

# REPUBLIC OF KENYA



## COUNTY GOVERNMENT OF SIAYA

### TENDER DOCUMENT

### FOR

MAINTENANCE OF GOT AGULU OUNDO ROAD AND UPPERHILL ULOWA  
PRIMARY- ULOWA SECONDARY ROAD IN YIMBO WEST WARD

INVITATION TO TENDER (ITT) NO.

CGS/PWR/OT/2022-  
2023/089

SUPPLIER PORTAL NEGOTIATION NO.

1167132

*(County Specific Procurement Reserved for Women )*

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APRIL, 2023

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## **INVITATION TO TENDER**

**TENDER NO: CGS/PWR/OT/2022-2023/089: FOR PROPOSED MAINTENANCE OF GOT AGULU OUNDO ROAD AND UPPERHILL ULOWA PRIMARY- ULOWA SECONDARY ROAD IN YIMBO WEST WARD.**

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The County Government of Siaya (CGS) invites sealed tenders for the **FOR MAINTENANCE OF GOT AGULU OUNDO ROAD AND UPPERHILL ULOWA PRIMARY- ULOWA SECONDARY ROAD IN YIMBO WEST WARD**. Tendering will be conducted under open National competitive method using a standardized tender document. Tendering is open to all qualified and interested Tenderers.

**This is a County Specific Procurement reserved for residents of Siaya County. To enhance equity and fast track implementation, bidders shall bid for a maximum of One (1) Tenders under this Tender Notice. Bidders who participate in more than one (1) tenders shall be disqualified. In Addition, Contractors who have been awarded any roads project this financial year are also not eligible for award.**

Qualified and interested candidates may view, inspect and obtain complete tender documents free of charge from the CGS website ([www.siaya.go.ke](http://www.siaya.go.ke)) and the Public Procurement Information Portal ([www.tenders.go.ke](http://www.tenders.go.ke)). Tenderers who download the tender document should forward their particulars immediately to [supplies@siaya.go.ke](mailto:supplies@siaya.go.ke) to facilitate any further clarification or addendum.

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 98 days from the closing/opening date of the tender. Tenders must be accompanied by a **Tender Security as indicated in the tender notice in the Website ([www.siaya.go.ke](http://www.siaya.go.ke))** in the form of a guarantee acceptable under the Public Procurement and Asset Disposal Act, 2015 and The Public Procurement and Asset Disposal Regulations, 2020, payable to the County Secretary, CGS

The Tenderer shall chronologically serialize all pages of the tender documents submitted

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:

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

so as to be received **on or before Monday, 24<sup>th</sup> April, 2023 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**.

**Late tenders will be rejected**

**Director, Supply Chain Management  
For: COUNTY SECRETARY**

**Date: 14<sup>th</sup> April 2023**

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# **PART 1 - TENDERING PROCEDURES**

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## SECTION I: INSTRUCTIONS TO TENDERERS

### A General Provisions

#### 1. Scope of Tender

- 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 in the TDS**.

#### 2. Fraud and Corruption

- 2.1 The Procuring Entity requires compliance with the provisions 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 the person shall not engage in any corrupt or fraudulent practice and a declaration that the person or his or her sub-contractors are not debarred from participating 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. To this effect, Tenders shall be required to complete and sign the “Certificate of Independent Tender Determination” annexed to the 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 firm any unfair competitive advantage 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, make available to any tenderer information that would give such firm unfair competitive advantage over competing firms.

#### 3. Eligible Tenderers

- 3.1 A Tenderer 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 in the **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 have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.
- 3.3 A Tenderer shall not have a conflict of interest. Any tenderer found to have a conflict of interest shall be disqualified. A tenderer may be considered to have a conflict of interest for the purpose of this tendering process, if the tenderer:
- Directly or indirectly controls, is controlled by or is under common control with another tenderer; or
  - Receives or has received any direct or indirect subsidy from another tenderer; or
  - Has the same legal representative as another tenderer; or
  - 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; or



- e) Any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender; 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) Has a close business 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 the Tender 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 Entity throughout the tendering process and execution of the Contract.
- 3.4 A tenderer shall not be involved in corrupt, coercive, obstructive, collusive or fraudulent practice. A tenderer that is proven to have been involved any of these practices shall be automatically 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. A firm 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 the same Tender.
- 3.6 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT 3.9 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 the case may be. This criterion also shall apply to the determination of the nationality of proposed subcontractors or sub-consultants for any part of the Contract 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](http://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 from any 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 Firms 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. A tenderer 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, subcontracts and labor) from national suppliers and contractors. To this 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 enable the 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 the tenderer is registered in Kenya and has less than 51 percent ownership by Kenyan Citizens. JVs are considered as foreign tenderers if the individual member firms are not registered in Kenya or if registered in Kenya and have less than 51 percent ownership by Kenyan citizens. The JV shall not subcontract to foreign firms more than 10 percent of the contract 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 the website [www.nca.go.ke](http://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 be a condition for tender, but it shall be a condition of contract award 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 from the Competition Authority of Kenya may be accessed from the website [www.cak.go.ke](http://www.cak.go.ke)
- 3.14 A Kenyan tenderer shall provide evidence of having fulfilled his/her tax obligations by producing a valid tax clearance certificate or tax exemption certificate issued by the Kenya Revenue Authority.

#### **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. Contents of Tender Documents**

#### **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 be read in conjunction 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 by the 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 from the 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 Works and its surroundings and obtain all information that may be necessary for preparing the Tender and entering into a contract for the Services. The costs of visiting the Site shall be at 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 in the **TDS** before the meeting.
- 8.3 Minutes of the pre-Tender meeting and the pre-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 in accordance with ITT 6.3. Minutes shall not identify the source of the questions asked.
- 8.4 The Procuring Entity shall also promptly publish anonymized (*no names*) Minutes of the pre-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 made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT 8 and not through the minutes of the pre-Tender meeting. Nonattendance at the pre-Tender meeting will not be a cause for disqualification of a Tenderer.

## **9. Clarification and amendments of Tender Documents**

- 9.1 A Tenderer 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 the procedure under 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. Preparation of Tenders**

### **11. Cost of Tendering**

- 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 the relevant passages into the English Language, in which case, for purposes of interpretation of the Tender, such translation 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 in accordance with ITT 14 and ITT 16;
  - c) Tender Security or Tender-Securing Declaration, in accordance with ITT 21.1;
  - d) Alternative Tender, 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 evidence in accordance with ITT 19 establishing the Tenderer's qualifications to perform the Contract if its Tender is accepted;
  - g) Conformity: a technical proposal in accordance with ITT 18;
  - h) Any other document required in the **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 the proposed 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 paid to agents or any other party relating to this Tender.

### **14. Form of Tender and 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 in the **TDS**, alternative Tenders shall not be considered.
- 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, and proposed 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 The prices and discounts (including any price reduction) quoted by the Tenderer in the Form of Tender and in the Bill of Quantities shall conform to the requirements 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 the performance of the Contract in accordance with the provisions of the Conditions 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 require the Tenderer to justify 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 the procurement process is still ongoing, the tenderer will be disqualified from the procurement process,
  - ii) if the contract has been awarded to that tenderer, the contract award will be set aside,

- iii) the tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other persons have committed any criminal 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 attributable to the intentional act, negligence or recklessness of the tenderer.

