three (5) Business Days of receipt of this Notification of Intention to Award.

c) Provide the contract name, reference number, name of the Tenderer, contact details; and address the request for debriefing as follows:

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

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

ii) Agency: [*insert name of Procuring Entity*]

iii) Email address: [*insert email address*]

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

e) The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing howthe debriefing will takeplaceand confirmthe dateand time.

f) If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, wewill provide the debriefing as soon as practicable, and normally no later than fifteen (15) Days from the date of publication of theContract AwardNotice.

6. **How to make a complaint?**

a) Period: Procurement-related Complaint challenging the decision to award shall be submitted by midnight, [*insert date*] (local time).

b) Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-relatedComplaint as follows:

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

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

iii) Agency: [*insert name of Procuring Entity*]

iv) Email address: [*insert email address*]

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

d) Further information: For more information refer to the Public Procurement and Disposals Act 2015 and its Regulations availablefromtheWebsiteinfo@ppra.go.ke or complaints@ppra.go.ke.

You should read these documents before preparing and submitting your complaint.

e) Therearefour essential requirements:

i) You must be an 'interested party'. In this case, that means a Tenderer who submitted a Tender in this tendering process, and is therecipient of a Notification of Intention toAward.

ii) Thecomplaint can only challengethe decision to award thecontract.

iii) You must submit thecomplaint within theperiod stated above.

iv) You must include, in your complaint, all of the information required to support your complaint.

7. Standstill Period

i) DEADLINE: The Standstill Period is dueto endat midnight on [*insert date*] (local time).

ii) The Standstill Period lasts ten (14) Days after the date of transmission of this Notification of Intention to Award.

iii) The Standstill Period may beextended as stated in paragraph Section 5 (d) above.

If you haveany questions regarding this Notification please do not hesitatetocontact us. On behalf of the Procuring Entity:

**Signature:**_____ **Name:**_____

**Title/position:**_____ **Telephone:**___ **Email:** _____

**FORM NO. 2 - REQUEST FOR REVIEW**

**FORM FOR REVIEW(r.203(1))**

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD**

**APPLICATION NO…….OF……..…..20……...**

**BETWEEN**

**……...……..APPLICANT (Review Board)**

**AND**

**……RESPONDENT (Procuring Entity)**

Request for review of the decision of the…… (Name of the Procuring Entity of ……dated the…day of ……..20…….in the matter of Tender No……..…of ……..20….. for..... (Tender description).

**REQUEST FOR REVIEW**

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

1.

2.

By this memorandum, the Applicant requests the Board for an order/orders that:

1.

2.

SIGNED ……..(Applicant) Dated on…….day of ……/…20……

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FOR OFFICIAL USE ONLY Lodged with the Secretary Public Procurement Administrative Review Board on..... day of ……....20….……

**SIGNED**

**Board Secretary**

## FORM NO 3: NOTIFICATION OF AWARD - LETTER OFACCEPTANCE

*[letterhead paper of the Procuring Entity] [date]*

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

This is to notify you that your Tender dated *[date]* for execution of the *[name of the Contract and identification number, as given in the Contract Data]* for the Accepted Contract Amount *[amount in numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers, is hereby accepted by ..... (*name of Procuring Entity)*.

You are requested to furnish the Performance Security within 30 days in accordance with the Conditions of Contract, using, for that purpose, one of the Performance Security Forms included in Section VIII, Contract Forms, of the Tender Document.

Authorized Signature:.....

Name and Title of Signatory:.....

Name of Procuring Entity.....

Attachment: *Contract Agreement*.....

## FORM NO 4: CONTRACT AGREEMENT

THIS AGREEMENT made the_____day of_____, 20____, between _____of_____(hereinafter "the Procuring Entity"), of the one part, and_____of_____(hereinafter "theContractor"), of the other part:

WHEREAS the Procuring Entity desires that the Works known as ……
should be executed by the Contractor, and has accepted a Tender by the Contractor for the execution and completion of these Works andtheremedying of any defects therein,

The Procuring Entity and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in theContract documents referred to.

2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
   a) theLetter of Acceptance
   b) theLetter of Tender
   c) theaddenda Nos_____(if any)
   d) the Special Conditions of Contract
   e) the General Conditions of Contract;
   f) the Specifications
   g) the Drawings*;* and
   h) thecompleted Schedules and any other documents forming part of the contract.

3. In consideration of the payments to be made by the Procuring Entity to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Procuring Entity to execute the Works and to remedy defects therein inconformity inall respects with theprovisions of theContract.

4. The Procuring Entity 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 theprovisions of theContract at thetimes and inthe manner prescribed by theContract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the Laws of Kenya on the day, month and year specified above.

Signed and sealed by_____(for the Procuring Entity)

Signed and sealed by_____(for the Contractor).

## FORM NO. 5 - PERFORMANCE SECURITY

**[Option 1 - Unconditional Demand Bank Guarantee]**

*[Guarantor letterhead]*

**Beneficiary:**_____*[insert nameand Address of* Procuring Entity*]* **Date:**_____

_____*[Insert date of issue]*

**Guarantor: [***Insert name and address of place of issue, unless indicated in the letterhead]*

1. We have been informed that_____(hereinafter called "the Contractor") has entered into Contract No._____dated_____with (*name of Procuring Entity*)_____(the Procuring Entity as the Beneficiary), for the execution of _____(hereinafter called "the Contract").

2. Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

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

4. This guarantee shall expire, no later than the …. Day of ……, 2.....[2], and any demand for payment under it must bereceived by us at the office indicated above on or beforethat date.

5. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months] [one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor beforethe expiry of the guarantee."

*[Name of Authorized Official, signature(s) and seals/stamps*].

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

[1] *The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency of the Contract or a freely convertible currency acceptable to the Beneficiary.*

[2] *Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9. The Procuring Entity should note that in the event of an extension of this date for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must bein writing and must bemadeprior to the expiration date established in theguarantee.*

## FORM No. 6 - PERFORMANCE SECURITY

**[Option 2– Performance Bond]**

*[Note: Procuring Entities are advised to use Performance Security – Unconditional Demand Bank Guarantee instead of Performance Bond due to difficulties involved in calling Bond holder to action]*

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** _____ *[insert nameand Address of* Procuring Entity*]* **Date:** _____ *[Insert date of issue]*.

**PERFORMANCE BONDNo.:** _____

**Guarantor: [***Insert name and address of place of issue, unless indicated in the letterhead]*

1. By this Bond _____ as Principal (hereinafter called "the Contractor") and _____] as Surety (hereinafter called "the Surety"), are held and firmly bound unto _____] as Obligee (hereinafter called "the Procuring Entity") in the amount of _____ for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointlyand severally, firmly bythesepresents.

2. WHEREAS the Contractor has entered into a written Agreement with the Procuring Entity dated the _____ day of _____, 21 , for _____ in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof andarehereinafter referred toas theContract.

3. NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Procuring Entity to be, in default under the Contract, the Procuring Entity having performed the Procuring Entity's obligations thereunder, the Surety may promptly remedy thedefault, or shall promptly:
   1) completethe Contract in accordance with its terms and conditions; or
   2) obtain a tender or tenders from qualified tenderers for submission to the Procuring Entity for completing the Contract in accordance with its terms and conditions, and upon determination by the Procuring Entity and the Surety of the lowest responsive Tenderers, arrange for a Contract between such Tenderer, and Procuring Entity and make available as work progresses (even though there should be a default or a succession of defaults under the 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 Procuring Entity to Contractor under the Contract, less the amount properly paid by Procuring Entity to Contractor; or
   3) pay the Procuring Entity the amount required by Procuring Entity to complete the Contract in accordance with its terms andconditions up toa total not exceeding theamount of this Bond.

4. The Surety shall not beliablefor a greater sumthan the specified penalty of this Bond.

5. Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking-Over Certificate. No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Procuring Entity named herein or the heirs, executors, administrators, successors, and assigns of the Procuring Entity.

6. 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 _____ 21_____.

SIGNED ON_____on behalf of By……in the capacity of In thepresence of

SIGNED ON_____on behalf of By ..... in the capacity of In thepresence of

**FORM NO. 7 - ADVANCE PAYMENT SECURITY**

**[Demand Bank Guarantee]**

*[Guarantor letterhead]*

**Beneficiary:** _____*[Insert name and Address of* Procuring Entity*]*
**Date:** _____*[Insert date of issue]*

**ADVANCE PAYMENT GUARANTEE No.:** _____*[Insert guarantee reference number]* **Guarantor:** _____

_____**[***Insert name and address of place of issue, unless indicated in the letterhead]*

1. We have been informed that _____ (hereinafter called "the Contractor") has entered into Contract No. _____ *dated* _____ with the Beneficiary, for the execution of _____

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

3. At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ (*in words* _____)[1] upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:
   a) has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or
   b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Contractor on its account number _____ at _____.

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

6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months][one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

*[Name of Authorized Official, signature(s) and seals/stamps*]

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

[1] *The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency of the advance payment as specified in the Contract.*

[2] *Insert the expected expiration date of the Time for Completion. The Procuring Entity should note that in the event of an extension of the time for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.*

## FORM NO. 8 - RETENTION MONEY SECURITY

**[Demand Bank Guarantee]**

*[Guarantor letterhead]*

**Beneficiary:** _____*[Insertnameand Address of* Procuring Entity*]*

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

**Advance payment guarantee no.** *[Insert guarantee reference number]*

**Guarantor: [***Insert name and address of place of issue, unless indicated in the letterhead]*

1. We have beeninformed that_____*[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Contractor") has entered into Contract No. _____*[insert reference number of the contract]* dated_____with the Beneficiary, for the execution of_____*[insert name of contract and brief description of* Works*]* (hereinafter called "theContract").

2. Furthermore, we understand that, according to the conditions of the Contract, the Beneficiary retains moneys up to the limit set forth in the Contract ("the Retention Money"), and that when the Taking-Over Certificate has been issued under the Contract and the first half of the Retention Money has been certified for payment, and payment of *[*insert thesecond half of theRetention Money] is tobemadeagainst a Retention Money guarantee.

3. At the request of the Contractor, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]*_____(*[insert amount in words*_____*])*[1] upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Contractor is in breach of its obligation(s) under the Contract, without your needingtoprove or show grounds for your demand or thesumspecified therein.

4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the second half of the Retention Money as referred to above has been credited to the Contractor on its accou nt number_____at_____*[insert name and address of Applicant's bank]*.

5. This guarantee shall expire no later than the …..... Day of ….....……, 2.....[2], and any demand for payment under it must bereceived by us at theoffice indicated aboveon or beforethat date.

6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months] [one year],* in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor beforethe expiry of the guarantee.

