

REPUBLIC OF KENYA



COUNTY GOVERNMENT OF SIAYA

TENDER DOCUMENT

FOR

PROPOSED FENCING OF MAGO DISPENSARY

TENDER NO.: CGS/HEALTH/OT/2020-2021/020

Supplier Portal Negotiation No.: 832644

(County Specific Procurement reserved for PWD's Residents of Siaya County)

**CHIEF OFFICER
HEALTH AND SANITATION
P.O. BOX 803-40600
SIAYA**

**COUNTY SECRETARY
COUNTY GOVERNMENT OF SIAYA
P.O. BOX 803-40600
SIAYA**

NOVEMBER, 2020

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SECTION I - INVITATION TO TENDER

Date: 20/11/2020

TENDER NO. CGS/HEALTH/OT/2020-2021/020

The County Government of Siaya (CGS) invites sealed bids from eligible candidates for Procurement of the above-mentioned Works. **This is a County Specific Procurement Reserved Youth for Residents of Siaya County.**

Interested candidates may view / inspect/ obtain complete tender documents free of charge from the CGS website (www.siaya.go.ke) and the Public Procurement Information Portal (www.tenders.go.ke).

Prices quoted should be net inclusive of all taxes and delivery costs, must be expressed in Kenya shillings and shall remain valid for a period of 90 days from the closing/opening date of the tender. **Tenders must be accompanied by a Tender Securing-Declaration Form.**

Completed tender documents are to be enclosed in plain sealed envelopes, clearly marked with the tender identification number and name and be deposited in the Tender Box provided at the main entrance of **ALEGO USONGA SUB-COUNTY OFFICES** within Siaya Town or be addressed and posted to:

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**The County Secretary
County Government of Siaya
P.O. Box 803 - 40600
SIAYA**

So as to be received **on or before 4th December, 2020 at 12.00 noon**

In addition, tenderers **SHALL** respond to the tenders through the **IFMIS Supplier portal**, by the deadline indicated above in order to be eligible for award.

Tenders will be opened immediately thereafter in the presence of the tenderers representatives who choose to attend at the **Alego Usonga Sub-County Offices**.

Director, Supply Chain Management
For: COUNTY SECRETARY

SECTION II - INSTRUCTIONS TO TENDERERS

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INSTRUCTIONS TO TENDERERS

1. General

- 1.1 The Employer as defined in the Appendix to Instructions to Tenderers 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 Appendix to Conditions of Contract.
- 1.2 Tenderers shall include the following information and documents with their tenders, unless otherwise stated:
 - (a) copies of certificates of registration, and principal place of business;
 - (b) total monetary value of construction work performed for each of the last five years;
 - (c) experience in works of a similar nature and size for each of the last five years, and clients who may be contacted for further information on these contracts;
 - (d) major items of construction equipment owned;
 - (e) qualifications and experience of key site management and technical personnel proposed for the Contract;
 - (f) reports on the financial standing of the Tenderer, such as profit and loss statements and auditor's reports for the last five years;
 - (g) authority to seek references from the Tenderer's bankers.
- 1.3 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.
- 1.4 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.
- 1.5 The procurement entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.
- 1.6 The price to be charged for the tender document shall not exceed Kshs. 1,000/=
- 1.7 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 here below and any addenda issued in accordance with clause 2.4 here below: -
 - (a) These instructions to Tenderers
 - (b) Form of Tender
 - (c) Conditions of Contract and Appendix to Conditions of Contract
 - (d) Specifications
 - (e) Drawings
 - (f) Bills of Quantities/Schedule of Rates (whichever is applicable)
 - (g) Other materials required to be filled and submitted in accordance with these Instructions and Conditions
- 2.2 The Tenderer shall examine all instructions, forms and specifications in the tender documents. Failure to furnish all information required by the tender documents may result in rejection of his tender.
- 2.3 A prospective Tenderer making inquiry of the tendering documents may notify the Employer in writing or by cable, telex or facsimile at the address indicated in the invitation to tender. The Employer will respond to any request for clarification received earlier than seven [7] 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 4.5 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) The Tender;
 - (b) Tender Security / Tender Security Declaration Form (Whichever is applicable);
 - (c) Priced Bill of Quantities/Schedule of Rates for lump-sum Contracts

(d) Any other materials required to be completed and submitted by Tenderers.