## 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 indicated above.

## 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 use the form included 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 the following forms at the Tenderer's option:
- a) an unconditional Bank Guarantee issued by reputable commercial bank); or
  - b) an irrevocable letter of credit;
  - c) a Banker's cheque issued by a reputable commercial bank; or
  - d) another security specified **in the 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:
- a) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer on the Form of Tender, or any extension thereto provided by the Tenderer; or
  - b) if the successful Tenderer fails to:
    - i) sign the Contract 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 debar 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 use an 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, the Tenderer shall place the following 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) the name of the Tenderer and whether there is a withdrawal, substitution, or modification;
  - b) the Tender Price, per lot (contract) if applicable, including any discounts;
  - c) any alternative Tenders;
  - d) the presence or absence of 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 be distributed to all 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 in writing.**

### **29. Clarification of Tenders**

- 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, the following definitions apply:
- a) "Deviation" is a departure from the requirements specified in the tender document;
  - b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the tender document; and
  - c) "Omission" is the failure to submit part or all of the information or documentation required in the Tender document.

### **31. Determination of 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. **A material deviation, reservation, or omission is one that, if accepted, would:**
- a) affect in any substantial way the scope, 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 the proposed contract; or
  - c) if rectified, would unfairly affect the competitive position of other tenderers presenting substantially responsive tenders.
- 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 the tender 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 the tender as non-responsive. and
- c) if there is a discrepancy between words and figures, the amount in words shall prevail
- 33.3 Tenderers shall be notified of any error detected in their bid during the notification of a ward.
- 34. Currency provisions**
- 34.1 Tenders will be priced in Kenya Shillings only. Tenderers quoting in currencies other than in Kenya shillings will be determined non-responsive and rejected.
- 35. Margin of 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 owned by 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 not 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) price adjustment due to discounts 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 ITT 39;
  - c) price adjustment due to 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 **Form of Tender, is specified in Section III, Evaluation and Qualification Criteria.**
- 38. Comparison of Tenders**
- 38.1 The Procuring Entity shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 38.2 to determine the Tender that has the lowest 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 the tender 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 and conditions of contract, as the case may be.
- 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 on the cause of the compromise, before retendering.

#### **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 the Tender; 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 the Tender.

#### **42. Qualifications of the 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 to be:

- a) Most responsive to the Tender document; and
- b) the lowest evaluated price.

#### **44. Procuring Entity's Right to Accept Any 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 be promptly returned to the Tenderers.

### **F. Award of Contract**

#### **45. Award Criteria**

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

#### **46. Notice of Intention to enter into a Contract**

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

- a) the name and address of the Tenderer submitting the successful tender;
- b) the Contract price of the successful tender;
- c) a statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was unsuccessful, unless the price information in (c) above already reveals the reason;
- d) the expiry date of the Standstill Period; and
- e) instructions on how to request a debriefing and/or submit a complaint during the standstill 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 with the 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 of Award**
- 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 21 days of the date of the letter.
- 50. Signing of Contract**
- 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 of Adjudicator**
- 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 the appointment 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 the Adjudicator.
- 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. Publication of 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 contain the following information:
- a) name and 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) the name of the successful Tenderer, the final total contract price, the contract duration.
  - d) dates of signature, commencement and completion of contract;
  - e) names of all Tenderers that submitted Tenders, and their Tender prices as read out at Tender opening.

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

- 54.1 The procedures for making Procurement-related Complaints are as 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
	<b>A. General</b>
ITT 1.1	The name of the contract is: <i>As per Invitation to Tender in this Tender Document</i> Procuring Entity is: <i>County Government of Siaya</i> The reference number of the Contract is: <i>As per Invitation to Tender in this Tender Document</i> The number and identification of lots (contracts) comprising this Tender are: <i>N/A</i>
ITT 2.3	The Information made available on competing firms is as follows: <i>N/A</i>
ITT 2.4	The firms that provided consulting services for the contract being tendered for are: <i>N/A</i>
ITT 3.1	Maximum number of members in the Joint Venture (JV) shall be: <i>JV not allowed</i>
	<b>B. Contents of Tender Document</b>
8.1	(A) A pre-arranged pretender site visit " <i>shall not</i> " take place (B) Pre-Tender meeting <i>shall not</i> take place
ITT 8.2	The Tenderer will submit any questions in writing, to reach the Procuring Entity not later than <i>Five (5) days before tender opening</i>
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 <i>N/A</i>
ITT 9.1	For Clarification of Tender purposes, for obtaining further information and for purchasing tender documents, the Procuring Entity's address is:  (1) Name of Procuring Entity <i>County Government of Siaya</i>  (2) Physical address for hand Courier Delivery to an office or Tender Box <b>Tender documents to be deposited in the Tender Box provided at the main entrance of ALEGO USONGA SUB-COUNTY OFFICES within Siaya Town</b>  (3) Postal Address <i>County Secretary, P. O. Box 803-40600, Siaya -</i>  (4) Insert name, telephone number and e-mail address of the officer to be contacted. <i>Director, Supply Chain Management, Tel: No. _____supplies@siaya.go.ke</i>
	<b>C. Preparation of Tenders</b>
ITP 13.1 (h)	The Tenderer shall submit the following additional documents in its Tender: <i>All documents to be submitted shall be included under Section III – Evaluation and Qualification Criteria</i>
ITT 15.1	Alternative Tenders <i>shall not be</i> considered.
ITT 15.2	Alternative times for completion [ <i>insert "shall be" or "shall not be"</i> ] permitted. <i>Not Applicable</i>
ITT 15.4	Alternative technical solutions shall be permitted for the following parts of the Works: <i>Not Applicable</i>
ITT 16.5	The prices quoted by the Tenderer shall be: <i>fixed</i>
ITT 20.1	The Tender validity period shall be _____ [ <i>insert number of days that is a multiple of seven counting as of the deadline for Tender submission</i> ] days.
ITT 20.3 (a)	(a) The delayed to exceeding 30__number of days.  (b) The Tender price shall be adjusted by the following percentages of the tender price:  (i) By _____% of the local currency portion of the Contract price adjusted to reflect local inflation during the period of extension, and  (ii) By _____% the foreign currency portion of the Contract price adjusted to reflect the international inflation during the period of extension.