*[Name of Authorized Official, signature(s) and seals/stamps*]

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

[1] *The Guarantor shall insert an amount representing the amount of the second half of the Retention Money.*

[2] *Insert a date that is twenty-eight days after the expiry of retention period after the actual completion date of the contract. The Procuring Entity should note that inthe event of an extension of this date for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Suchrequestmustbe in writingandmust bemadeprior to the expiration dateestablished in theguarantee.*

# INSTRUCTIONS TO TENDERERS.

## 1. General/Eligibility/Qualifications/Joint venture/Cost of tendering

1.1 The Employer as defined in the Appendix to Conditions of Contract invites tenders for Works Contract as described in the tender documents. The successful tenderer will be expected to complete the Works by the Intended Completion Date specified in the tender documents.

1.2 All tenderers shall provide the Qualification Information, a statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or has not been associated in the past, directly or indirectly, with the Consultant or any other entity that has prepared the design, specifications, and other documents for the project or being proposed as Project Manager for the Contract. A firm that has been engaged by the Employer to provide consulting services for the preparation or supervision of the Works, and any of its affiliates, shall not be eligible to tender.

1.3 All tenderers shall provide in the Form of Tender and Qualification Information, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.

1.4 In the event that pre-qualification of potential tenderers has been undertaken, only tenders from pre-qualified tenderers will be considered for award of Contract. These qualified tenderers should submit with their tenders any information updating their original pre-qualification applications or, alternatively, confirm in their tenders that the originally submitted pre-qualification information remains essentially correct as of the date of tender submission.

1.5 Where no pre-qualification of potential tenderers has been done, all tenderers shall include the following information and documents with their tenders, unless otherwise stated:

(a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the tender to commit the tenderer:

(b) total monetary value of construction work performed for each of the last five years:

© experience in works of a similar nature and size for each of the last five years, and details of work under way or contractually committed; and names and addresses of clients who may be contacted for further information on these contracts;

(d) major items of construction equipment proposed to carry out the Contract and an undertaking that they will be available for the Contract.

(e) qualifications and experience of key site management and technical personnel proposed for the Contract and an undertaking that they shall be available for the Contract.

(f) reports on the financial standing of the tenderer, such as profit and loss statements and auditor's reports for the past five years;

(g) evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);

(h) authority to seek references from the tenderer's bankers;

(i) information regarding any litigation, current or during the last five years, in which the tenderer is involved, the parties concerned and disputed amount; and

(j) proposals for subcontracting components of the Works amounting to more than 10 percent of the Contract Price.

1.6 Tenders submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated:

(a) the tender shall include all the information listed in clause 1.5 above for each joint venture partner;

(b) the tender shall be signed so as to be legally binding on all partners;

(c) all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms;

(d) one of the partners will be nominated as being in charge, authorised to incur liabilities, and receive instructions for and on behalf of all partners of the joint venture; and

(e) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.

1.7 To qualify for award of the Contract, tenderers shall meet the following minimum qualifying criteria;

(a) annual volume of construction work of at least 2.5 times the estimated annual cashflow for the Contract;

(b) experience as main contractor in the construction of at least

(c) two works of a nature and complexity equivalent to the Works over the last 10 years (to comply with this requirement, works cited should be at least 70 percent complete);

(d) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed as required for the Works;

(e) a Contract manager with at least five years' experience in works of an equivalent nature and volume, including no less than three years as Manager; and

(f) liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract, of no less than 4 months of the estimated payment flow under this Contract.

1.8 The figures for each of the partners of a joint venture shall be added together to determine the tenderer's compliance with the minimum qualifying criteria of clause 1.7 (a) and (e); however, for a joint venture to qualify, each of its partners must meet at least 25 percent of minimum criteria 1.7 (a), (b) and (e) for an individual tenderer, and the partner in charge at least 40 percent of those minimum criteria. Failure to comply with this requirement will result in rejection of the joint venture's tender. Subcontractors' experience and resources will not be taken into account in determining the tenderer's compliance with the qualifying criteria, unless otherwise stated.

1.9 Each tenderer shall submit only one tender, either individually or as a partner in a joint venture. A tenderer who submits or participates in more than one tender (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the proposals with the tenderer's participation to be disqualified.

1.10 The tenderer shall bear all costs associated with the preparation and submission of his tender, and the Employer will in no case be responsible or liable for those costs.

1.11 The tenderer, at the tenderer's own responsibility and risk, is encouraged to visit and examine the Site of the Works and its surroundings, and obtain all information that may be necessary for preparing the tender and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the tenderer's own expense.

1.12 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.

1.13 The price to be changed for the tender document shall not exceed Kshs.1,000/=

1.14 The procuring entity shall allow the tenderer to review the tender document free of charge before purchase.

## 2. Tender Documents

2.1 The complete set of tender documents comprises the documents listed below and any addenda issued in accordance with Clause 2.4.

(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

2.2 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.

2.3 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.

2.4 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.

2.5 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.

## 3. Preparation of Tenders

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

3.2 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; and

(f) Any other materials required to be completed and submitted by the tenderers.

3.3 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.

3.4 he 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.

3.5 The unit rates and prices shall be in Kenya Shillings.

3.6 Tenders shall remain valid for a period of One Hundred Twenty (120) 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.

3.7 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

3.8 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.

3.9 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 "……".

3.10 The Tender Securities of unsuccessful tenderers will be returned within 28 days of the end of the tender validity period specified in Clause 3.6.

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

3.12 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;

© in the case of a successful tenderer, if the tenderer fails within the specified time limit to

(d)

(i) sign the Agreement, or

(ii) furnish the required Performance Security.

3.13 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.

3.14 The tenderer shall prepare one original of the documents comprising the tender documents as described in Clause 3.2 of these Instructions to Tenderers, bound with the volume containing the Form of Tender, and clearly marked "ORIGINAL". In addition, the tenderer shall submit copies of the tender, in the number specified in the invitation to tender, and clearly marked as "COPIES". In the event of discrepancy between them, the original shall prevail.

3.15 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by a person or persons duly authorised to sign on behalf of the tenderer, pursuant to Clause 1.5 (a) or 1.6 (b), as the case may be. All pages of the tender where alterations or additions have been made shall be initialled by the person or persons signing the tender.

3.16 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.

3.17 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.

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

## 4. Submission of Tenders

4.1 The tenderer shall seal the original and all copies of the tender in two inner envelopes and one outer envelope, duly marking the inner envelopes as "**ORIGINAL**" and "**COPIES**" as appropriate. The inner and outer envelopes shall:

(a) be addressed to the Employer at the address provided in the invitation to tender;

(b) bear the name and identification number of the Contract as defined in the invitation to tender; and

(c) provide a warning not to open before the specified time and date for tender opening.

4.2 Tenders shall be delivered to the Employer at the address specified above not later than the time and date specified in the invitation to tender. However, the Employer may extend the deadline for submission of tenders by issuing an amendment in accordance with Sub-Clause 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.

4.3 Any tender received after the deadline prescribed in clause 4.2 will be returned to the tenderer un-opened.

4.4 Tenderers may modify or withdraw their tenders by giving notice in writing before the deadline prescribed in clause 4.2. Each tenderer's modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with clause 3.13 and 4.1, with the outer and inner envelopes additionally marked "**MODIFICATION** "and "**WITHDRAWAL**", as appropriate. No tender may be modified after the deadline for submission of tenders.

4.5 Withdrawal of a tender between the deadline for submission of tenders and the expiration of the period of tender validity specified in the invitation to tender or as extended pursuant to Clause 3.6 may result in the forfeiture of the Tender Security pursuant to Clause 3.11.

4.6 Tenderers may only offer discounts to, or otherwise modify the prices of their tenders by submitting tender modifications in accordance with Clause 4.4 or be included in the original tender submission.

## 5. Tender Opening and Evaluation

5.1 The tenders will be opened by the Employer, including modifications made pursuant to Clause 4.4, in the presence of the tenderers' representatives who choose to attend at the time and in the place specified in the invitation to tender. Envelopes marked "**WITHDRAWAL**" shall be opened and read out first. Tenderers' and Employer's representatives who are present during the opening shall sign a register evidencing their attendance.

5.2 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.

5.3 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.

5.4 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.

5.5 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.

5.6 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.

5.7 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 will prevail; and

(b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will prevail, unless in the opinion of the Employer, there is an obvious typographical error, in which case the adjustment will be made to the entry containing that error.

(c) In the event of a discrepancy between the tender amount as stated in the Form of Tender and the corrected tender figure in the main summary of the Bill of Quantities, the amount as stated in the Form of Tender shall prevail.

(d) The Error Correction Factor shall be computed by expressing the difference between the tender amount and the corrected tender sum as a percentage of the corrected Builder's Work (i.e. Corrected tender sum less P.C. and Provisional Sums)

(e) The Error Correction Factor shall be applied to all Builder's Work (as a rebate or addition as the case may be) for the purposes of valuations for Interim Certificates and valuation of variations.

(f) the amount stated in the tender will be adjusted in accordance with the above procedure for the correction of errors and, with concurrence of the tenderer, shall be considered as binding upon the tenderer. If the tenderer does not accept the corrected amount, the tender may be rejected and the Tender Security may be forfeited in accordance with clause 3.11.

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

5.9 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 Dayworks 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

5.10 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.

5.11 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.

5.12 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 an non-indigenous sub-contractor.

## 6. Award of Contract

6.1 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.

6.2 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.

6.3 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.

6.4 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.

6.5 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

6.6 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.

6.7 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.

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

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

6.10 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.

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

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

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

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

6.15 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.

6.16 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.

## 7. Corrupt and Fraudulent practices

7.1 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.

# CONDITIONS OF CONTRACT

## 1. Definitions

1.1 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.

**"Dayworks"** 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 Cap 530.

**"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

2.1 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.

2.2 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).

2.3 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) Specifications,

(7) Drawings,

(8) Bill of Quantities,

(9) 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

3.1 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

**4.1** 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

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

## 6 Communications

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

## 7 Subcontracting

7.1 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

8.1 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

9.1 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

10.1 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

11.1 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.

11.2 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.

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

## 12. Discoveries

12.1 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

13.1 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

14.1 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

15.1 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

16.1 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

17.1 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.

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

## 18. Management Meetings

18.1 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

19.1 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.

19.2 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

20.1 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.

20.2 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.

20.3 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

21.1 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.

21.2 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.

21.3 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

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

22.2 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.

22.3 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, or if 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.

22.4 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.

22.5 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.

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

22.7 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

23.1 The Contractor shall submit to the Project Manager monthly applications for payment giving sufficient details of the Work done and materials on Site and the amounts which the Contractor considers himself to be entitled to. The Project Manager shall check the monthly application and certify the amount to be paid to the Contractor within 14 days. The value of Work executed and payable shall be determined by the Project Manager.