- 3.3 The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities/Schedule of Rates. Items for which no rate or price is entered 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/Schedule of Rates. All duties, taxes and other levies payable by the Contractor under 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 The rates and prices quoted by the Tenderer shall not be subject to any adjustment during the performance of the Contract.
- 3.5 The unit rates and prices shall be in Kenya Shillings.
- 3.6 Tenders shall remain valid for a period of Ninety (90) days from the date of submission. However, in exceptional circumstances, the Employer may request that the Tenderers extend the period of validity for a specified additional period. The request and the Tenderers' responses shall be made in writing.
- 3.7 The Tenderer shall prepare one original of the documents comprising the tender documents as described in these Instructions to Tenderers.
- 3.8 The original 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. All pages of the tender where alterations or additions have been made shall be initialed by the person or persons signing the tender.
- 3.9 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.
- 3.10 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.

4. Submission of Tenders

- 4.1 The tender duly filled and sealed in an envelope 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.
- 4.3 The tenderer shall not submit any alternative offers unless they are specifically required in the tender documents. Only one tender may be submitted by each tenderer. Any tenderer who fails to comply with this requirement will be disqualified.
- 4.4 Any tender received after the deadline for opening tenders will be returned to the tenderer un-opened.
- 4.5 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.

5. Evaluation

- 5.1 Information relating to the examination, clarification, evaluation and comparison of tenders and recommendations for the award of the Contract shall not be disclosed to Tenderers or any other persons not officially concerned with such process until the award to the successful Tenderer has been announced. Any effort by a Tenderer to influence the Employer's officials, processing of tenders or award decisions may result in the rejection of his tender.
- 5.2 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's representative, 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/Quotation, 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 forfeited.
- 5.3 The tender evaluation committee shall evaluate the tender within 30 days of the validity period from the date of opening the tender.
- 5.4 Contract price variations shall not be allowed for contracts not exceeding one year (12 months)
- 5.5 Where contract price variation is allowed, the valuation shall not exceed 15% of the original contract price.
- 5.6 Price variation requests shall be processed by the procuring entity within 30 days of receiving the request.
- 5.7 Preference where allowed in the evaluation of tenders shall not exceed 15%
- 5.8 To assist in the examination, evaluation, and comparison of tenders, the Employer at his discretion, may request [in writing] 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 tender price or substance of the tender shall be sought, offered or permitted.
- 5.9 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.

6. Award of Contract

- 6.1 The award of the Contract will be made to the Tenderer who has offered the lowest evaluated tender price.
- 6.2 Notwithstanding the provisions of 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" which 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. The contract shall be formed on the parties signing the contract. At the same time the other tenderers shall be informed that their tenders have not been successful.
- 6.4 The Contract Agreement will incorporate all agreements between the Employer and the successful Tenderer. It will be signed by the Employer and sent to the successful Tenderer, within 30 days following the notification of award. Within 21 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 amount stipulated in the Appendix to Conditions of Contract.
- 6.6 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.
- 6.7 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 6.8 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.

7. Corrupt and fraudulent practices

- 7.1 The procuring entity requires that the tenderer observe the highest standard of ethics during the procurement process and execution of the contract. A tenderer shall sign a declaration that he has not and will not be involved in corrupt and fraudulent practices.
- 7.2 The procuring entity will reject a tender if it determines that the tenderer recommended for award has engaged in corrupt and fraudulent practices in competing for the contract in question.
- 7.3 Further a tenderer who is found to have indulged in corrupt and fraudulent practices risks being debarred from participating in public procurement in Kenya.