ITT Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	<i>Prevailing consumer price index obtained from Kenya National Bureau of Statistics or the monthly inflation rate issued by the Central Bank of Kenya for both (i) and (ii)</i>
ITT 21.1	Tenderer shall provide a <b>Tender Security</b> <i>As per the invitation to tender</i>
ITT 21.2 (d)	The other Tender Security shall be: <i>N/A</i> _____
ITT 21.5	On the Performance Security, other documents required shall be: <i>Detailed Work Program</i>
ITT 22.1	In addition to the original of the Tender, the number of copies is: <i>One (1)</i>
ITT 22.3	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of: <i>Written Power of Attorney</i>
<b>D. Submission and Opening of Tenders</b>	
ITT 24.1	(A) For <u>Tender submission purposes</u> only, the Procuring Entity's address is: <ol style="list-style-type: none"> <li>(1) Name of Procuring Entity: <i>County Government of Siaya</i></li> <li>(2) Postal Address: <i>County Secretary, P. O. Box 803-40600, Siaya</i></li> <li>(3) Physical address for hand Courier Delivery to an office or Tender Box: <b>Tender documents to be deposited in the Tender Box provided at the main entrance of ALEGO USONGA SUB-COUNTY OFFICES within Siaya Town.</b></li> <li>(4) Date and time for submission of Tenders: <i>As per Invitation to Tender</i></li> <li>(5) Tenders shall <b>submit</b> tenders electronically: <i>Tenderers must respond both electronically through the IFMIS Supplier Portal and also manually submit physical tender document</i></li> </ol>
ITT 27.1	The Tender opening shall take place at the time and the address for Opening of Tenders provided below: <ol style="list-style-type: none"> <li>(1) Name of Procuring Entity: <i>County Government of Siaya</i></li> <li>(2) Physical address for the location: <b>ALEGO USONGA SUB-COUNTY OFFICES within Siaya Town.</b></li> <li>(3) State date and time of tender opening: <i>As per Invitation to Tender</i></li> </ol>
ITT 27.1	If Tenderers are allowed to submit Tenders electronically, they shall follow the electronic tender submission procedures <b>specified below: There shall be no electronic opening of tenders</b>
ITT 27.6	The number of representatives of the Procuring Entity to sign is: <b>At least Three (3)</b>
<b>E. Evaluation, and Comparison of Tenders</b>	
ITT 32.3	The adjustment shall be based on the <i>average</i> 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: <i>As per Invitation to Tender</i>
ITT 36.1	At this time, the Procuring Entity <i>does not intend</i> 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: <i>0% of the total contract amount</i> . 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 Reference	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 36.3	<p><i>[Indicate N/A if not applicable]</i></p> <p>The parts of the Works for which the Procuring Entity permits Tenderers to propose Specialized Subcontractors are designated as follows: <i>N/A</i></p> <p>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.</p>
ITT 37.2 (d)	<p>Additional requirements apply. <i>All requirements are detailed in the evaluation criteria in Section III, Evaluation and Qualification Criteria</i></p>
ITT 45.1	<p><b>Award Criteria:</b></p> <p><i>The Procuring Entity shall award the Contract to the successful tenderer whose tender has been determined to be the Lowest Evaluated Tender</i></p> <p><i>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</i></p> <p><b>This is a County Specific Procurement reserved for residents of Siaya County. To enhance equity and fast track implementation, bidders shall bid for a maximum of One (1) Tenders under this Tender Notice. Bidders who participate in more than one (1) tenders shall be disqualified. In Addition, Contractors who have been awarded any roads project this financial year are also not eligible for award.</b></p>
ITT 46	<p>Notification of intent to enter into a contract shall be communicated through E-mail. Tenderers must therefore provide their E-mail addresses:</p> <p>Email Address 1 (Mandatory): _____</p> <p>Email Address 2: (Optional): _____</p>
ITT 51.1	<p>The person named to be appointed as Adjudicator is: <i>N/A</i> _</p>
ITT 52.1	<p>Performance Security: <i>Performance Security shall be required only for Contracts above Kshs. 5 Million 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 2% of the contract sum.</i></p>
ITT 52.2	<p>Other documents required in addition to the Performance Security are: <i>Detailed Work Program</i></p>
ITT 54.1	<p>The procedures for making a Procurement-related Complaint are available from the PPRA website <a href="mailto:info@ppra.go.ke">info@ppra.go.ke</a> or <a href="mailto:complaints@ppra.go.ke">complaints@ppra.go.ke</a>. If a Tenderer wishes to make a Procurement-related 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:</p> <ul style="list-style-type: none"> <li>• Title/position: <b>Director, Supply Chain Management</b></li> <li>• Procuring Entity: <b>County Government of Siaya</b></li> <li>• Email address: <b>supplies@siaya.go.ke</b></li> </ul> <p>In summary, a Procurement-related Complaint may challenge any of the following:</p> <p>(i) the terms of the Tender Documents; and</p> <p>(ii) the Procuring Entity’s decision to award the contract.</p>



## **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 the rate 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) Value of single contract - Exchange rate prevailing on the date 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 exchange rates in the Tender may be corrected by the 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.

#### **Evaluation and 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 price shall be selected for award of contract.

### **2. Preliminary examination for Determination of 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 irresponsive and will not be considered further.

#### **Preliminary examination for Determination of Responsiveness**

The Procuring Entity will start by examining all tenders to ensure they meet in all respects the eligibility criteria and other mandatory requirements in the ITT, and that the tender is complete in all aspects in meeting the requirements provided for in the preliminary evaluation criteria outlined below. 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 non-responsive and will not be considered further.

<b>No.</b>	<b>Parameter</b>
1	Tenders must respond both electronically through the IFMIS Supplier Portal and also manually submit Physical tender documents. Tenderers who do not respond through the IFMIS Supplier Portal shall be disqualified and not subjected to any further evaluation
2	Proof of Registration with Registrar of Companies. 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>
3	Copy of Valid Tax Compliance Certificate issued by the Kenya Revenue Authority <i>(Will be verified on the KRA TCC Checker)</i> . The Tax Compliance Certificate shall be valid at least up to the Tender Closing date.

No.	Parameter
4	Form of Tender duly Completed, Signed and Stamped by the Tenderer in the format provided and all attachments submitted.
5	Must submit a Duly Completed, Signed and Stamped Tenderer's Eligibility - Confidential Business Questionnaire in format provided
6	Submit a duly completed, signed and stamped Certificate of Independent Tender Determination in format provided
7	Submit a duly completed, signed and stamped Self Declaration that the person/tenderer is not debarred in the matter of the Public Procurement and Asset Disposal Act 2015 (Form SD1)
8	Submit a duly completed, signed and stamped Self Declaration that the person/tenderer will not engage in any corrupt or fraudulent practice (Form SD2)
9	Submit a duly completed, signed and stamped Declaration and Commitment to Code of Ethics Code Form in format provided
10	Bills of Quantities duly Completed, Signed and Stamped by the Tenderer in the format provided
11	Must submit a Duly Completed, Signed and Stamped Tenderer Information Form in format provided
12	Submit a duly completed, signed and stamped Tender Securing Declaration Form attached to this tender document
13	Certificate of Tenderer's Visit to the Site attached to this tender document duly completed, stamped and signed by both the Employer's representative and contractor
14	Must submit a copy of relevant current National Construction Authority Practicing License (NCA Category as per Tender Notice).
15	Must submit Audited Financial Statements for the year 2021.
16	Proof of Registration within Siaya County. Submit a valid relevant current Trading License / Single Business Permit issued by the County Government of Siaya
17	Since this is a County Specific Procurement reserved for Residents of Siaya County, Proof of Residency specifically proof of physical location of the company by attaching evidence (i.e. title deed in the name of the firm or at least one of the directors, Valid lease agreement, utility bills in the name of the firm or one of the Directors) shall be submitted. ( <i>Single Business permit shall not be considered as evidence/ proof</i> ).
18	Submit a workplan / program and Methodology
19	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 i.e sequentially paginated, from the first page to the last in this format; ( <i>i.e. 1, 2, 3... .. n where n is the last page</i> ). Table of contents should also be provided and the document accordingly arranged.