23.2 The value of Work executed shall comprise the value of the quantities of the items in the Bills of Quantities completed, materials delivered on Site, variations and compensation events. Such materials shall become the property of the Employer once the Employer has paid the Contractor for their value . Thereafter, they shall not be removed from Site without the Project Manager's instructions except for use upon the Works.

23.3 Payments shall be adjusted for deductions for retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 30 days of the date of issue of each certificate. If the Employer makes a late payment, the Contractor shall be paid simple interest on the late payment in the next payment. Interest shall be calculated on the basis of number of days delayed at a rate three percentage points above the Central Bank of Kenya's average rate for base lending prevailing as of the first day the payment becomes overdue.

23.4 If an amount certified is increased in a later certificate or as a result of an award by an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.

23.5 Items of the Works for which no rate or price has been entered in will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.

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

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

a) On signature of the Contract, the Contractor shall at his request, and without furnishing proof of expenditure, be entitled to an advance of 10% (ten percent) of the original amount of the Contract. The advance shall not be subject to retention money.

b) No advance payment may be made before the Contractor has submitted proof of the establishment of deposit or a directly liable guarantee satisfactory to the Employer in the amount of the advance payment. The guarantee shall be in the same currency as the advance.

c) Reimbursement of the lump sum advance shall be made by deductions from the Interim payments and where applicable from the balance owing to the Contractor. Reimbursement shall begin when the amount of the sums due under the Contract reaches 20% of the original amount of the Contract. It shall have been completed by the time 80% of this amount is reached.

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

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

Where:

R = the amount to be reimbursed

A = the amount of the advance which has been granted

$X^1$ = the amount of proposed cumulative payments as a percentage of the original amount of the Contract. This figure will exceed 20% but not exceed 80%.

$X^{11}$ = the amount of the previous cumulative payments as a percentage of the original amount of the Contract. This figure will be below 80%but not less than 20%.

d) with each reimbursement the counterpart of the directly liable guarantee may be reduced accordingly.

## 24. Compensation Events

24.1 The following issues shall constitute Compensation Events:

(a) The Employer does not give access to a part of the Site by the Site Possession Date stated in the Appendix to Conditions of Contract.

(b) The Employer modifies the List of Other Contractors, etc., in a way that affects the Work of the Contractor under the Contract.

(c) The Project Manager orders a delay or does not issue drawings, specifications or instructions required for execution of the Works on time.

(d) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon the Work, which is then found to have no defects.

(e) The Project Manager unreasonably does not approve a subcontract to be let.

(f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to tenderers (including the Site investigation reports), from information available publicly and from a visual inspection of the Site.

(g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer or additional work required for safety or other reasons.

(h) Other contractors, public authorities, utilities, or the Employer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.

(i) The effects on the Contractor of any of the Employer's risks.

(j) The Project Manager unreasonably delays issuing a Certificate of Completion.

(k) Other compensation events described in the Contract or determined by the Project Manager shall apply.

24.2 If a compensation event would cause additional cost or would prevent the Work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.

24.3 As soon as information demonstrating the effect of each compensation event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager will assume that the Contractor will react competently and promptly to the event.

24.4 The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor not having given early warning or not having co-operated with the Project Manager.

24.5 Prices shall be adjusted for fluctuations in the cost of inputs only if provided for in the Appendix to Conditions of Contract.

24.6 The Contractor shall give written notice to the Project Manager of his intention to make a claim within thirty days after the event giving rise to the claim has first arisen. The claim shall be submitted within thirty days thereafter.

Provided always that should the event giving rise to the claim of continuing effect, the Contractor shall submit an interim claim within the said thirty days and a final claim within thirty days of the end of the event giving rise to the claim.

## 25. Price Adjustment

25.1 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.

25.2 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 may be.

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

(i) The prices contained in the Contract Bills of Quantities shall be deemed to be based upon the rates of wages and other 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 Price 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.

25.4 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.

25.5 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.

25.6 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.

25.7 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.

## 26. Retention

26.1 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.

## 27. Liquidated Damages

27.1 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.

27.2 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

## 28. Securities

28.1 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.

## 29. Dayworks

29.1 If applicable, the Dayworks 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.

29.2 All work to be paid for as Dayworks 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.

29.3 The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

## 30. Liability and Insurance

30.1 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 to;

(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.

30.2 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

© the activities of the Contractor on the Site after the Completion Date.

30.3 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;
© loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract, and
(d) personal injury or death.

30.4 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.

30.5 If the Contractor does not provide any of the policies and certificates required, the Employer may effect 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.

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

## 31. Completion and taking over

31.1 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's issuing a Certificate of Completion.

## 32. Final Account

32.1 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. If the final account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a Payment Certificate. The Employer shall pay the Contractor the amount due in the Final Certificate within 60 days.

## 33. Termination

33.1 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 30 days when no stoppage of work is shown on the current program and the stoppage has not been authorised by the Project Manager;

(b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 30 days;

(c) the Contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation;

(d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 30 days (for Interim Certificate) or 60 days (for Final Certificate)of issue.

(e) the Project Manager gives notice that failure to correct a particular defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;

(f) the Contractor does not maintain a security, which is required.

33.2 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under Clause 33.1 above, the Project Manager shall decide whether the breach is fundamental or not.

33.3 Notwithstanding the above, the Employer may terminate the Contract for convenience.

33.4 If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible. The Project Manager 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.

## 34. Payment Upon Termination

34.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the Work done and materials ordered and delivered to Site up to the date of the issue of the certificate. Additional liquidated damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor, the difference shall be a debt payable by the Contractor.

34.2 If the Contract is terminated for the Employer's convenience or because of a fundamental breach of Contract by the Employer, the Project Manager shall issue a certificate for the value of the Work done, materials ordered, the reasonable cost of removal of equipment, repatriation of the Contractor's personnel employed solely on the

Works, and the Contractor's costs of protecting and securing the Works.

34.3 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 the Site, plant, equipment and temporary works.

34.4 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 Project Manager may in writing specify, any temporary buildings, plant, machinery, appliances, goods or materials belonging to or hired by him, and in default 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 Project Manager 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.

## 35. Release from Performance

35.1 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.

## 36. Corrupt gifts and payments of commission

36.1 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.

## 37. Settlement Of Disputes

37.1 In case any dispute or difference shall arise between the Employer or the Project Manager on his behalf and the Contractor, either during the progress or after the completion or termination of the Works, such dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred 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 or Vice Chairman of any of the following professional institutions;

(i) Architectural Association of Kenya

(ii) Institute of Quantity Surveyors of Kenya

(iii) Association of Consulting Engineers of Kenya

(iv) Chartered Institute of Arbitrators (Kenya Branch)

(v) Institution of Engineers of Kenya

On the request of the applying party. The institution written to first by the aggrieved party shall take precedence over all other institutions.

37.2 The arbitration may be on the construction of this Contract or on any matter or thing of whatsoever nature arising thereunder or in connection therewith, including any matter or thing left by this Contract to the discretion of the Project Manager, or the withholding by the Project Manager of any certificate to which the Contractor may claim to be entitled to or the measurement and valuation referred to in clause 23.0 of these conditions, or the rights and liabilities of the parties subsequent to the termination of Contract.

37.3 Provided that no arbitration proceedings shall be commenced on any dispute or difference where notice of a dispute or difference has not

been given by the applying party within ninety days of the occurrence or discovery of the matter or issue giving rise to the dispute.

37.4 Notwithstanding the issue of a notice as stated above, the arbitration of such a dispute or difference shall not commence unless an attempt has in the first instance been made by the parties to settle such dispute or difference amicably with or without the assistance of third parties. Proof of such attempt shall be required.

37.5 Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Works or abandonment of the Works or termination of the Contract by either party:

37.5.1 The appointment of a replacement Project Manager upon the said person ceasing to act.

37.5.2 Whether or not the issue of an instruction by the Project Manager is empowered by these Conditions.

37.5.3 Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.

37.5.4 Any dispute or difference arising in respect of war risks or war damage.

37.6 All other matters shall only be referred to arbitration after the completion or alleged completion of the Works or termination or alleged termination of the Contract, unless the Employer and the Contractor agree otherwise in writing.

37.7 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.

37.8 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision requirement or notice had been given.

37.9 The award of such Arbitrator shall be final and binding upon the parties.

# SECTION IV – APPENDIX TO CONDITIONS OF CONTRACT

THE EMPLOYER IS

Name: **BORESHA SACCO**

Address: **P.O. BOX 80 – 20103 ELDAMA RAVINE**
The Project Manager is

Facsimile:

The name (and identification number) of the Contract is **PROPOSED BORESHA PLAZA ON PLOT NO.255 MARIGAT TOWNSHIP**

The Works consist of **Construction of Offices.**
**as per the specifications and Bills of Quantities.**

The Start Date shall be **to be agreed with the project Manager**

The Intended Completion Date for the whole of the Works shall be
**56 Weeks after commencement date.**

The following documents also form part of the Contract:
**As listed in clause 2.1 of the Conditions of Contract**

The Contractor shall submit a revised program for the Works within 14 days of delivery of the Letter of Acceptance.

The Site Possession Date shall be **to be agreed with the project Manager**
The Site is located at – MARIGAT
and is defined in drawings
nos._____

_____

The Defects Liability period is **180** days.

Other Contractors, utilities etc., to be engaged by the Employer on the Site Include those for the execution of ;

**1.Builders Works**
**2.Plumbing Works**
**3.Electrical Works**

The minimum insurance covers shall be;

1 The minimum cover for insurance of the Works and of Plant and Materials in respect of the Contractor's faulty design is_____**Nil**_____

2 The minimum cover for loss or damage to Equipment is_____**Nil**_____

3 The minimum for insurance of other property is__**Kshs. 500,000.00**_____

4 The minimum cover for personal injury or death insurance

For the Contractor's employees is_____ **Kshs. 500,000.00**_____

And for other people is_____ **Kshs. 1,000,000.00**_____

The following events shall also be Compensation Events:

1 **NONE OTHER THAN AS DEFINED IN THESE CONDITIONS OF CONTRACT**

2 _____

3 _____

4 _____

The period between Program updates is _____**14**_____ days.

The amount to be withheld for late submission of an updated Program is **FULL CERTIFICATE**

The proportion of payments retained is _____**10**_____ percent.