APPENDIX TO INSTRUCTIONS TO TENDERERS

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

Instructions to tenderers	Particulars of appendix to instructions to tenderers																														
1.1	<i>The Employer is the County Government of Siaya (CGS)</i>																														
1.2	<p>Tenderers are required to submit copies of the following MANDATORY DOCUMENTS which will be used during preliminary evaluation to determine responsiveness, notwithstanding any other requirement in the tender document:</p> <table border="1" data-bbox="344 613 1425 1675"> <thead> <tr> <th data-bbox="344 613 432 645">No.</th> <th data-bbox="432 613 1425 645">Parameter</th> </tr> </thead> <tbody> <tr> <td data-bbox="344 645 432 712">1</td> <td data-bbox="432 645 1425 712">Tenderers must respond both electronically through the IFMIS Supplier Portal and also manually submit physical tender documents</td> </tr> <tr> <td data-bbox="344 712 432 831">2</td> <td data-bbox="432 712 1425 831">Proof of Registration with Registrar of Companies. Incorporated under the Company's Act must in addition submit Copy of recent Certificate of Confirmation of Directors and Shareholding (CR12) issued within the last 12 months from the date of tender opening. <i>(This may be verified with the Registrar of Companies)</i></td> </tr> <tr> <td data-bbox="344 831 432 898">3</td> <td data-bbox="432 831 1425 898">Copy of Valid Tax Compliance Certificate issued by the Kenya Revenue Authority <i>(May be verified on the KRA TCC Checker)</i></td> </tr> <tr> <td data-bbox="344 898 432 958">4</td> <td data-bbox="432 898 1425 958">Tender Form duly Completed, Signed and Stamped by the Tenderer in the format provided.</td> </tr> <tr> <td data-bbox="344 958 432 1019">5</td> <td data-bbox="432 958 1425 1019">Bills of Quantities duly Completed, Signed and Stamped by the Tenderer in the format provided</td> </tr> <tr> <td data-bbox="344 1019 432 1079">6</td> <td data-bbox="432 1019 1425 1079">Confidential Business Questionnaire Duly Completed, Signed and Stamped by the Tenderer in format provided</td> </tr> <tr> <td data-bbox="344 1079 432 1146">7</td> <td data-bbox="432 1079 1425 1146">Must submit a copy of relevant Valid National Construction Authority Practicing License</td> </tr> <tr> <td data-bbox="344 1146 432 1214">8</td> <td data-bbox="432 1146 1425 1214">Proof of Registration within Siaya County. Submit a relevant valid current Trading License / Single Business Permit issued by the County Government of Siaya</td> </tr> <tr> <td data-bbox="344 1214 432 1281">9</td> <td data-bbox="432 1214 1425 1281">Tender-Securing Declaration Form attached to this tender document duly Completed, Signed and Stamped by the Tenderer</td> </tr> <tr> <td data-bbox="344 1281 432 1310">10</td> <td data-bbox="432 1281 1425 1310">Submit a copy of valid relevant AGPO Certificate</td> </tr> <tr> <td data-bbox="344 1310 432 1370">11</td> <td data-bbox="432 1310 1425 1370">Submit a duly completed and signed Certificate of Tenderer's Visit to Site attached to this tender document</td> </tr> <tr> <td data-bbox="344 1370 432 1400">12</td> <td data-bbox="432 1370 1425 1400">Submit a detailed Work Program</td> </tr> <tr> <td data-bbox="344 1400 432 1556">13</td> <td data-bbox="432 1400 1425 1556">Since this is a County Specific Procurement reserved for Target Group in the Specified Category who are Residents of Siaya County, any acceptable evidence/proof is required e.g. proof of physical location of the company by attaching evidence (title deed, lease agreement, utility bills) etc. <i>Trading License / Single Business Permit shall not be considered as evidence / proof</i></td> </tr> <tr> <td data-bbox="344 1556 432 1675">14</td> <td data-bbox="432 1556 1425 1675">Properly bound, good-presented document. The tender document shall be paginated / serial numbered. All bidders are required to submit their documents paginated in a continuous ascending order from the first page to the last in this format; <i>(i.e. 1, 2, 3..... n where n is the last page)</i></td> </tr> </tbody> </table> <p data-bbox="344 1709 1425 1827">AT THIS STAGE, THE TENDERER'S SUBMISSION WILL EITHER BE RESPONSIVE OR NON-RESPONSIVE. THE NON-RESPONSIVE SUBMISSIONS WILL BE ELIMINATED FROM THE ENTIRE EVALUATION PROCESS AND WILL NOT BE CONSIDERED FURTHER. RESPONSIVE BIDS WILL PROCEED TO FINANCIAL EVALUATION.</p>	No.	Parameter	1	Tenderers must respond both electronically through the IFMIS Supplier Portal and also manually submit physical tender documents	2	Proof of Registration with Registrar of Companies. 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Submit a relevant valid current Trading License / Single Business Permit issued by the County Government of Siaya	9	Tender-Securing Declaration Form attached to this tender document duly Completed, Signed and Stamped by the Tenderer	10	Submit a copy of valid relevant AGPO Certificate	11	Submit a duly completed and signed Certificate of Tenderer's Visit to Site attached to this tender document	12	Submit a detailed Work Program	13	Since this is a County Specific Procurement reserved for Target Group in the Specified Category who are Residents of Siaya County, any acceptable evidence/proof is required e.g. proof of physical location of the company by attaching evidence (title deed, lease agreement, utility bills) etc. <i>Trading License / Single Business Permit shall not be considered as evidence / proof</i>	14	Properly bound, good-presented document. The tender document shall be paginated / serial numbered. 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1.6	Price to be Charged for Tender Documents: Documents to be downloaded from the County Government of Siaya website www.siaya.go.ke free of charge.																														