### 3.0 TENDER EVALUATION (ITT 35)

Tenders meeting the minimum responsiveness requirements will be **evaluated** according to the following Evaluation Criteria

#### 3.1 Technical Evaluation

Candidates that will have passed preliminary evaluation will have their technical proposals evaluated.

The pass mark for technical specifications shall be **70%** - see technical requirements below:

Detailed scoring matrix for technical evaluation is as shown in the table below:

Item	Parameter	Maximum points
1	Tenderer Information Form ELI-1.1	10
2	Works of similar nature, complexity and magnitude completed.	10

Item	Parameter	Maximum points
3	Current Commitments	8
4	Reputation	5
5	Equipment Holding	10
6	Qualifications and experience of technical staff	18
7	Financial Situation	10
8	Credit Lines:	8
9	Litigation and arbitration history (Provide affidavit).	2
10	Completeness and clarity of the tender document in accordance with Clause 3 of instructions to tenderers	2
	<b>TOTAL</b>	<b>83</b>

Item	Description	Scoring breakdown	Max-points	Score
1	Tenderer Information Form ELI-1.1  Properly filled  Not filled	(Aggregate score) 10  0	10	
2	Experience under road construction contracts in the role of main contractor for at least two (2) years prior to the applications submission deadline. <b>Similar works satisfactorily and substantially completed within the last two (2) years for different projects for different clients each with a value of at least Kshs. Two (2) Million</b> <i>(Present the similar works competed in a table format and attach evidence for each e.g. completion certificates, handing over certificates or any other documentary proof)</i> 5 projects and above successfully completed 4 projects and above successfully completed 3 projects and above successfully completed 2 projects and above successfully completed 1 project successfully completed None or no relevant project	(Aggregate score)   10 8 6 4 2 0	10	
3	<b>Current Commitments:</b> Details of road works underway or contractually committed i.e. Schedules of on-going projects. <i>(Present the similar works underway or contractually committed in a table format and attach evidence for each e.g. award letters, interim certificates or any other documentary proof)</i> 4 projects and above ongoing well 3 projects and above ongoing well 2 projects and above ongoing well 1 project ongoing well None or no relevant project	(Aggregate score)   8 6 4 2 0	8	
4	<b>Reputation:</b> Names and addresses of clients (other than County Government of Siaya) who may be contacted for further information on completed projects. [in a table format with the following details; Name of the contact person, Firm, Project/Assignment, Cost & Contact - <i>Postal Address, E-mail Address, Tel: No. - etc.</i> ]. Please also submit reference letters from the Clients.  5 Clients and above 4 Clients 3 Clients 2 Clients	(Aggregate score)   5 4 3 2	5	

Item	Description	Scoring breakdown	Max-points	Score
	1 Clients	1		
5	<p><b>Equipment Holding:</b> Major items of construction equipment proposed to carry out the Contract (Owned, leased or hired) and an undertaking that they will be available for the Contract i.e. Schedule of contractors' equipment</p> <p><i>(Submit Evidence of Ownership/Leasing (Mandatory) e.g. log books for vehicles, purchase receipts for equipment or lease agreements or any other acceptable documentary evidence)</i></p> <p>Compaction Equipment</p> <p>Earth Moving Equipment</p> <p>Transportation Vehicles</p> <p>Availability Undertaking</p>	<p>(Add Individual item score)</p> <p>3</p> <p>3</p> <p>3</p> <p>1</p>	10	
	Total	10		
6	<p><b>Qualifications and experience of technical staff.</b> Submit current CVs of at least three (3) technical staff with the following minimum qualifications and experience: -</p> <p>6 marks per technical staff to be awarded – maximum 18</p> <ul style="list-style-type: none"> <li>- Qualifications – at least Dip Civil Engineering</li> <li>- General Experience – at least 5 years</li> <li>- Specific Experience – at least 3 Years</li> </ul>	<p>(Add individual item score)</p> <p>3</p> <p>1</p> <p>2</p>	18	
	Total per technical staff	6		
7	<p><b>Financial Situation:</b> The current soundness of the applicant's financial position and its prospective long-term profitability. Submit: -</p> <ul style="list-style-type: none"> <li>▪ Audited financial statement for the year 2021 with a turnover of at least Kshs. 10 million <ul style="list-style-type: none"> <li>- Provided and Satisfactory - 6 marks</li> <li>- None or unsatisfactory - 0 Marks</li> </ul> </li> <li>▪ Bank Statements for the last six months <ul style="list-style-type: none"> <li>- Provided and satisfactory – 4 Marks</li> <li>- None or unsatisfactory – 0 Marks</li> </ul> </li> </ul>	<p>(Aggregate score)</p> <p>6</p> <p>4</p>	10	
8	<p><b>Credit Lines:</b> Evidence of ability to access credit facilities amounting to a minimum of Kshs. Three (3) million i.e. Lines of credit [e.g. from bank, suppliers' letters of credit, overdraft facility etc.]</p> <ul style="list-style-type: none"> <li>- Provided and satisfactory – 8 Marks</li> <li>- None or unsatisfactory – 0 Marks</li> </ul>	<p>(Aggregate score)</p> <p>10</p> <p>0</p>	10	
9	<p><b>Litigation and arbitration history.</b> Information regarding any litigation, current or during the last five years, in which the tenderer is involved, the parties concerned and disputed amount (Provide affidavit)</p> <p>Provided and satisfactory</p> <p>None</p>	<p>(Aggregate score)</p> <p>2</p> <p>0</p>	2	
10	<p>Completeness and clarity of the tender documents</p> <p>Satisfactory</p> <p>Not satisfactory</p>	<p>(Aggregate score)</p> <p>2</p> <p>0</p>	2	
	<b>TOTAL</b>		<b>83</b>	



*Only bidders who scores 59.5 points (70%) and above shall proceed to financial evaluation. In addition to the pass mark, the following criteria are considered critical and firms must score at least half the marks allocated to each to be deemed technically responsive*

- **Criteria No. 2**
- **Criteria No. 6**
- **Criteria No. 7**

## **B) Financial evaluation**

### **Stage 1**

- 1) This will include the following: -
  - a) Confirmation of and considering Bill of Quantities completed and signed.
  - b) Conducting a financial comparison for the firms that passed technical evaluation

### **Stage 2 and Post Qualification**

- The lowest evaluated tender having passed stage 1 above shall be the winning bid subject to the employer's right to exercise due diligence relating to confirmation of information submitted by the bidder. **The CGS may conduct post-qualification as it deems necessary** in accordance with "The Public Procurement & Disposal Act 2015 Section 83 (1), which provides that '*An evaluation committee may, after tender evaluation, but prior to the award of the tender, conduct due diligence and present the report in writing to confirm and verify the qualifications of the tenderer who submitted the lowest evaluated responsive tender to be awarded the contract in accordance with this Act*'. Any bidder who shall be found to have supplied false or misleading information shall be disqualified and the next lowest tender that has passed stage 1 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. In addition, any contract terminated on grounds of integrity and/or fraud or corruption is ineligible to tender. These bidders shall be shall be disqualified and the next lowest tender that has passed stage 1 shall be considered.