The Price Adjustment Clause _____**SHALL NOT**_____ apply

The liquidated damages for the whole of the Works is **Kshs. _5,000.OO_(per Week)**

The Performance Security shall be for the following minimum amounts equivalent as a percentage of the Contract Price----**5**-------- percent (%)

The Completion Period for the Works is_____24_____[Weeks]

The rate of exchange for calculation of foreign currency payments is **NOT APPLICABLE**

The schedule of basic rates used in pricing by the Contractor is as **ISSUED BY THE JOINT BUILDING COUNCIL (JBC - KENYA) THIRTY DAYS BEFORE THE DATE OF SUBMISSION OF TENDERS**

Advance Payment **SHALL NOT APPLY**

The Bidder should submit **ONLY ONE (1 No.) ORIGINAL COPY** of the Bills of Quantities and **NOT TWO (2 No.)** as indicated in clause 4.1 of the Instruction To Tenderers.

| Item no | Descrption | Unit | Qty | Rate | Amount KSHs |
|---|---|---|---|---|---|
| | **SECTION NO. 1**<br>**PRELIMINARIES**<br><br>**LOCATION OF THE SITE**<br>The site of the proposed works is at Plot No. 255 MARIGAT TOWNSHIP BARINGO COUNTY<br><br>**SCOPE OF CONTRACT AND DESCRIPTION OF THE WORKS** | | | | |
| A | The works comprises construction of Office Block Compririsng of a Banking Hall and associated Mechanical works.<br><br>The construction comprises,solid floors, structural concrete, Concerete slab and partial timber roof, stone external and internal walls, steel casement windows,and timber doors; plastered and painted walls, plastered and painted ceilings, ceramic floor tiles and coloured wall and floor tiles, joinery fittings etc.<br><br>Services comprise electrical installations, special installations, internal plumbing to be executed by either Main Contractor or Domestic subcontractor | ITEM | | | |
| B | External works comprising septic tank,foul and storm water drainage.etc | ITEM | | | |
| | **DEFINITIONS** | | | | |
| C | Abbreviations used in the Bills of Quantities shall be interpreted as follows:-<br><br>"Approved" shall mean: approved by the Architect<br>"as described" shall mean: as described in the<br><br>"as directed" shall mean: as directed by the Designer<br><br>"B.S." shall mean: the Bristish Standards Institution,2 Park Street, London, W.I, England<br><br>"KBS" shall mean: The Kenya Bureau of Standards Specification<br><br>**DEFINITIONS AND ABBREVIATIONS ( cont'd )**<br>"KG" shall mean: Kilogrammes<br>"No" shall mean: Number<br>"M" shall mean: Linear Metres<br>"M2" shall mean: Square Metres<br>"M3" shall mean: Cubic Metres<br>"Ditto" shall mean: Above | ITEM | | | |
| | **Total carried to collection** | **-1/1-** | | | |

| Item no | Descrption | Unit | Qty | Rate | Amount KSHs |
|---|---|---|---|---|---|
| | **INSURANCE OF WORKS** | | | | |
| A | Allow for the insurance of the works | ITEM | | | |
| | **HOARDING** | | | | |
| B | The Contractor shall enclose the site or part of the works under construction with a hoarding 2400 mm high consisting of clean gauge 30 iron sheets on 100 x 50 mm timber posts firmly secured at 1800 mm centres with two 75 x 50 mm timber rails. The Contractor is in addition required to take all precautions necessary for the safe custody of the works, materials, plant, public and Employer's property on the site. (Hoarding length approx 565 LM) | ITEM | | | |
| | **OFFICES AND SHED** | | | | |
| C | Allow for erection and maintainance of temporary office accommodation and ample temporary water tight sheds for the proper storage and protection of materials vulnerable to weather. | ITEM | | | |
| | **WATCHING AND LIGHTING** | | | | |
| D | Allow for the provision of all watching as necessary to safe guard the works, plants and materials against damage and theft. | ITEM | | | |
| | **STORE** | | | | |
| E | Allow for erection and maintainance of temporary store and ample temporary water tight sheds for the proper storage and protection of materials vulnerable to weather. | ITEM | | | |
| | **MATERIALS, TOOLS, PLANT AND SCAFFOLDINGS** | | | | |
| F | Allow for the provision of all materials, scaffolding, tools, plant, transport and workmen required for the works except in so far as may be stated otherwise herein. | ITEM | | | |
| | **SECURITY OF WORKS AND FENCING** | | | | |
| G | The contractor shall be entirely responsible and shall pay security of all works, stores, materials, plant, personnel etc both his own and sub-contractors and shall also provide all necessary watching, lighting, and other precautions as necessary to ensure the security, the safety and protection of the public. | ITEM | | | |
| H | Allow a sum of Kenya Shillings ( Kshs1,300,000/=) for Management expenses including transport,airtime and Lunches to be used as directed by the project manager or deducted in whole or in part as the case may be. | | | | 1,300,000 |
| | **Total carried to collection** | **-1/2-** | | | |

| Item no | Descrption | Unit | Qty | Rate | Amount KSHs |
|---|---|---|---|---|---|
| | **WATER** | | | | |
| | All water shall be fresh, clean and pure, free from earthly vegetable or organic matter, acid or alkaline substance in solution or suspension. | ITEM | | | 100,000 |
| | **CONCRETE TEST** | | | | |
| | Note: The contractor must allow in his rates all costs in connection with the making of cubes, curing, transport, crushing by an approved testing Authority and obtaining the test certificate | ITEM | | | 25,000 |
| | Set of fourty 150 x 150 x 150mm concrete test cubes | | | | |
| | 100sets (Provisional @ Kshs.....each set) | | | | |
| | *Contractor to insert rate and extend | | | | |
| | **SANITATION OF THE WORKS** | | | | |
| G | The sanitation of the works shall be provided, maintained and removed on completion by the Contractor to the satisfaction of the Architects and local Authorities. | ITEM | | | 50,000 |
| | **SIGN BOARD** | | | | |
| H | Allow for the provision and erection of project signboard and maintainance during the whole period of the building operation and removal at completion, one approved temporary notice board to the Architect's standard design giving a brief description of the works. | ITEM | | | 25,000 |
| | **REMOVAL OF PLANT AND RUBBISH ETC** | | | | |
| A | Allow for, upon completion of the works, removal and clearing away all temporary buildings, plant, rubbish and unused materials, and leaving the whole of the site of the works in a clean and tidy state to the satisfaction of the Architect. | ITEM | | | |
| | Allow a provisional sum for Geotechnical Survey | | | | 300,000 |
| | **Total carried to collection below** | | | | |
| | **Collection** | | | | |
| | Brought Forward From Page -1/1- | | | | |
| | Brought Forward From Page -1/2- | | | | |
| | Brought Forward From Page Above | | | | |
| | **Total Carried to Summary.** | | **-1/3-** | | |

| Item no | Description | Unit | Qty | Rate | Amount KSHs |
|---|---|---|---|---|---|
| | **PROPOSED BORESHA PLAZA ON PLOT NO.255 MARIGAT TOWNSHIP** | | | | |
| | **EXCAVATION & FILLING (ALL PROVISIONAL)** | | | | |
| | **ELEMENT No.1** | | | | |
| | **Site Clearance** | | | | |
| A | Clear site of small bushes and grub roots of small trees and cart | m2 | 827 | | |
| | **Excavation** | | | | |
| B | Excavate average 500mm deep to remove vegetable top soil and cart away from site | m3 | 310 | | |
| | Excavate 0.05-1.0m deep starting from reduced level | | | | |
| C | Column bases | m3 | 68 | | |
| | Ditto over 1.5m deep but not exceeding 3.0m deep | | | | |
| D | Column bases | m3 | 68 | | |
| | **Planking and strutting** | | | | |
| E | Allow for Planking and strutting to sides of all excavations including keeping excavations free from fallen materials | | Item | | |
| | **Disposal of water** | | | | |
| F | Allow for keeping excavation free from all water by pumping, bailing or otherwise | | Item | | |
| | **Fillings** | | | | |
| G | Return fill and compact selected excavated earthfilling in foundation to make up levels | m3 | 126 | | |
| | **Disposal of Surplus Spoil:-** | | | | |
| H | Remove surplus spoil from the site | m3 | 357 | | |
| | **Damp Proof Membrane** | | | | |
| J | 1000g Polythene damp proof membrane laid under floor bed with 300mm side and end lap ( measured nett allow for laps) | m2 | 310 | | |
| | **Approved Imported Filling** | | | | |
| K | 300mm thick Approved imported hardcore filling; well rolled and compacted in 4 layers not exceeding 150mm deep to 96% compaction at optimum moisture content | m3 | 124 | | |
| L | 50mm Thick stone dust blinding to hardcore surfaces (M.S) | m2 | 827 | | |
| | **Carried to Collection** | | | | |

| Item no | Description | Unit | Qty | Rate | Amount KSHs |
|---|---|---|---|---|---|
| | **Anti-Termite Treatment** | | | | |
| A | Chemical anti-termite treatment to subsoil or filling: RENTOKIL. or equal approved: provide a ten year guarantee | m2 | 827 | | |
| | **Total carried to collection below** | | | | |
| | **COLLECTION** | | | | |
| | Brought Forward From Page 1 | | | | |
| | Brought Forward From Page Above | | | | |
| | **Carried to summary** | | | | |

| Item no | Description | Unit | Qty | Rate | Amount KSHs |
|---|---|---|---|---|---|
| | **SUBSTRUCTURE CONCRETE WORKS** | | | | |
| | Plain concrete class 15 (mix 1:3:6) as described, in:- | | | | |
| A | 50mm Thick surface blinding under column foundation | m2 | 113 | | |
| | Insitu concrete class 25/20 , vibrated and reinforced as described, in:- | | | | |
| B | Column bases | m3 | 55 | | |
| C | Columns | m3 | 21 | | |
| D | 150mm thick Ground Floor Slab | m2 | 827 | | |
| E | Entrance steps | m3 | 4 | | |
| | **Reinforcement**<br>High tensile steel reinforcement to B.S. 4461 in structural concrete work including cutting, bending, hoisting, fixing, tying wire and spacing blocks | | | | |
| | Column bases | | | | |
| F | D16 | kg | 3,850 | | |
| | Columns | | | | |
| G | D8 | kg | 955 | | |
| H | D12 | kg | 1,400 | | |
| J | D16 | kg | 2,800 | | |
| | **Carried to Collection** | | | | |