Instructions to tenderers	Particulars of appendix to instructions to tenderers
2.4	<p>Communication: For ease of Communication, all written correspondences with tenderers, including communicating outcome of the tender process, shall be through <u>E-MAIL</u>. Tenderers must therefore provide their E-mail addresses:</p> <p>Email Address 1 (<i>Mandatory</i>): _____</p> <p>Email Address 2 (<i>Optional</i>): _____</p>
4.2	<p>Delivery of Tenders: In addition, tenderers <u>SHALL</u> respond to the tenders through the IFMIS Supplier portal, by the deadline indicated in the tender notice in order to be eligible for award</p>
5.3	<p>Arithmetic Errors: The tender sum as submitted shall be final and shall not be the subject of any corrections, adjustments or amendments.</p>
5.5	<p>Contract Price Variations: Any contract price variations shall be as allowable in the Public Procurement and Asset Disposal Act, 2015</p>
6.1	<p>Award of Contract: Award will be made to the lowest evaluated bidder.</p> <p><i>However, if some bids are seriously unbalanced or front loaded in relation to the Engineer's estimates for the major items of work to be performed under the contract, the Employer may require the bidder to produce detailed price analyses for any or all items of the Bills of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. The Employer will compare the tenderers' rates with the Engineer's estimates for major items of construction. This shall also apply to bids that are more than 15% below the Engineers Estimate. After evaluation of the price analyses, taking into consideration the schedule of estimated contract payments, the Employer may require that a performance security be introduced and /or the amount increased where the tender attracted a performance security as per the requirements of clause 6.5 below.</i></p>
6.2	<p>Poor Past Performance</p> <p>Record of unsatisfactory or default in performance obligations in any contract shall be considered. To be eligible for award, in addition to the requirements given, the tenderer if previously contracted by CGS to offer similar services or any other contract, must not have had any negative evaluation for poor performance and/or delayed delivery of contract. Contractors who have delayed in delivery of any contract will not be eligible for additional contract awards until the delayed contracts are fully delivered. In addition, any contract terminated on grounds of integrity and/or fraud or corruption is ineligible to tender.</p>
6.5	<p>Particulars of performance security if applicable:</p> <p>Performance Security shall be required only for Contracts above <u>Kshs. 5 Million</u> as per the requirements of Reg. 135(1) of the Public Procurement and Asset Disposal Regulations, 2020. The performance Security shall be in the form of an unconditional Bank Guarantee amounting to 1% of the contract sum.</p> <p>However, where the lowest evaluated bidder's tender sum is more than 15% below the Engineers Estimate and where the bids are seriously unbalanced or front loaded in relation to the Engineer's estimates, a performance security to a level sufficient to protect the Employer against financial loss in the event of default by the successful bidder under the contract shall be introduced where the contract did not attract a performance security or increased where the contract attracted a performance security. The performance Security shall be in the form of an unconditional Bank Guarantee and shall not be more than 10% of the contract sum.</p>
Other's as necessary	<p>Complete as necessary. None</p>

SECTION III - CONDITIONS OF CONTRACT

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SECTION III - CONDITIONS OF CONTRACT

1. Definitions

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

“**Bills of Quantities**” means the priced and completed Bill of Quantities forming part of the tender [where applicable].

“**Schedule of Rates**” means the priced Schedule of Rates forming part of the tender [where applicable].

“**The Completion Date**” means the date of completion of the Works as certified by the Employer’s Representative.

“**The Contract**” means the agreement entered into by the Employer and the Contractor as recorded in the Agreement Form and signed by the parties.

“**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.

“**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 Employer’s Representative upon correction of defects by the Contractor.

“**The Defects Liability Period**” is the period named in the Appendix to Conditions of Contract and calculated from the Completion Date.

“**Drawings**” include calculations and other information provided or approved by the Employer’s Representative for the execution of the Contract.

“**Employer**” Includes Central or Local Government administration, Universities, Public Institutions and Corporations and 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.

“**Site**” means the place or places where the permanent Works are to be carried out including workshops where the same is being prepared.

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

“**Employer’s Representative**” is the person appointed by the Employer and notified to the Contractor for the purpose of supervision of the Works.

“**Specification**” means the Specification of the Works included in the Contract.

“**Start Date**” is the date when the Contractor shall commence execution of the Works.

“**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 Employer’s Representative which varies the Works.

“**The Works**” are what the Contract requires the Contractor to construct, install, and turnover to the Employer.

2. Contract Documents

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

- (1) Agreement,
- (2) Notification of Award
- (3) Letter of Acceptance,
- (4) Contractor’s Tender,
- (5) Conditions of Contract,
- (6) Specifications,
- (7) Drawings,
- (8) Bills of Quantities or Schedule of Rates [whichever is applicable]
- (9) Approved Work Program

3. Employer’s Representative’s Decisions

3.1 Except where otherwise specifically stated, the Employer’s Representative will decide contractual matters between the Employer and the Contractor in the role representing the Employer.

4. Works, Language and Law of Contract

- 4.1 The Contractor shall construct and install the Works in accordance with the Contract documents. 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 Employer's Representative, and complete them by the Intended Completion Date.
- 4.2 The ruling language of the Contract shall be English language and the law governing the Contract shall be the law of the Republic of Kenya.