**SECTION III - EVALUATION AND QUALIFY ON CRITERIA**

**QUALIFICATION FORMS**

**1. TENDERER’S QUALIFICATION WITHOUT PRE-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.

**FORM ELI -1.1 - Tenderer Information Form**

*[The Tenderer shall fill in this Form and attach all documents in accordance with the instructions indicated below. No alterations to its format shall be permitted and no substitutions shall be accepted.]*

Date: .....*[insert date (as day, month and year) of Tender submission]*

ITT No.: .....*[insert number of Tendering process]*

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

1	Tenderer’s Name <i>[insert Tenderer’s legal name]</i>
2	In case of JV, legal name of each member: <i>[insert legal name of each member in JV]</i>
3	Tenderer’s actual or intended country of registration: <i>[insert actual or intended country of registration]</i>
4	Tenderer’s year of registration: <i>[insert Tenderer’s year of registration]</i>
5	Tenderer’s Legal Address in country of registration: <i>[insert Tenderer’s legal address in country of registration]</i>
6	Tenderer’s Authorized Representative Information
	Name: <i>[insert Authorized Representative’s name]</i>
	Address: <i>[insert Authorized Representative’s Address]</i>
	Telephone/Fax numbers: <i>[insert Authorized Representative’s telephone/fax numbers]</i>
7	Attached are copies of original documents of [check the box(es) of the attached copy original documents]
	<input type="checkbox"/> For Kenyan Tenderers a current tax clearance certificate issued by the Kenya Revenue Authority in accordance with ITT 3.14. The Tax Compliance Certificate shall be valid at least up to the Tender Closing date. <i>(This may be verified on the KRA TCC Checker).</i>
	<input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 3.6.
	<input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 3.1. <i>(Not applicable as JV not allowed)</i>
	<input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with ITT 3.8 documents establishing:
	(i) Legal and financial autonomy
	(ii) Operation under commercial law
(iii) Establishing that the tenderer is not under the supervision of the Procuring Entity	
8	Included are the organizational chart, a list of Board of Directors, and the beneficial ownership

..... (Title) ..... (Signature) ..... (Date)

Bidder Official Stamp

## **OTHER FORMS**

### **2 FORM OF TENDER**

#### *INSTRUCTIONS TO TENDERERS*

- i) *The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address.*
- ii) *All italicized text is to help Tenderer in preparing this form.*
- iii) *Tenderer must complete and sign CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELF DECLARATION OF THE TENDERER attached to this Form of Tender.*
- iv) *The Form of Tender shall include the following Forms duly completed and signed by the Tenderer.*
  - *Tenderer's Eligibility- Confidential Business Questionnaire*
  - *Certificate of Independent Tender Determination*
  - *Self-Declaration of the Tenderer*

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

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

**Name and description of Tender** *[Insert as per ITT]*

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

**To:** *[insert complete name 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 *[amount in words]* \_\_\_\_\_.

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 within the time stated in the Special Conditions of Contract.
3. We agree to adhere by this tender until \_\_\_\_\_ *[Insert date]*, and it shall remain binding upon us and may be accepted at any time before that date.
4. Unless and until a formal Agreement is prepared and executed this tender together with your written acceptance thereof, shall constitute a binding Contract between us. We further understand that you are not bound to accept the lowest or any tender you may receive.
5. We, the undersigned, further declare that:
  - 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 in accordance 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 the options below as 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 and the respective 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 amounts and the respective currencies];*
- vii) **Discounts:** The discounts offered and the methodology for their application are:
- viii) The discounts 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 method that shall be used to apply 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 the Tendering 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 than alternative Tenders 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 prepared and executed;
- xvii) **Not Bound to Accept:** We understand 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 in any type of Fraud and 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” attached below.
- xx) We undertake to adhere by the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal, copy available from \_\_\_\_\_ (*specify website*) during the procurement process and the execution of any resulting contract.
- xxi) We, the Tenderer, have completed fully and signed the following Forms as part of our Tender:
- a) Tenderer's Eligibility; Confidential Business Questionnaire – to establish we are not in any conflict to interest.
  - 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 and corruption.
  - 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 duly authorized to sign the Tender]*

**Title of the person signing the Tender:** *[insert complete title of the person signing the Tender]*

**Signature of the person named above:** *[insert signature of person whose name and capacity are shown above]*

**Date signed** *[insert date of signing]* day of *[insert month]*, *[insert year]*

Date signed \_\_\_\_\_ 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. The Power of Attorney shall be Tender Specific Written Power of Attorney drawn by Commissioner of Oaths for the person(s) duly authorized to bind the tenderer. The County Government of Siaya will determine whether the tender document has been properly signed*

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

#### Instruction to Tenderer

Tender is instructed to complete the particulars required in this Form, *one form for each entity if Tender is a JV.* Tenderer is further reminded that it is an offence to 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 2. City 3. Location 4. Building 5. Floor 6. Postal Address 7. Name and email of contact person.
6	Current Trade License Registration Number and Expiring date	
7	Name, country and full address ( <i>postal and physical addresses, email, and telephone number</i> ) 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 ( <i>postal and physical addresses, email, and telephone number</i> ) of 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 OF INTEREST- Interest of the Firm in the Procuring Entity.**

i) Are there any 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.		
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 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.		
7	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.		
8	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)

#### 4. CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

I, the undersigned, in submitting the accompanying Letter of Tender to the \_\_\_\_\_ [Name of Procuring Entity] for: \_\_\_\_\_ [Name and number of tender] in response to the request for tenders made by: \_\_\_\_\_ [Name of Tenderer] do hereby make the following statements that I certify to be true and complete in 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 am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;
4. For the purposes of this Certificate and the Tender, I understand that the word “competitor” shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:
  - a) has been requested to submit a Tender in response to this request for tenders;
  - b) could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;
5. The Tenderer discloses that [check one of the following, 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, such consultations, 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 any competitor regarding:
  - a) prices;
  - b) methods, factors or formulas used to calculate prices;
  - c) the intention or decision to submit, or not to submit, 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 to paragraph (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 to paragraph (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].*



**5. SELF - DECLARATION FORMS**

**FORM SD1**

**SELF DECLARATION THAT THE PERSON/TENDERER IS NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015.**

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

- 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.
- THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.
- THAT what is deponed to herein above is true to the best 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 name of the Procuring entity*) and duly authorized and competent to make this 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 the subject tender
  
5. THAT what is deponed to herein above is true to the best of my knowledge information and belief.

.....  
(Title)

.....  
(Signature)

.....  
(Date)

Bidder's Official Stamp

**6 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 abide by the provisions 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.....