| Item no | Description | Unit | Qty | Rate | Amount KSHs |
|---|---|---|---|---|---|
| | Mesh fabric reinforcement to B.S. 4483 and setting in concrete with 300mm side and end laps (measured nett-allow for laps) | | | | |
| A | Fabric mesh ref: A142 weighing 2.22kg per square metre in floor | m2 | 827 | | |
| | Sawn formwork to:- | | | | |
| B | Ditto Column bases | m2 | 62 | | |
| C | Ditto column | m2 | 88 | | |
| D | Ditto egdes of slabs, girth 75mm-150mm high | m | 114 | | |
| | Paving slabs around building | | | | |
| E | 200mm Thick well watered and compacted murram filling | m2 | 99 | | |
| F | Treat surface of murram with approved weed killer | m2 | 99 | | |
| G | 50mm thick levelled consolidated bed of sand | m2 | 99 | | |
| | Precast concrete (1:2:4/20) class 20/20 fair faced including moulds: bedded jointed and pointed in cement and sand (1:4) mortar as described | | | | |
| H | 600 x 600 x 50mm Thick paving slabs laid on bed of sand(m.s.) | m2 | 53 | | |
| | Mass concrete (1:3:6/38-38mm aggregate) | | | | |
| J | Ex. 50 x 50mm splayed edging to paving slabs(m.s.) | m | 98 | | |
| | Total carried to collection below | | | | |
| | **COLLECTION** | | | | |
| | Brought Forward From Page 3 | | | | |
| | Brought Forward From Page Above | | | | |
| | **Carried to summary** | | | | |

| Item no | Description | Unit | Qty | Rate | Amount KSHs |
|---|---|---|---|---|---|
| | **MASONRY WORK-SUBSTRUCTURES** | | | | |
| | Load bearing natural stone walling, jointed in cement and sand (1:4) mortar with and including No. 20 gauge hoop iron ties 450mm long x 25mm wide bent and tacked into formwork with one end cast into concrete and straightened after removal of formwork and built into mortar joint of walling. | | | | |
| A | 200mm Thick wall in foundations | m2 | 245 | | |
| | **Carried to summary** | | | | |

| Item no | Description | Unit | Qty | Rate | Amount KSHs |
|---|---|---|---|---|---|
| | **SUPERSTRUCTURE CONCRETE** | | | | |
| | Insitu concrete class 20/20 , vibrated and reinforced as described, in:- | | | | |
| A | Columns | m3 | 14 | | |
| B | Beams | m3 | 18 | | |
| C | Monolithic wall(strong rooms) | m3 | 9 | | |
| D | 150mm thick staircase landing | m2 | 12 | | |
| E | Steps | m3 | 2 | | |
| F | 150mm thick sloping soffits | m2 | 30 | | |
| G | 150 mm thick suspended floor | m2 | 812 | | |
| | **Reinforcement**<br>High tensile steel reinforcement to B.S. 4461 in structural concrete work including cutting, bending, hoisting, fixing, tying wire and spacing blocks | | | | |
| | Columns | | | | |
| H | D8 | kg | 587 | | |
| J | D16 | kg | 1,750 | | |
| | Beams | | | | |
| K | D8 | kg | 812 | | |
| L | D16 | kg | 1,350 | | |
| | Suspended Slab | | | | |
| M | D10 | kg | 14,500 | | |
| | **Carried to Collection** | | | | |

| Item no | Description | Unit | Qty | Rate | Amount KSHs |
|---|---|---|---|---|---|
| | Staircase | | | | |
| A | D8 | kg | 95 | | |
| B | D10 | kg | 139 | | |
| C | D12 | kg | 76 | | |
| | Sawn formwork to:- | | | | |
| D | Vertical sides of beam | m2 | 158 | | |
| E | Ditto column | m2 | 184 | | |
| F | Soffits of suspended slab | m2 | 812 | | |
| G | Ditto egdes of slabs, girth 300mm-375mm high | m | 216 | | |
| H | Soffits of landings | m2 | 45 | | |
| J | Sloping soffits of stairs | m2 | 30 | | |
| K | Edges of risers over 75mm but not exceeding 150mm high | m | 44 | | |
| L | Edges of open raking string to steps 300mm high (extreme), cut and fitted to profile of treads and risers | m | 27 | | |
| | **Total carried to collection below** | | | | |
| | **COLLECTION** | | | | |
| | Brought Forward From Page -6- | | | | |
| | Brought Forward From Page Above | | | | |
| | **Carried to summary** | | | | |

| Item no | Description | Unit | Qty | Rate | Amount KSHs |
|---|---|---|---|---|---|
| | **SUPERSTRUCTURE MASONRY WORK** | | | | |
| | Machine cut natural stone wall; load bearing 7.0 N/mm$^2$; bedded and jointed in cement and sand (1:4) mortar reinforced with 25mm x 20mm gauge hoop iron at every alternate course as described in; | | | | |
| A | 200mm thick external walling | m2 | 298 | | |
| B | Ditto internal walling | m2 | 356 | | |
| | **Carried to summary** | | | | |

| Item no | Description | Unit | Qty | Rate | Amount KSHs |
|---|---|---|---|---|---|
| | **WINDOWS** | | | | |
| | Supply and fix the following ex- shop purpose made welded mild steel casement windows comprising of standard z-section framing including all couplings mullions and or transomes;metal gauze permanent vents; complete with approved brass fasteners and stays for window size:- | | | | |
| A | Window size 2400 x 1500mm High - | no | 8 | | |
| B | Ditto 2100 x 1500mm High - | no | 3 | | |
| C | Ditto 1800 x 1500mm High - | no | 3 | | |
| D | Ditto 1500 x 1500mm High - | no | 3 | | |
| E | Ditto 450x 600mm High - | no | 15 | | |
| | **Curtain rods** | | | | |
| F | Aluminium `I' section curtain track : fixed with screws : complete with brackets, runners, overlaps and stop ends | m | 120 | | |
| | **Window Board** | | | | |
| | Wrot hardwood; selected and kept clean | | | | |
| G | 25 x 250mm Window board : two labours plugged and pellated (provisional) | m | 120 | | |
| | **Window cill** | | | | |
| | "First Quality" Clay flooring tiles and fittings as manufactured by "Kenya Clay Products Ltd" bedded and jointed in cement and sand 1:1 and pointed in tinted cement | | | | |
| H | Window cill size 225 x 25mm cill fixed to falls and ends built into blockwork | m | 178 | | |
| | **Carried to summary** | | | | |

| Item no | Description | Unit | Qty | Rate | Amount KSHs |
|---|---|---|---|---|---|
| | **DOORS** | | | | |
| | **Mahogany Panel Timber Door**<br>45mm thick Mahogany Panel Timber Door and frame comprising of solid hardwood panels ; 150 x 50mm hard wood frame with 25mm quadrant beading and 40 x 25 mm architraves with surfaces primed back; all exposed surfaces finished with three (3) coats approved lacquer/varnish all to the Architect's drawings | | | | |
| A | Overall size 900 x 2400 mm high : single leaf door leaves size 800 x 2050 mm high in 4No. Solid mohagony panels, 800 x 250 mm high fanlight with 4mm thick clear sheet glass infill. - | no | 9 | | |
| | **Semi Solid Core Flush Doors**<br>45mm thick Solid core hardwood veneered flush door and frame comprising of solid hardwood panels ; 150 x 50mm hard wood frame with 25mm quadrant beading and 40 x 25 mm architraves with surfaces primed back; all exposed surfaces finished with three (3) coats approved lacquer/varnish all to the Architect's drawings | | | | |
| B | Overall size 900 x 2100 mm high : single leaf door leaves size 800 x 2050 mm high. - | no | 20 | | |
| C | Ditto but steel door 1500x2100mm high | no | 3 | | |
| D | Ditto but steel door 9000x2100mm high(Strong room) | no | 2 | | |
| | **Carried to Collection** | | | | |

| Item no | Description | Unit | Qty | Rate | Amount KSHs |
|---|---|---|---|---|---|
| | **Ironmongery** | | | | |
| | Brass' ironmongery as'Union' or other equal and approved manufacturer(s); complete with matching handles, fixing screws and accessories | | | | |
| A | Three lever mortice lock; with lever handles | no | 15 | | |
| B | Two lever mortice lock; with lever handles | no | 13 | | |
| C | 100mm Heavy duty brass BUTT hinges | prs | 42 | | |
| D | 38mm Diameter rubber door stop | no | 27 | | |
| | **Total carried to collection below** | | | | |
| | **COLLECTION** | | | | |
| | Brought Forward From Page -10- | | | | |
| | Brought Forward From Page Above | | | | |
| | **Total carried to Summary** | | | | |

| Item no | Description | Unit | Qty | Rate | Amount KSHs |
|---|---|---|---|---|---|
| | **PLASTER, SCREED & BACKING** | | | | |
| | **Floor screeding**<br>Cement and sand (1:4) screed as described in:- | | | | |
| A | 28mm thick to receive ceramic floor tiles | m2 | 756 | | |
| B | Ditto non slip ceramic floor tiles | m2 | 44 | | |
| C | Ditto Rustic ceramic floor tiles | m2 | 28 | | |
| | **Wall backing**<br>15mm thick cement and sand (1:4) backing as described to:- | | | | |
| D | Masonry walling | m2 | 81 | | |
| | **Plaster work**<br>12mm (minimum) Two coat cement & sand (1:4) plaster, with steel trowelled finish , as described to:- | | | | |
| E | Soffits of suspended Slab | m2 | 827 | | |
| F | Slopping soffits of Stairs | m2 | 20 | | |
| G | Masonry walling Internally | m2 | 480 | | |
| H | Reveals opening | m2 | 76 | | |
| | 15mm thick woodfloated waterproof Cement and sand (1:4) rendering as described to:- | | | | |
| J | External masonry & concrete surfaces | m2 | 298 | | |
| K | Revels opening | m2 | 76 | | |
| | **Total carried to Summary** | | | | |

| Item no | Description | Unit | Qty | Rate | Amount KSHs |
|---|---|---|---|---|---|
| | **CEILING FINISHES** | | | | |
| | **Gypsum Ceiling**<br>12mm thick one stepped suspended Gypsum ceiling with 250mm deep decking on 50x38 steel fixing studs with all fixing accessories in; | | | | |
| A | Offices | m2 | 76 | | |
| B | 150mm wide cornice | m | 96 | | |
| | **Total carried to Summary** | | | | |