5. Safety, Temporary works and Discoveries

- 5.1 The Contractor shall be responsible for design of temporary works and shall obtain approval of third parties to the design of the temporary works where required.
- 5.2 The Contractor shall be responsible for the safety of all activities on the Site.
- 5.3 Any thing of historical or other interest or significant value unexpectedly discovered on the Site shall be the property of the Employer. The Contractor shall notify the Employer's Representative of such discoveries and carry out the Employer's Representative's instructions for dealing with them.

6 Work Program and Sub-contracting

- 6.1 Within seven days after Site possession date, the Contractor shall submit to the Employer's Representative for approval a program showing the general methods, arrangements, order and timing for all the activities in the Works.
- 6.2 The Contractor may sub-contract the Works (but only to a maximum of 25 percent of the Contract Price) with the approval of the Employer's Representative. However, he shall not assign the Contract without the approval of the Employer in writing. Sub-contracting shall not alter the Contractor's obligations.

7 The site

- 7.1 The Employer shall give possession of all parts of the Site to the Contractor.
- 7.2 The Contractor shall allow the Employer's Representative and any other person authorised by the Employer's Representative, 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.

8 Instructions

- 8.1 The Contractor shall carry out all instructions of the Employer's Representative which are in accordance with the Contract.

9 Extension of Completion Date

- 9.1 The Employer's Representative shall extend the Completion Date if an occurrence arises which makes it impossible for completion to be achieved by the Intended Completion Date. The Employer's Representative shall decide whether and by how much to extend the Completion Date.
- 9.2 For the purposes of this clause, the following occurrences shall be valid for consideration;

Delay by: -

- (a) force majeure, or
- (b) reason of any exceptionally adverse weather conditions, or
- (c) reason of civil commotion, strike or lockout affecting any of the trades employed upon the Works or any of the trades engaged in the preparation, manufacture or transportation of any of the goods or materials required for the Works, or
- (d) reason of the Employer's Representative's instructions issued under these Conditions, or
- (e) reason of the contractor not having received in due time necessary instructions, drawings, details or levels from the Employer's Representative for which he specifically applied in writing on a date which having regard to the date for Completion stated in the appendix to these Conditions or to any extension of time then fixed under this clause was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same, or
- (f) delay on the part of artists, tradesmen or others engaged by the Employer in executing work not forming part of this Contract, or
- (g) reason of delay by statutory or other services providers or similar bodies engaged directly by the Employer, or
- (h) reason of opening up for inspection of any Work covered up or of the testing or any of the Work, materials or goods in accordance with these conditions unless the inspection or test showed that the Work, materials or goods were not in accordance with this Contract, or
- (i) reason of delay in appointing a replacement Employer's Representative, or
- (j) reason of delay caused by the late supply of goods or materials or in executing Work for which the Employer or his agents are contractually obliged to supply or to execute as the case may be, or
- (k) delay in receiving possession of or access to the Site.

10 Management Meetings

- 10.1 A Contract management meeting shall be held regularly and attended by the Employer's Representative and the Contractor. Its business shall be to review the plans for the remaining Work. The Employer's Representative shall record the business of management meetings and provide copies of the record to those attending the meeting and the Employer. The responsibility of the parties for actions to be taken shall be decided by the Employer's Representative either at the management meeting or after the management meeting and stated in writing to all who attend the meeting.
- 10.2 Communication between parties shall be effective only when in writing.

11 Defects

- 11.1 The Employer's Representative 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 Employer's Representative may instruct the Contractor to search for a defect and to uncover and test any Work that the Employer's Representative 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.
- 11.2 The Employer's Representative 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.
- 11.3 Every time notice of a defect is given, the Contractor shall correct the notified defect within the length of time specified by the Employer's Representative's notice. If the Contractor has not corrected a defect within the time specified in the Employer's Representative's notice, the Employer's Representative 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.

12 Bills of Quantities/Schedule of Rates

- 12.1 The Bills of Quantities/Schedule of Rates 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 rates in the Bills of Quantities/Schedule of Rates for each item. Items against which no rate is entered by the Tenderer will not be paid for when executed and shall be deemed covered by the rates for other items in the Bills of Quantities/Schedule of Rates.
- 12.2 Where Bills of Quantities do not form part of the Contract, the Contract Price shall be a lump sum (which shall be deemed to have been based on the rates in the Schedule of Rates forming part of the tender) and shall be subject to re-measurement after each stage.