**7. 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 complete name of Purchaser]* I/We, the undersigned, declare that:

1. I/We understand that, according to your conditions, bids must be supported by a 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 refuse to furnish the Performance Security, in accordance 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 the name of the successful Tenderer; or
  - b) thirty days after the expiration of our Tender.
4. I/We understand 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, the Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed:..... Capacity / title (director  
or partner or sole proprietor, etc.) ..... Name:

..... Duly authorized to sign the bid

for and on behalf of: *[insert complete name of Tenderer]*

Dated on ..... day of ..... *[Insert date of signing]* Seal or stamp

## APPENDIX 1- FRAUD AND CORRUPTION

*(Appendix 1 shall not be modified)*

- **Purpose**

- 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 that are governed by the laws of Kenya.

- **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 in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, 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 no tolerance for such practices and behavior: -

- 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 any procurement or asset disposal proceeding;
  - A person referred to under subsection (1) who contravenes the provisions of that sub-section commits an offence;
  - Without limiting the generality of the subsection (1) and (2), the person shall be: -
  - disqualified from entering into a contract for a procurement or asset disposal proceeding; or
  - if a contract has already been entered into with the person, the contract shall be voidable;
  - The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
  - 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 to a procurement: -
  - shall not take part in the procurement proceedings;
  - shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
  - 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.
  - 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 to the procuring entity;
  - 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 by the awarding officer. Etc.
  - In compliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:
- a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
- i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions 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) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
  - iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
  - v) “obstructive practice” 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 inspection and 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 collusive practices 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 free and open competition.
- c) Rejects a proposal for award<sup>1</sup> 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 obstructive practices in competing for the contract 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<sup>2</sup> 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 Government of 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 any corrupt or fraudulent practices.

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<sup>1</sup> 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 such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract.

<sup>2</sup> 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; accessing and 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 OF TENDER SECURITY-[Option 1–Demand Bank Guarantee]**

**Beneficiary:** \_\_\_\_\_

**Request for Tenders No:**

\_\_\_\_\_

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

**TENDER GUARANTEE No.:** \_\_\_\_\_

**Guarantor:** \_\_\_\_\_

1. We have been informed that \_\_\_\_\_ (here inafter called "the Applicant") has submitted or will submit to the Beneficiary its Tender (here inafter called" the Tender") for the execution of \_\_\_\_\_ under Request for Tenders No. \_\_\_\_\_ ("the ITT").
2. Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.
3. 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 the demand, stating that either the Applicant:
  - (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 there to provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the Performance.
4. 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 the Tendering process; or (ii) thirty days after the end of the Tender Validity Period.
5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

\_\_\_\_\_  
[signature(s)]

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

**8. FORMAT OF TENDER SECURITY [Option 2–Insurance Guarantee]**

**TENDER GUARANTEE No.:** \_\_\_\_\_

1. Whereas ..... [*Name of the tenderer*] (hereinafter called “the tenderer”) has submitted its tender dated ..... [*Date of submission of tender*] for the ..... [*Name and/or description of the tender*] (hereinafter called “the Tender”) for the execution of \_\_\_\_\_ under Request for Tenders No. \_\_\_\_\_ (“the ITT”).
2. KNOW ALL PEOPLE by these presents that WE ..... of ..... [**Name of Insurance Company**] having our registered office at ..... (hereinafter called “the Guarantor”), are bound unto ..... [*Name of Procuring Entity*] (hereinafter called “the Procuring Entity”) in the sum of ..... (Currency and guarantee amount) for which payment well and truly to be made to the said Procuring Entity, the Guarantor binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with the Common Seal of the said Guarantor this \_\_\_ day of \_\_\_\_\_ 20 \_\_.

3. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Applicant:
  - 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 guarantee 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. 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 the Tendering process; or (ii) twenty-eight days after the end of the Tender Validity Period.
5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

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

\_\_\_\_\_  
*[Signature of the Guarantor]*

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

\_\_\_\_\_  
*[Seal]*

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



**9. 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.

3. 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.

**Contractor**

Signed: .....  
(Tenderer Representative)

Date: .....

Rubber Stamp .....

**Employer (County Government of Siaya)**

Signed: .....  
(Employer Representative)

Date: .....

Rubber Stamp .....

**11) FORM OF WRITTEN POWER-OF-ATTORNEY**

The Bidder shall state here below the name(s) and address of his representative(s) who is/are authorized to commit the bidder and receive on his behalf correspondence in connection with the Bid. The Tender document shall be signed by the Person(s) with the Power of Attorney.

.....  
(Name of Bidder's Representative in block letters)

.....  
(Address of Bidder's Representative)

.....  
(Signature of Bidder's Representative)

**Alternate:**

.....  
(Name of Bidder's Representative in block letters)

.....  
(Address of Bidder's Representative)

.....  
(Signature of Bidder's Representative)

\*To be filled by all Bidders.

\*Both representative and alternate must attach copy of National Identification card or Passport.

=====

\*Where the representative is not a Director of the Firm, At least one Director must sign below.

Name of Director	Signature	Date
1 .....		
2 .....		
3 .....		
4 .....		

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## **PART II - WORK REQUIREMENTS**

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## **SECTION V - DRAWINGS**

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

**No drawings provided at the tendering stage but may be issued if required during implementation.**

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## **SECTION 1 - GENERAL**

### **101 Special Specifications.**

Special specification is supplementary to the Standard Specifications and the two must be read in conjunction. In any case where there appears to be conflict between the two then the Special Specifications will take precedence **Location:**

The Road is located in Siaya County..

The road traverses rolling terrain with the main economic activity being, pastrolisim and livestock farming.

### **102 Extent of Contract.**

The Major Works to be executed under the Contract is as per BoQs.

It shall be the contractor's responsibility to construct all works in conformity with the latest revision, amendments or superseding drawings current at the time of construction of such works.

It shall be the contractor's responsibility to construct all works in conformity with the latest revision, amendments or superseding drawings current at the time of construction of such works.

### **104 Programme of Execution of the Works**

The contractor shall provide the works programme, required under clause 14 of the Conditions of Contract, within 28 days of receipt of the Engineer's Order to commence work.

The programme shall be co-ordinated with climatic and other conditions to provide for the completion of the works in the order and by the time specified.

The Contractor shall carry out the contract in accordance with the programme agreed with the Engineer, but he shall in no manner be relieved by the Engineer's approval of the programme, of his obligation to complete the works in the prescribed order and by the prescribed completion date and he shall from time to time review his progress and make such amendments to his rate of execution of the works as may be necessary to fulfil his obligations.