| Item no | Description | Unit | Qty | Rate | Amount KSHs |
|---|---|---|---|---|---|
| | **TILE WORKS** | | | | |
| | **Ceramic Floor Tiles**<br>600x600x9mm thick coloured ceramic floor tiles; bedding and jointed in cement slurry and fixed with approved adhesive as specified by the manufacturer; including grouting joints with approved epoxy grout; including incorporating spacers and laying tiles to completion; including polishing after completion of fixing; tiles laid on cement and sand screed (m/s) in: | | | | |
| A | Floor | m2 | 756 | | |
| B | 100mm high skirting | m | 432 | | |
| | **Non slip Ceramic Floor Tiles**<br>300x300x9mm thick non slip coloured ceramic floor tiles; bedding and jointed in cement slurry and fixed with approved adhesive as specified by the manufacturer; including grouting joints with approved epoxy grout; including incorporating spacers and laying tiles to completion; including polishing after completion of fixing; tiles laid on cement and sand screed (m/s); to: | | | | |
| C | Washrooms | m2 | 24 | | |
| | **Rustic Ceramic Floor Tile**<br>300x300x9mm thick Rustic ceramic floor tiles; bedding and jointed in cement slurry and fixed with approved adhesive as specified by the manufacturer; including grouting joints with approved epoxy grout; including incorporating spacers and laying tiles to completion; including polishing after completion of fixing; tiles laid on cement and sand screed (m/s); to: | | | | |
| D | Entrance porch & entrance steps & balcony | m2 | 28 | | |
| E | 100mm high skirting | m | 19 | | |
| | **Ceramic Wall Tiles**<br>300x250x6mm thick ceramic wall tiles; bedding and jointed in cement slurry and fixed with approved adhesive as specified by the manufacturer; including grouting joints with approved epoxy grout; including incorporating spacers and laying tiles to completion; including polishing after completion of fixing; tiles laid on cement and sand backing (m/s); to: | | | | |
| F | Washrooms | m2 | 52 | | |
| | **Carried to Collection** | | | | |

| Item no | Description | Unit | Qty | Rate | Amount KSHs |
|---|---|---|---|---|---|
| | **COLLECTION**<br><br>Brought Forward From Page -14- | | | | |
| | **Total Carried to Summary** | | | | |

| Item no | Description | Unit | Qty | Rate | Amount KSHs |
|---|---|---|---|---|---|
| | **PAINT WORKS** | | | | |
| | **Vinyl Silk Emulsion Paint**<br>Prepare and apply one coat of Universal Undercoat and two coats of Vinyl Silk Emulsion paint on: | | | | |
| A | Soffits of suspended Slab | m2 | 827 | | |
| B | Slopping soffits of stairs | m2 | 20 | | |
| C | Masonry Walling Internally | m2 | 244 | | |
| D | Reveals openings | m2 | 76 | | |
| E | Soffits of gypsum ceiling | m2 | 76 | | |
| F | 25mm moulded Cornice 150mm high | m | 96 | | |
| | **Aluminium Wood Primer**<br>Prepare & apply aluminium equal and approved wood primer to: | | | | |
| G | Back of door frames not exceeding 100mm girth | m | 152 | | |
| | **Clear Matt Varnish**<br>Prepare and apply three coats clear pinotex spirit in clear matt varnish | | | | |
| H | Frame surfaces not exceeding 100mm girth | m | 152 | | |
| J | General surfaces | m2 | 121 | | |
| | **Total Carried to Summary** | | | | |

| Item no | Description | Unit | Qty | Rate | Amount KSHs |
|---|---|---|---|---|---|
| | **BALUSTRADING AND RAILING**<br><br>Supply & fix in anodized gold 950mm Balustrade consisting of 50mm diameter x 3mm thick handrail welded to 40mm diameter x 3mm thick baluaters at 150mm centers, with 2No. 25mm diameter x 2mm thick intermidiate handrails, welded and arranged in approved pattern all to architects detail and approval. Rate to include griding all welds smooth after fixation | | | | |
| A | Staircase | m | 15 | | |
| B | Balcony | m | 25 | | |
| | **Total Carried to Summary** | | | | |

| Item no | Description | Unit | Qty | Rate | Amount KSHs |
|---|---|---|---|---|---|
| | **JOINERY & FIXTURES** | | | | |
| | **Storage Fixtures** | | | | |
| A | 20mm thick MDF laminated Storage size 3000x600x2400 high with 600mm deep open shelfs. | no | 2 | | |
| B | Ditto 2400x600x2400mm high | no | 2 | | |
| | **Banking Hall Worktop** | | | | |
| | In Built low level Worktop | | | | |
| C | 2000mm Long x 750mm wide x 900mm high polished granite worktop consisting of 450 x 600mm high doors, laminated MDF shelving and masonry framework all to ARCH detail and | m | 7 | | |
| | **Total Carried to Summary** | | | | |

| Item no | Description | Unit | Qty | Rate | Amount KSHs |
|---|---|---|---|---|---|
| | **GROUND FLOOR SUMMARY** | | | | |
| 1 | EXCAVATION & FILLING | | | | |
| 2 | SUBSTRUCTURE CONCRETE WORKS | | | | |
| 3 | MASONRY WORK SUBSTRUCTURES | | | | |
| 4 | SUPERSTRUCTURE CONCRETE | | | | |
| 5 | MASONRY WORK SUPERSTRUCTURE | | | | |
| 7 | WINDOWS | | | | |
| 8 | DOORS | | | | |
| 9 | PLASTER, SCREED & BACKING | | | | |
| 10 | CEILING FINISHES | | | | |
| 11 | TILE WORKS | | | | |
| 12 | PAINT WORKS | | | | |
| 13 | BALUSTRADING AND RAILING | | | | |
| 14 | JOINERY & FIXTURES | | | | |
| | **Total Carried to Main Grand Summary For Ground floor** | | | | |

| Item No. | Description | Unit | Qty | Rate | Amount |
|---|---|---|---|---|---|
| | **PROVSIONAL SUMS** | | | | |
| | **ELECTRICAL SERVICES** | | | | |
| | **ELECTRICAL INSTALLATIONS** | | | | |
| A | Allow a **P.C. Sum** of thousands (Kshs.930,858/=) only for Eletrical Installations | | Item | | 916,207 |
| | **PLUMBING WORKS** | | | | |
| B | Allow a **P.C. Sum** of (Kshs. 558,515/=) only for Plumbing | | Item | | 549,724 |
| | **Total Carried to Summary** | | | | **1,465,931** |

| Item No | Description | Unit | Qty | Rate | Amount |
|---|---|---|---|---|---|
| | **GENERAL CONTINGENCY ALLOWANCE** | | | | |
| A | Provide a **Provisional Sum** of Kshs (Kshs.250,000/-) only for General contingency to be spended in whole or in part at the discretion of the Architecture | | Item | | 250,000 |
| | **Total carried to Main Summary** | | | | **250,000** |

| MAIN GRAND SUMMARY | | | |
|---|---|---|---|
| **Section no.** | **Description** | **Page no.** | **Amount Kshs** |
| **1** | **GENERAL PRELIMINARIES**<br>**PARTICULAR PRELIMINARIES**<br>**GEOTECHNICAL SURVEY** | | |
| 2 | **GROUND FLOOR** | 19 | |
| 3 | **PROVISIONAL SUMS - (ELECTRIAL & MECHANICAL SERVICES )** | 1 | |
| 4 | **GENERAL CONTIGENCIES** | 2 | |
| | **TOTAL CONSTRUCTION COST** | | |