13 Variations

- 13.1 The Contractor shall provide the Employer's Representative with a quotation for carrying out the variations when requested to do so. The Employer's Representative shall assess the quotation and shall obtain the necessary authority from the Employer before the variation is ordered.
- 13.2 If the Work in the variation corresponds with an item description in the Bill of Quantities/Schedule of Rates, the rate in the Bill of Quantities/Schedule of Rates shall be used to calculate the value of the variation. If the nature of the Work in the variation does not correspond with items in the Bill of Quantities/Schedule of Rates, the quotation by the Contractor shall be in the form of new rates for the relevant items of Work.
- 13.3 If the Contractor's quotation is unreasonable, the Employer's Representative may order the variation and make a change to the Contract Price, which shall be based on the Employer's Representative's own forecast of the effects of the variation on the Contractor's costs.

14 Payment Certificates and Final Account

- 14.1 The Contractor shall be paid after each of the following stages of Work listed herebelow (subject to re-measurement by the Employer's Representative of the Work done in each stage before payment is made). In case of lump-sum Contracts, the valuation for each stage shall be based on the quantities so obtained in the re-measurement and the rates in the Schedule of Rates.
- (i) Advance payment _____ (*percent of Contract Price, [after Contract execution] to be inserted by the Employer.*)
 - (ii) First stage (*define stage*) _____
 - (iii) Second stage (*define stage*) _____
 - (iv) Third stage (*define stage*) _____
 - (v) After defects liability period.

- 14.2 Upon deciding that Works included in a particular stage are complete, the Contractor shall submit to the Employer's Representative his application for payment. The Employer's Representative shall check, adjust if necessary and certify the amount to be paid to the Contractor within 21 days of receipt of the Contractor's application. The Employer shall pay the Contractor the amounts so certified within 30 days of the date of issue of each Interim Certificate.
- 14.3 The Contractor shall supply the Employer's Representative with a detailed final account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Employer's Representative shall issue a Defect Liability Certificate and certify any final payment that is due to the Contractor within 30 days of receiving the Contractor's account if it is correct and complete. If it is not, the Employer's Representative shall issue within 21 days a schedule that states the scope of the corrections or additions that are necessary. If the final account is still unsatisfactory after it has been resubmitted, the Employer's Representative shall decide on the amount payable to the Contractor and issue a Final Payment Certificate. The Employer shall pay the Contractor the amount so certified within 60 days of the issue of the Final Payment Certificate.
- 14.4 If the period laid down for payment to the Contractor upon each of the Employer's Representative's Certificate by the Employer has been exceeded, the Contractor shall be entitled to claim simple interest calculated pro-rata on the basis of the number of days delayed at the
Central Bank of Kenya's average base lending rate prevailing on the first day the payment becomes overdue. The Contractor will be required to notify the Employer within 15 days of receipt of delayed payments of his intentions to claim interest.

15. Insurance

- 15.1 The Contractor shall be responsible for and shall take out appropriate cover against, among other risks, personal injury; loss of or damage to the Works, materials and plant; and loss of or damage to property

16. Liquidated Damages

- 16.1 The Contractor shall pay liquidated damages to the Employer at the rate 0.001 per cent of the Contract price per day for each day that the actual Completion Date is later than the Intended Completion Date except in the case of any of the occurrences listed under clause 9.2. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

17. Completion and Taking Over

- 17.1 Upon deciding that the Work is complete the Contractor shall request the Employer's Representative to issue a Certificate of Completion of the Works, upon deciding that the Work is completed.

The Employer shall take over the Site and the Works within seven days of the Employer's Representative issuing a Certificate of Completion.

18. Termination

- 18.1 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 continuously without reasonable cause or authority from the Employer's Representative;
 - (b) the Contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
 - (c) a payment certified by the Employer's Representative is not paid by the Employer to the Contractor within 30 days after the expiry of the payment periods stated in sub clauses 14.2 and 14.3 hereinabove.
 - (d) the Employer's Representative 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.
- 18.2 If the Contract is terminated, the Contractor shall stop Work immediately, and leave the Site as soon as reasonably possible. The Employer's Representative shall immediately thereafter arrange for a meeting for the purpose of taking record of the Works executed and materials, goods, equipment and temporary buildings on Site.

19. Payment Upon Termination

- 19.1 The Employer may employ and pay other persons to carry out and complete the Works and to rectify any defects and may enter upon the Works and use all materials on Site, plant, equipment and temporary works.
- 19.2 The Contractor shall, during the execution or after the completion of the Works under this clause, remove from the Site as and when required within such reasonable time as the Employer's Representative may in writing specify, any temporary buildings, plant, machinery, appliances, goods or materials belonging to him, and in default thereof, the Employer may (without being responsible for any loss or damage) remove and sell any such property of the Contractor, holding the proceeds less all costs incurred to the credit of the Contractor.

19.3 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 therefor the Employer's Representative shall certify the amount of expenses properly incurred by the Employer and, if such amount added to the money paid to the Contractor before such determination exceeds the total amount which would have been payable on due completion in accordance with this Contract, the difference shall be a debt payable to the Employer by the Contractor; and if the said amount added to the said money be less than the said total amount, the difference shall be a debt payable by the Employer to the Contractor.