### **105 Order of Execution of Works**

In addition to Clause 105 of the Standard Specification the Contractor shall carry out the Works such that a continuous and consecutive output of fully completed work is achieved.

### **107 Taking over Certificate**

Taking over certificate shall be issued upon completion of the works.

### **108 METHOD OF CONSTRUCTION AND HOURS OF ATTENDANCE BY THE ENGINEER'S REPRESENTATIVE ON SITE**

At the commencement of the contract the Contractor will submit in writing to the Engineer, the hours which shall be considered normal working hours, together with the day of the week to be set aside for rest. When approved these shall be maintained throughout the continuance of the Contract.

Notwithstanding the provision of the last paragraph of clause 108 of the Standard Specification, the Engineer's Representative normal working hours shall be defined as 8.00 a.m. to 5.00 p.m. on weekdays and excluding lunch hour and 8.00 a.m. to 01.00 p.m. on Saturdays. Sundays will be set aside for rest. If the Contractor wishes to execute permanent works outside these hours, he shall meet any extra costs arising thereof in addition to giving a day's notice in writing. In this respect the salaries of the Engineer's junior staff, involved in the overtime supervision shall be paid to with an overhead of 65%.



## **109 Notice of Operations**

Add the following sub- Clause.

### Notification Terms

It shall be the Contractor's responsibility to notify the Engineer when any item of works scheduled are completed and ready for approval, and the contractor shall give sufficient notice to allow control test to be performed.

### Explosive and Blasting

- (a) The requirements of the Laws of Kenya governing explosives and other requirements and regulations of Government of Kenya and other authorities shall be complied with.
- (b) No explosives of any kind shall be used without prior written consent of the Engineer.
- (c) The Contractor shall be solely responsible for the provision, handling, storage and transporting of all explosives, ancillary materials and all other items of related kind whatsoever required for blasting.

## **117 Health, Safety and Accidents**

Insert Sub-clause (i):

In accordance with the laws of Kenya, the Contractor shall make arrangement for awareness programme for public health education and particularly for HIV/AIDS as detailed under Section 26 of this specification.

## **121 Diversion of Services**

- a) The Contractor shall acquaint himself with the location of all existing services such as telephone lines, electricity cables, water pipes, sewerlines etc., before execution of any works that may affect the services. The cost of determining the location of the existing services together with making good or repairing of any damage caused all to the satisfaction of the Engineer shall be included in the BID rates.
- b) Subject to the agreement with the Engineer, the Contractor shall be responsible for removal of alteration and relocation of existing services.
- c) The Contractor shall indemnify the Employer against claims originating from damage to existing services or works.

## **123 Liaison with Government and Police Officials**

The Contractor shall keep in close touch with the Police and the other Government officials of the area regarding their requirements in the control of traffic, or other matters, and shall provide all assistance or facilities, which may be required by such officials in the execution of their duties.

## **124 Land For All Camps Sites And For The Contractor's Own Purposes, Including Temporary Works.**

Notwithstanding Clause 124 of the Standard Specification all requirements of land for temporary works and construction purposes shall be to the approval of the Engineer but the Contractor will make all necessary arrangements with the property owners concerned and pay all charges arising there from. On or before completion of the Contract, the Contractor shall remove all temporary works and shall restore all such land to the condition in which it was immediately prior to the occupation thereof as far as is reasonable and practicable. No separate payment will be made to the Contractor on account of these items and the Contractor must make due allowance for them in his rates.

Notwithstanding Clause 120 of the Standard Specifications, the Contractor shall be required to appoint competent surveyors who will liaise with the Engineer on matters related to the demarcation of the existing road reserve, site measurements, removal and reinstatement of existing services.

**125 Water Supply**

The water source proposed for the project road is from the nearby river. However, it should be known that the source is used by the local communities and as such the Contractor will be required to make appropriate arrangements with the local communities before their use.

Notwithstanding the above limitations, the contractor is expected to supply clean water as in indicated in clause 125 of standard specification and take due consideration of these in his rates.

**126 MATERIALS AND MANUFACTURED ARTICLES**

Notwithstanding the provision of Clause 126 of the Standard Specifications, the contractor's attention is drawn to his obligation with regard to quality and delivery schedule of materials and goods obtained from suppliers. Should the Engineer at any time be dissatisfied with any goods and materials intended for use or used by the contractor upon the works, he shall be empowered to reject such goods and materials and shall order that they be replaced by others of acceptable quality. Any more work that may consequently have to be redone and the cost thereof or the new supplies shall all be borne by the contractor.

**128 Storage of Materials**

All materials shall be stored on Site in a manner approved by the Engineer and the Contractor shall carefully protect from the weather all work and materials which may be affected thereby.

**129 Test Certificates**

When instructed by the Engineer the Contractor shall submit certificates of test from the suppliers of materials and goods required in connection with the works as the Engineer may require.

Such certificates shall certify that the materials or goods concerned have been tested in accordance with the requirements of the specifications and shall give the results of all the tests carried out. The Contractor shall provide adequate means of identifying the materials and goods delivered to the site with the corresponding certificates.

**131 Signboards**

The Contractor shall provide and erect two (2) publicity signboards on the site as directed. The Engineer shall, as shown in the Drawings, direct the minimum dimensions of the boards. The boards shall be prepared, primed and painted cream and lettered in black. The boards shall be of stout construction, resistant to the effects of weather.

**137 Attendance upon the Engineer and His Staff**

The Contractor shall pay wages (including all overtime) use all attendant staff to fulfil the requirements of Clause 137 of the Standard Specification. The Contractor will be paid on a prime cost basis plus a percentage for overheads and profits under appropriate items in the Bills of Quantities.

**139 Receipted Accounts**

The Contractor maybe instructed by the Engineer to make payments of general miscellaneous accounts for such items as stationery, stores and equipment and miscellaneous supervision personnel and claims or the Engineer may direct the Contractor to purchase or pay for the above. The Contractor will be paid on a prime cost basis plus a percentage for overheads and profits under appropriate items in the Bills of Quantities.

**142 Liquidated Damages**

Liquidated damages at the rate per day specified in the Appendix to the Form of Bid shall apply in the event of the works not being completed within the time for completion plus any extension of time which may be determined by the Engineer.

**143 Environmental Protection**

The Contractor shall comply with the Statutory Regulations in force in Kenya regarding environmental protection and waste disposal, and shall liaise with the National Environmental Management Agency (NEMA).

Within four (4) weeks of the order to commence work, the Contractor shall prepare and submit a specific Environmental Management Plan for the project and his operations, relating to the approved Environmental Impact Assessment. The Environmental Management Plan shall outline potential environmental hazards and risks, and provide an action plan to deal with the hazards, minimise the risks, and mitigate adverse environmental impacts, and include a general decommissioning plan covering all relevant aspects of the project. The Environmental Management Plan shall identify monitoring indicators and reporting requirements.

The Contractor shall be required to submit environmental progress reports to the Engineer every three (3) months.

The Contractor shall ensure so far as is reasonably practicable and to the satisfaction of the Engineer; that the impact of the construction on the environment shall be kept to a minimum and that appropriate measures are taken to mitigate any adverse effects during the construction.