Amount in words……
……
……

Tenderers signature and stamp……
……

Address……

Date……

Witness Name……

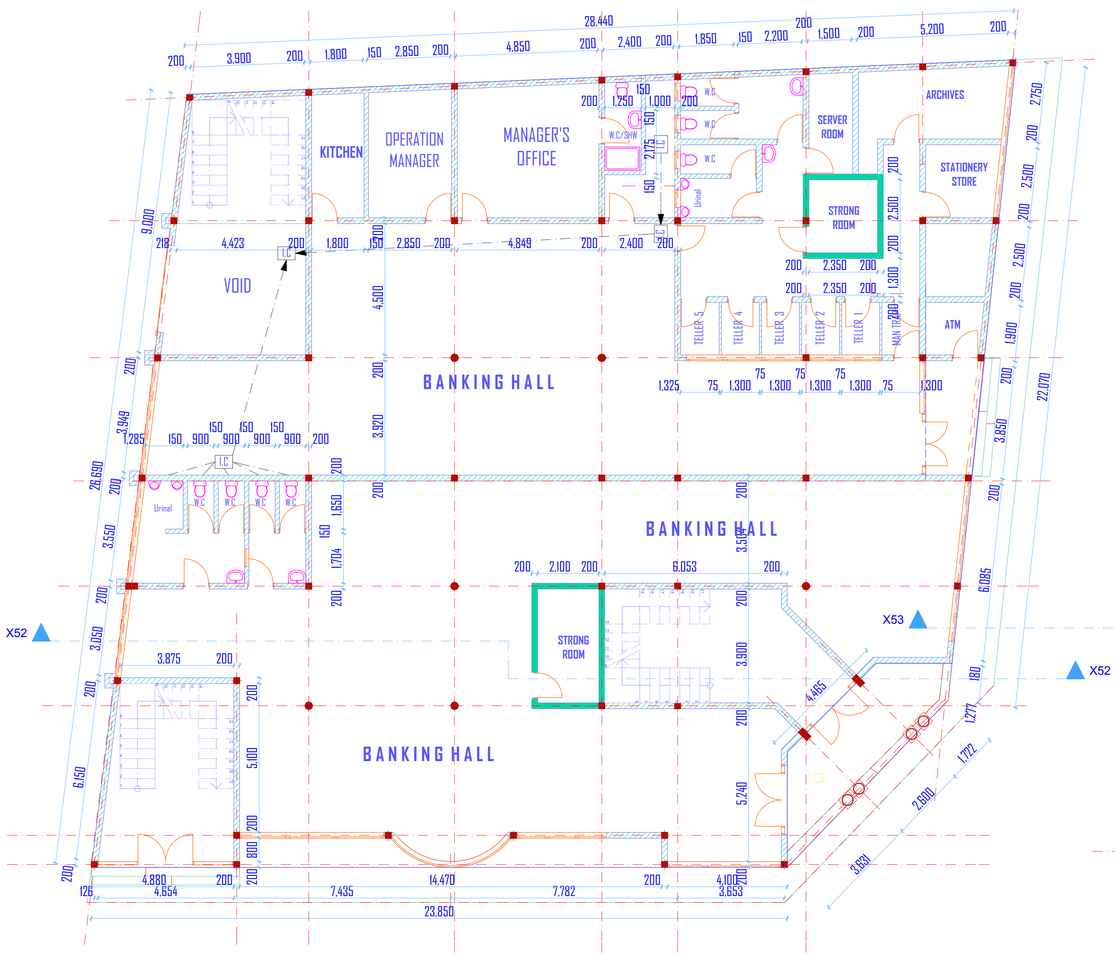
Signature……
……
Address……

Date……

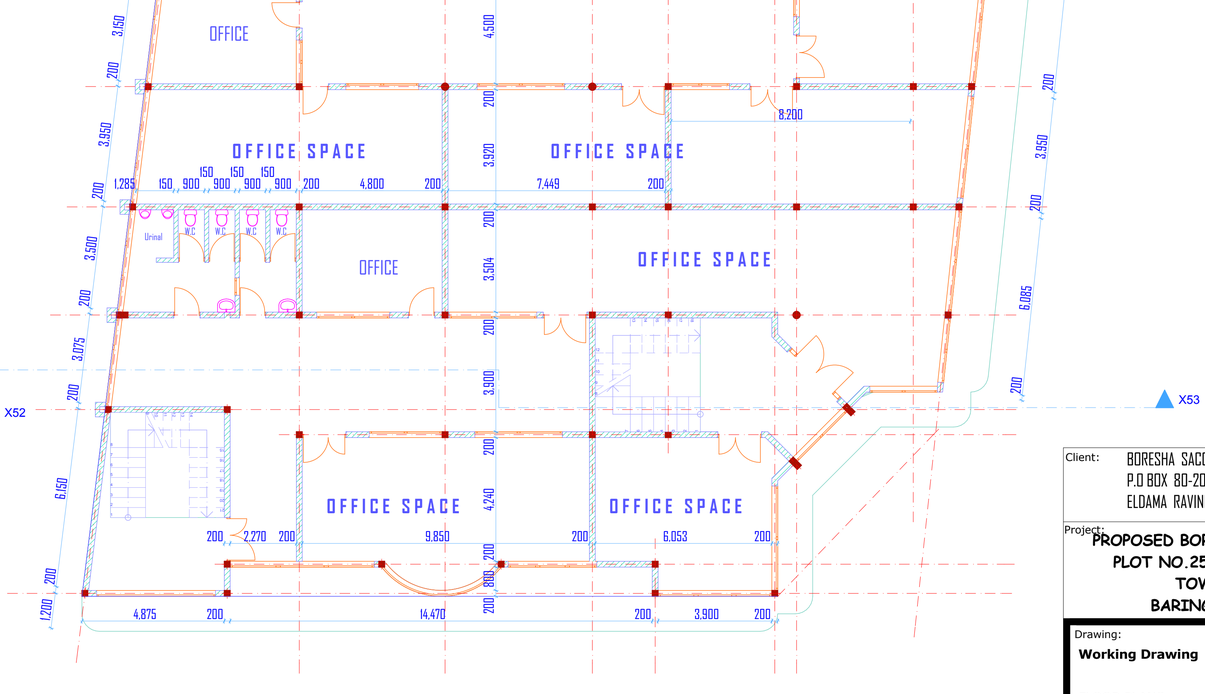
## NOTES

1. This drawing is protected under the copyright Act. & cannot be used or reproduced in part or in whole without authors consent.

2. All dimensions to be checked on site. Written dimension rules over scaled dimension.
3. P.V. denotes permanent ventilation & must be provided on all major openings.
4. D.P.C. denotes one layer of bituminous felt and should be provided on all load bearing walls
5. All walls less 200mm thick to be reinforced with hoop iron at every course.
6. Water meter to be 300mm above ground level.
7. Provide one row of (600x600x50)mm precast conc. paving slabs around the building.
8. Plinth level to be minimum 300mm from ground level.
9. Depth of foundation trenches to be minimum 600mm below reduced groud level.
10. All service pipes to be minimum 450mm below reduced ground level.
11. All dimensions are in milimeters (mm) unless otherwise stated.




## GROUND FLOOR PLAN




## 1ST FLOOR PLAN

Client: BORESHA SACCO SOCIETY LTD.
P.O BOX 80-20103
ELDAMA RAVINE.

Project: PROPOSED BORESHA PLAZA ON PLOT NO.255 AT MARIGAT TOWNSHIP BARINGO COUNTY

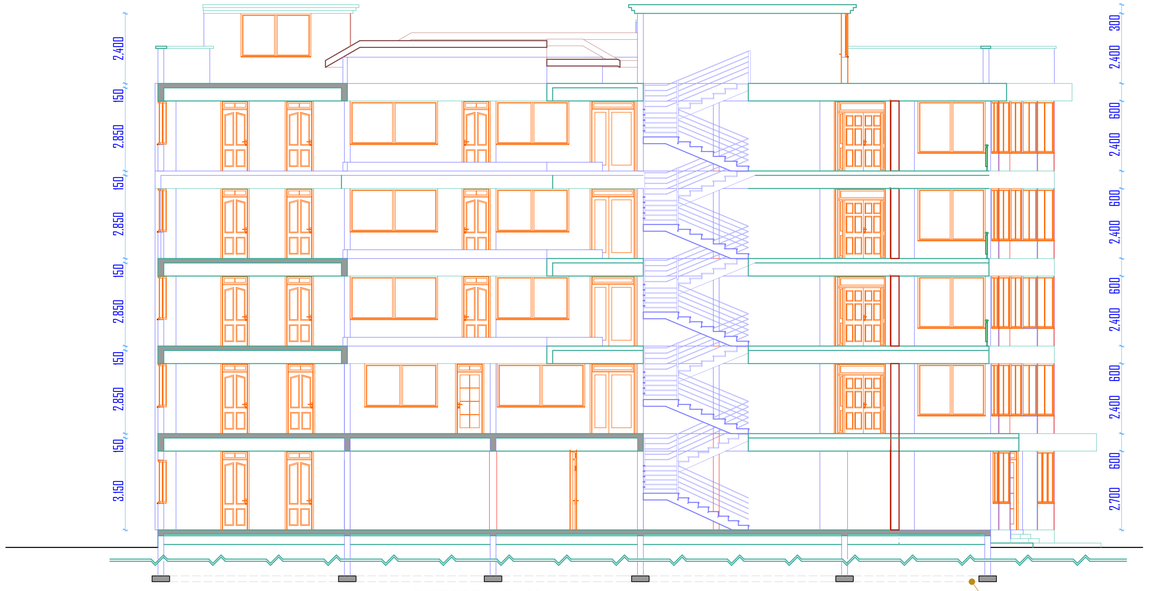
Drawing: **Working Drawing**

FLOOR PLANS

Client's signature:

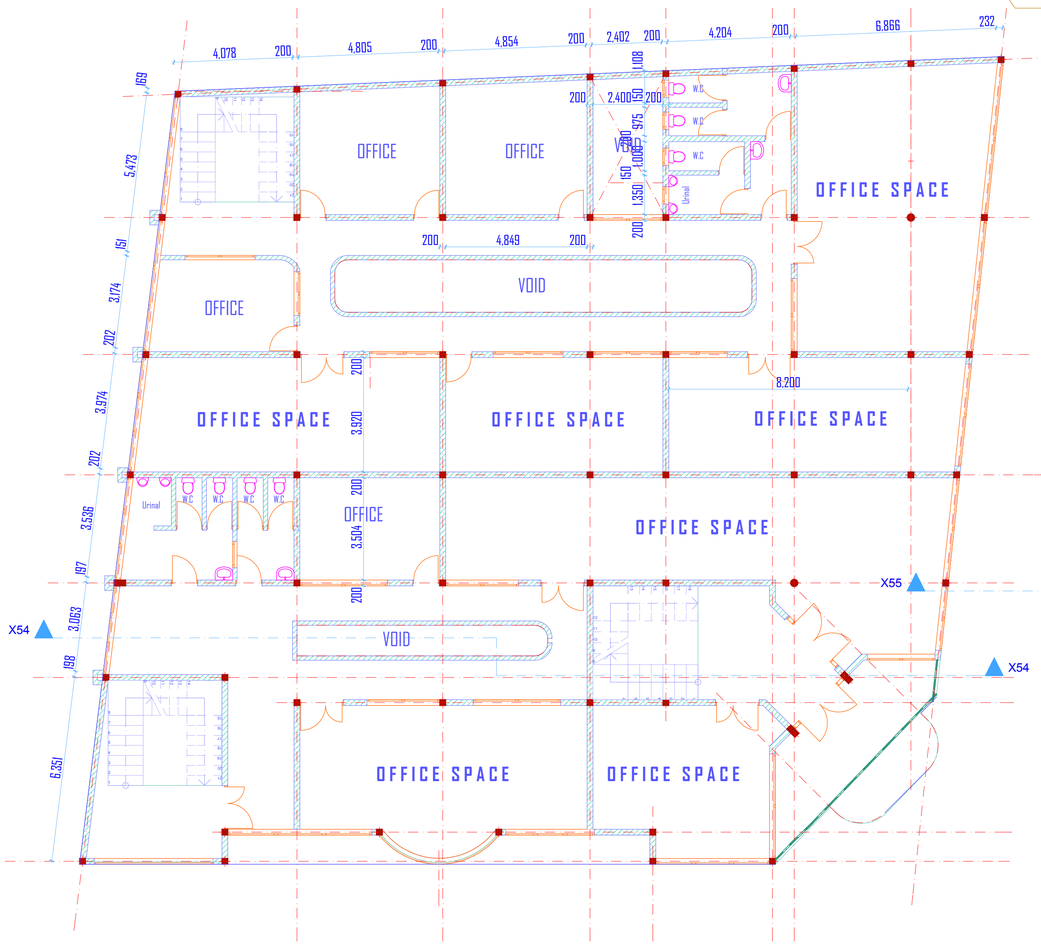
scale: 1:100 | date: JUNE. 2024

designed: ARCH. IVAN KELUNYO. | checked: | drawn: N. ARUSEI

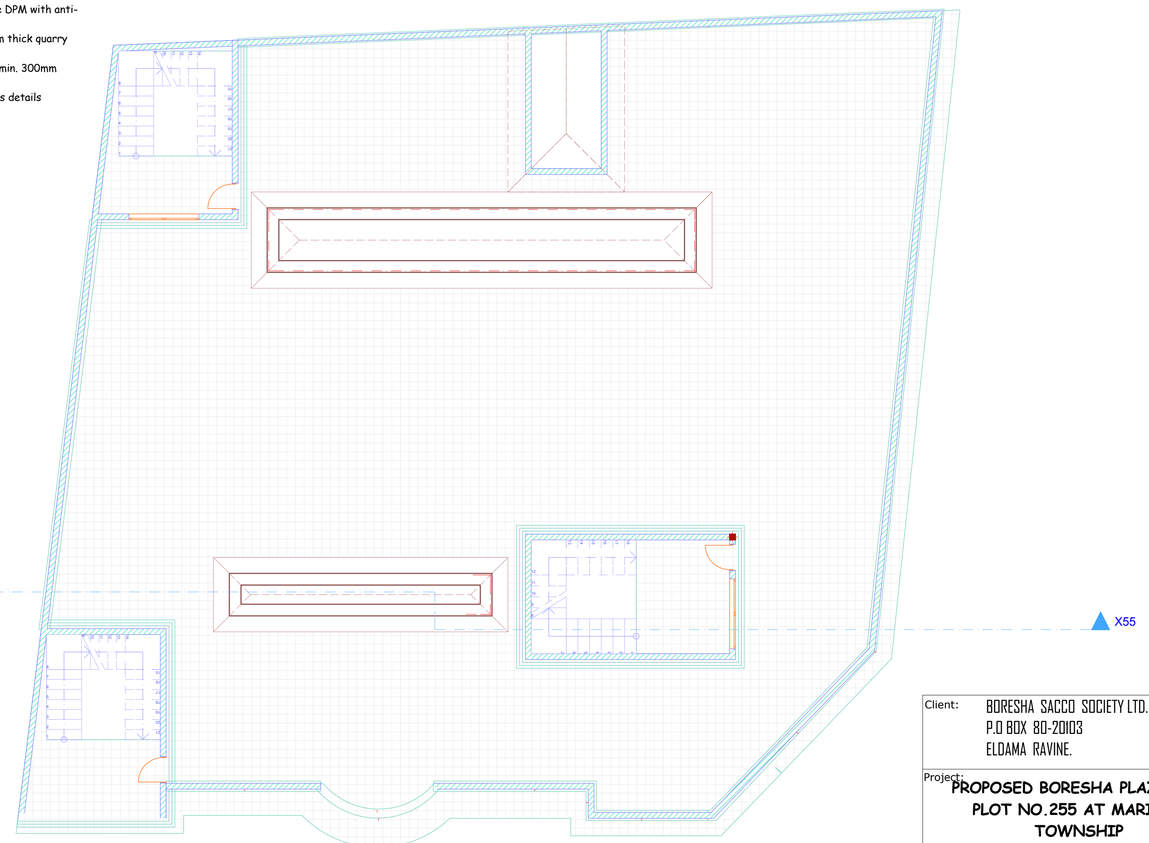



## SECTION X-X

150mm thick r.c.c slab on BRC-A-142 wiremesh
on 1000g polythene DPM with anti-termite
treatment on 50mm thick quarry dust blinding
on well compacted min. 300mm hardcore filling
on earthing to S.E's details




## TYPICAL 2ND,3RD & 4TH FLOOR PLANS




## ROOF SLAB

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6. Provide one row of (600x600x50)mm precast conc. paving slabs around the building.
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8. Depth of foundation trenches to be minimum 600mm below reduced groud level.
9. All service pipes to be minimum 450mm below reduced ground level.
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P.O BOX 80-20103
ELDAMA RAVINE.

Project: PROPOSED BORESHA PLAZA ON PLOT NO.255 AT MARIGAT TOWNSHIP
BARINGO COUNTY

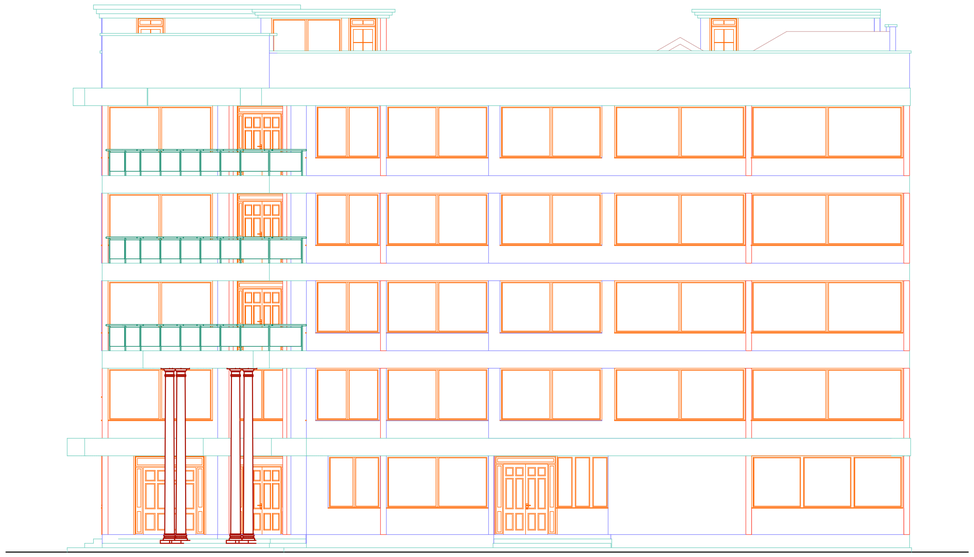
Drawing:
**Working Drawing**

FLOOR PLANS

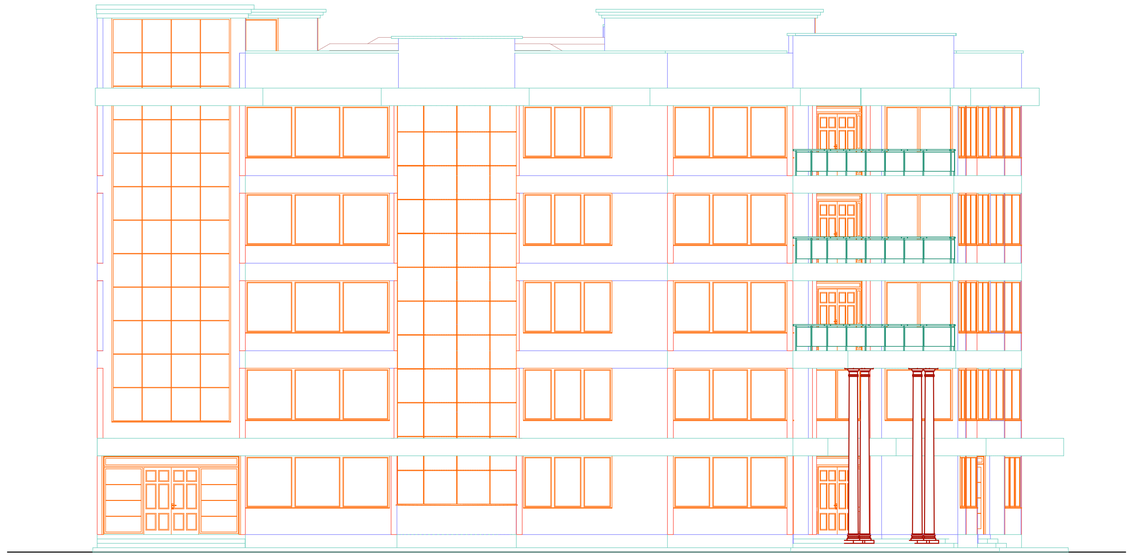
Client's signature:

| scale: | date: |
|---|---|
| 1:100 | JUNE. 2024 |

| designed: | checked: | drawn: |
|---|---|---|
| ARCH. IVAN KELUNYO. | | N. ARUSEI |



FRONT ELEVATION



LHS ELEVATION

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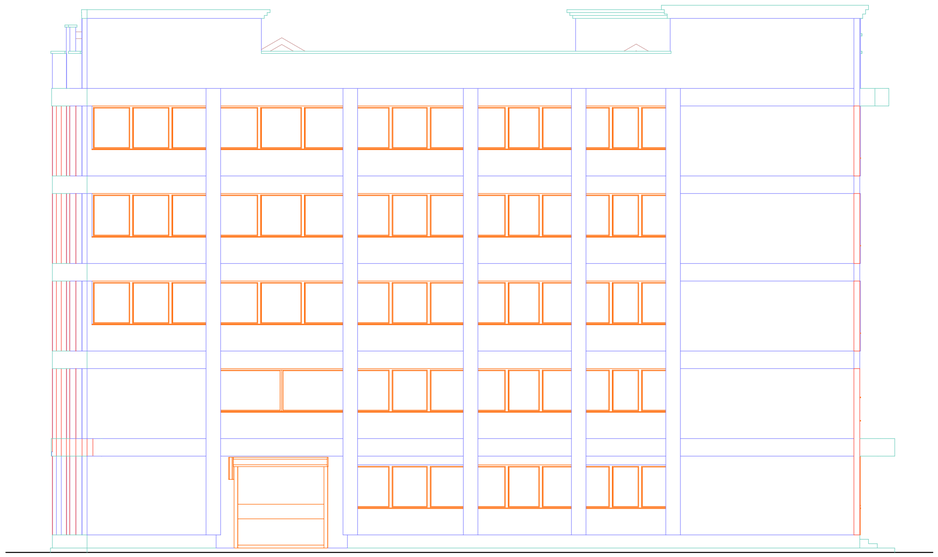
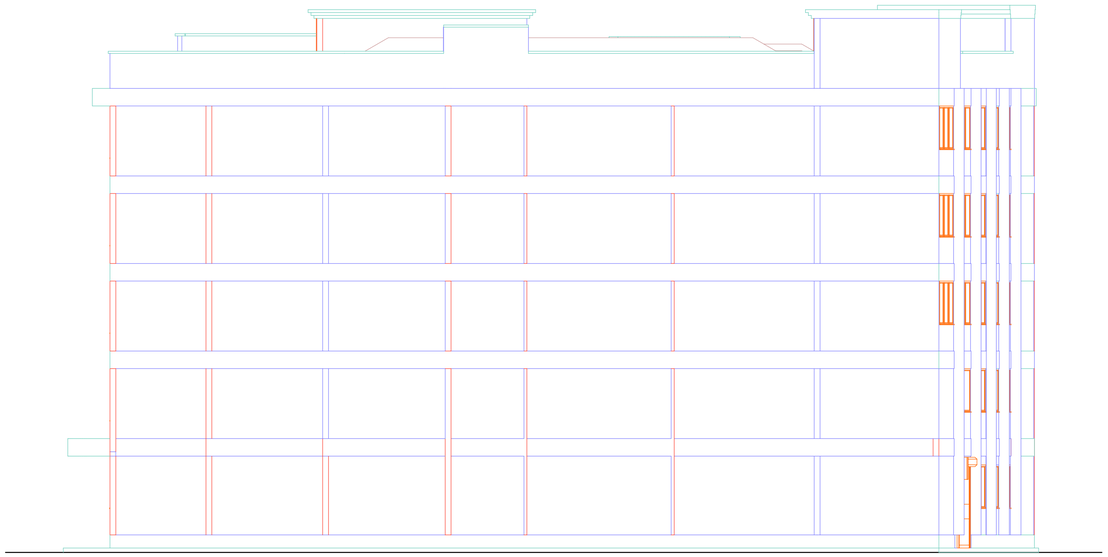


REAR ELEVATION



RHS ELEVATION

Client: BORESHA SACCO SOCIETY LTD.
P.O BOX 80-20103
ELDAMA RAVINE.

Project: PROPOSED BORESHA PLAZA ON PLOT NO.255 AT MARIGAT TOWNSHIP
BARINGO COUNTY

Drawing:
**Working Drawing**

ELEVATIONS

Client's signature:

scale: 1:100 | date: JUNE. 2024

designed: ARCH. IVAN KELUNYO. | checked: | drawn: N. ARUSEI