20. Corrupt Gifts and Payments of Commission

20.1 The Contractor shall not;

- (a) Offer or give or agree to give to any person in the service of the Employer any gifts 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 with the Employer or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract with the Employer.
- (b) 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 Laws of Kenya.

21. Settlement of Disputes

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

APPENDIX TO CONDITIONS OF CONTRACT

The following information shall complement or amend the provisions of the General Conditions of Contract. Wherever there is a conflict between the provisions of the General Conditions of Contract and the provisions of this appendix, the provisions of the appendix herein shall prevail over those of the instructions to tenderers

THE EMPLOYER IS

Name: **THE COUNTY SECRETARY, COUNTY GOVERNMENT OF SIAYA**

DEPARTMENT: _____

Address: **P.O. Box 803-40600, SIAYA, KENYA**

Name of Employer's Representative: _____

Title: _____

Telephone: _____

The name (and identification number) of the Contract is: _____

The Works consist of: _____

Work shall only start after the Employer's representative notice to commence. The Start Date shall be: _____

The Intended Completion Date for the whole of the Works shall be: _____

The following documents also form part of the Contract: _____

The Site Possession Date shall be _____

The Site is located at _____ and is defined in drawings Nos: _____

Payment Certificates: Pursuant to Clause 14 of the General Conditions of Contract, the Employer's Representative may issue interim Payment certificates from time to time subject to measurement of the Work done in each stage before payment is made

The Defects Liability Period is _____ weeks from practical completion date.

The proportion of payment retained is ____% and the limit is ____%

The amount of performance security is Kshs...(Not Required).....(Note: the Employer must select the form of performance security to be accepted. A bank guarantee of between five (5) and ten (10) percent is acceptable. A performance bond on the other hand from an insurance company may be of upto thirty (30) percent of the Contract Price).

SECTION IV - STANDARD FORMS

List of Standard Forms

- (i) Form of Tender**
- (ii) Form of Agreement**
- (iii) Tender Securing-Declaration Form**
- (iv) Confidential Business Questionnaire**
- (v) Certificate of Tenderer's Visit to The Site**

FORM OF TENDER

TO: **The County Secretary** _____ *[Date]*
County Government of Siaya
P. O. Box 804-4600
Siaya, Kenya

TENDER NO. _____ **FOR** _____

Dear Sir,

1. In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Quantities for the execution of the above-named Works, we, the undersigned offer to construct, install and complete such Works and remedy any defects therein for the sum of Kshs. _____ *[Amount in figures]* Kenya Shillings _____ *[Amount in words]*
2. We undertake, if our tender is accepted, to commence the 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 within the time stated in the Appendix to Conditions of Contract.
3. We agree to abide by this Tender for the Tender validity period specified in Clause 3.6 of the Instructions to Tenderers, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
4. Unless and until a formal Agreement is prepared and executed this tender together with your written acceptance thereof, shall constitute a binding Contract between us.
5. We understand that you are not bound to accept the lowest or any tender you may receive.

Dated this _____ day of _____ 20 _____

Signature _____ in the capacity of _____

duly authorized to sign tenders _____

for and on behalf of _____ *[Name of Tenderer]*

of _____ *[Address Tenderer]*

Witness: Name _____

Address _____

Signature _____

Date _____

FORM OF AGREEMENT

THIS AGREEMENT, made the _____ day of _____ 20 _____ between the **County Government of Siaya, of P.O. Box 803-40600, Siaya** (hereinafter called "the Employer") of the one part
AND _____

_____ of **P. O. Box** _____ (hereinafter called "the Contractor") of the other part.

WHEREAS THE Employer is desirous that the Contractor executes _____

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

NOW THIS AGREEMENT WITNESSETH as follows:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and shall be read and construed as part of this Agreement i.e.
 - (i) Notification of award
 - (ii) Letter of Acceptance
 - (iii) Form of Tender
 - (iv) Conditions of Contract Part I
 - (v) Conditions of Contract Part II and Appendix to Conditions of Contract
 - (vi) Specifications
 - (vii) Drawings
 - (viii) Priced Bills of Quantities/Priced Schedule of Rates [whichever is applicable]
3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

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

**SIGNED/STAMPED FOR AND ON BEHALF OF
THE COUNTY GOVERNMENT OF SIAYA**

SIGNED/STAMPED FOR AND ON BEHALF OF

DEPARTMENT: _____

CONTRACTOR: _____

FULL NAME: _____

FULL NAME: _____

TITLE: _____

TITLE: _____

SIGNATURE: _____

SIGNATURE: _____

IN THE PRESENCE OF:

IN THE PRESENCE OF:

FULL NAME: _____

FULL NAME: _____

TITLE: _____

TITLE: _____

SIGNATURE: _____

SIGNATURE: _____

DATE: _____

DATE: _____

TENDER SECURITY DECLARATION FORM

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

Date: _____ **RFQ No.** _____

To: The County Government of Siaya
P. O. Box 803 – 40600
SIAYA

We, the undersigned, declare that:

1. We understand that, according to your conditions, bid must be supported by a Bid-Securing Declaration.
2. We accept that we will be automatically be suspended from being eligible for bidding in any contract with the Purchaser for the period of time of twelve months starting, if we are in breach of our obligation(s) under the bid conditions, because we –
 - (a) Have withdrawn our bid during the period of bid validity; or
 - (b) Having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity,
 - (i) Fail, refuse or deliberately delay to execute the contract, if required, or
 - (ii) fail or refuse to furnish the Performance Security, in accordance with the ITT
3. We understand that this Bid Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of
 - (i) our receipt of a copy of your notification of the name of the successful Bidder; or
 - (ii) twenty-eight days after the expiration of our Tender
4. We understand that if we are a Joint Venture, the Bid Securing Declaration must be in the name of the Joint Venture that submits bid and the Joint Venture has not been legally constituted at the time of bidding, the Bid Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Name:
.....
[insert complete name of person signing the Bid Securing Declaration]

Duly authorized to sign the bid for and on behalf of:
.....
[insert complete name of Bidder]

Signed:
.....
[insert signature of person whose name and capacity are shown]

In the capacity of:
.....
[insert legal capacity of person signing the Bid Securing Declaration]

Date:
[insert date of signing]

CONFIDENTIAL BUSINESS QUESTIONNAIRE

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

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

Part 1 General	
Business Name	
Location of Business Premises	
Plot No.	Street/Road
Postal address	Tel No. Fax No.
..... Email	
Nature of Business	
Registration Certificate No.	
Maximum value of business which you can handle at any one time – Kshs.	
Name of your bankers.....	
Branch.....	

	Part 2 (a) – Sole Proprietor					
	Your name in full.....Age.....					
	Nationality.....Country of Origin.....					
	Citizenship details					
	Part 2 (b) – Partnership					
	Given details of partners as follows					
	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;"></td> <td style="width: 25%;">Name</td> <td style="width: 25%;">Nationality</td> <td style="width: 25%;">Citizenship details</td> <td style="width: 10%;">Shares</td> </tr> </table>		Name	Nationality	Citizenship details	Shares
	Name	Nationality	Citizenship details	Shares		
	1.					
	2.					
	3.					
	4.					
	Part 2 (c) – Registered Company					
	Private or Public					
	State the nominal and issued capital of company					
	Nominal Kshs.					
	Issued Kshs.					
	Given details of all directors as follows					
	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 15%;"></td> <td style="width: 25%;">Name</td> <td style="width: 25%;">Nationality</td> <td style="width: 25%;">Citizenship details</td> <td style="width: 10%;">Shares</td> </tr> </table>		Name	Nationality	Citizenship details	Shares
	Name	Nationality	Citizenship details	Shares		
	1.					
	2.					
	3.					
	4.					
	Date.....Signature of Candidate.....					

CERTIFICATE OF TENDERER’S VISIT TO THE SITE

1. This is to certify that
(Name of Tenderer or his Representative)
of the Firm of
(Name of the Firm Tendering)
visited the sites in connection with the Tender for
(Project Name)
.....TENDER No.
2. Having previously studied the Contract Documents, I carefully examined the sites.
4. I have made myself familiar with all the local conditions likely to influence the works and the cost thereof.
4. I further certify that I am satisfied with the description of the works and that I understand perfectly the work to be done as specified and implied in the execution of the Contract.

Signed:
(Tender or his Representative)

Date:

Rubber Stamp

BILLS OF QUANTITIES

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
	ELEMENT NO:01				
	FENCING				
A	2.4m highx14 gauge chainlink complete with 12.5 gaugex6 strand galvanised barbed wire fencing with 100x125mm cranked precast concrete post complete with bracings at 3.0m centres mortised in mass concrete surround	LM	357		
	GATE				
B	Steel gate size 4000x2100mm high between two structurally sound concret posts anchored in mass concret soround. Opening leafs each size 2000x2100mm to detail including pedestrian gate size 900x2100	NO	1		
	Allow for Ksh.20,000 for Contigency				
	SUBTOTAL			Ksh	-
	ADD 14% VAT				-
	TOTAL CARRIED TO FORM OF TENDER				-

Amount in words.....
.....
.....

Tenderers Signature & Stamp.....

Address.....Email

Date.....

Witness Name.....

Signature.....

Address.....

Date.....