- (a) The Contractor shall exercise care to preserve the natural landscape and shall conduct his construction operations so as to prevent any unnecessary destruction, scarring, or defacing of the natural surroundings in the vicinity of the work. Except where clearing is required for permanent works, all trees, native shrubbery, and vegetation shall be preserved and shall be protected from damage by the Contractor's construction operations and equipment. All unnecessary destruction, scarring, damage or defacing resulting from the Contractor's operations shall be repaired, replanted, reseeded or otherwise corrected as directed by the Engineer, and at the Contractor's expense.
- (b) The Contractor shall ensure that measures are in place to control soil erosion and water pollution, by use of berms, dykes, silt fences, brush barriers, dams, sediment basins, filter mats, netting, gravel, mulches, grasses, slope drains, contour banks, and other erosion control devices and methods. Temporary erosion control provisions shall be coordinated with permanent erosion control features to assure economical, effective and continuous measures throughout the period of the works. The Contractor's attention is drawn to the requirements of Clause 502, in that works need to be progressively finished so that permanent vegetation can establish quickly to mitigate soil erosion and erosion of drains.
- (c) The Contractor shall provide all the labour, equipment, materials, and means required and shall carry out proper and efficient measures wherever and as often as necessary to minimise the dust nuisance.
- (d) The Contractor shall comply with all applicable Kenyan laws, orders and regulations concerning the prevention, control and abatement of excessive noise. Blasting, use of jackhammers, pile driving, rock crushing, or any other activities producing high-intensity impact noise may be performed at night only upon approval of the Engineer.
- (e) Immediately after extraction of materials, all borrows pits shall be backfilled to the satisfaction of the Engineer. In particular borrow pits near the project road shall be backfilled in such a way that no water collects in them.
- (f) Spilling of bitumen fuels Oils and other pollutants shall be cleared up.
- (g) The Contractor's attention is drawn to the requirements of the Standard Specification in regard to the environment and in particular to the following clauses:
  - Clause 115: Construction Generally Clause 116:
    - Protection from Water Clause 136:
      - Removal of Camps
  - Clause 605: Safety and Public Health Requirements Clause
  - Clause 607: Site Clearance and Removal of Topsoil and Overburden
- (h) Payment in respect of this Clause will be under appropriate items in the BoQ

## **SECTION 2 - MATERIALS AND TESTING OF MATERIALS**

All materials testing shall be in accordance with Section 2 of the Standard Specifications.



## **SECTION 3 - SETTING OUT & TOLERANCES**

### **301 SETTING OUT**

- a) In addition to the provisions of clause 3.01(a) if the traverse points to be used for the setting out are close to the existing carriageway and interfere with construction works then the Contractor will have to relocate them to a location where they will not be disturbed. The co-ordinates and heights of all traverse points so located shall be listed and provided to the Engineer for checking and/or approval. Contractor shall also monument the new centreline every 200m along straight and all salient points along curves by a pin in the concrete beacon before commencement of any works.

The road reserve boundary posts shall have 12mm diameter steel pins embedded in concrete, 200mm long with 25mm exposed to the air, sticking out from its top surface. This pin shall be co-ordinated and heighted and result of the same shall be provided to the Engineer for approval. Cost of these works shall be included in the rates as no separate item has been provided.

Commencement of the works shall not be permitted until this basic survey data has been provided and approved by the Engineer.

b) Detailed Setting Out

Reference pegs shall be 50mm by 50mm in section 600mm long driven 400mm firmly into ground and painted white above the ground. The offset from centre line shall be indicated by small nail 20mm to 25mm long with its head driven flush with the top of the peg.

Chainages, offset and reference elevation shall be clearly indicated to the sides of the peg to the satisfaction of the Engineer.

After cutting of benches and prior to commencement of earthworks or subgrade works, Contractor shall take cross-sections again and submit the copy of the same to Engineer for agreement. These cross-sections shall then be used as basis of measurement for all subsequent layers, unless otherwise stated.

## **SECTION 4- SITE CLEARANCE AND TOP SOIL STRIPPING**

### **401 Site Clearance**

Site Clearance shall be carried out as directed by the Engineer.

#### **Removal of Topsoil**

Topsoil shall include up to 200mm depth of any unsuitable material encountered in existing or newly constructed drains, drainage channels, and accesses.

#### **Removal of Structures, Fences and Obstructions**

When instructed by the Engineer, the Contractor shall demolish or remove any structure and payment for this shall be made on day works basis.

## SECTION 5 - EARTHWORKS

### 504 Preparation Prior To Forming Embankment

Where benching is required for existing pavement to accommodate earthworks subgrade or subbase for widening the road, the rate for compaction of existing ground shall be deemed to cover this activity.

Excavations shall be kept dry. In the event of water penetrating the underlying layer, construction of the subsequent layers shall be postponed until the underlying layers are dry enough to accommodate the construction plant without deforming or otherwise showing distress.

Step construction shall be carried out per layer at the joint where excavating both vertically and perpendicular to the direction of the travel. The step shall be 500mm perpendicular to the direction of the travel and 150mm vertical unless otherwise instructed by the Engineer.

Special care shall be taken when compacting new material at the joint ensuring that specified density is achieved.

### 505 Construction of Embankments

Only material approved by the Engineer shall be used for fill in embankments.

Material with high swelling characteristics or high organic matter content and any other undesirable material shall not be used, unless specifically directed by the Engineer. Unsuitable material shall include:

- (i) All material containing more than 5% by weight of organic matter (such as topsoil, material from swamps, mud, logs, stumps and other perishable material)
- (ii) All material with a swell of more than 3% (such as black cotton soil)
- (iii) All clay of plasticity index exceeding 50.
- (iv) All material having moisture content greater than 105% of optimum moisture content (Standard Compaction)

Subgrade: Shall mean upper 300mm of earthworks either insitu or in fill and subgrade shall be provided for as part of earthworks operation and payment shall be made as "fill". The material for subgrade shall have a CBR of not less than 8% measured after a 4 day soak in a laboratory mix compacted to a dry density of 100% MDD (AASHTO T99) and a swell of less than 1%.

Subgrade repair: Where directed by the Engineer, any localized failure in the subgrade shall be repaired by filling in selected soft, hard or natural of minimum CBR 30% and compacted in accordance with clauses in the specifications applying to normal subgrade.

Embankment repair:

Where directed by the Engineer, any localized filling in soft, hard or natural; selected material requirements shall be executed in accordance with Clause 505.

### 508 Compaction of Earthworks

At pipe culverts, all fill above ground level around the culverts shall be compacted to density of 100% MDD (AASHTO T.99) up to the level of the top of the pipes or top of the surround(s), if any and for a width equal to the internal diameter of the pipe on either side of the pipe(s) or surround(s) as applicable.

At locations adjacent to structures, all fill above ground level up to the underside of the subgrade shall be compacted to density of 105% MDD (AASHTO T.99). In case of fill around box culverts this should be carried out for the full width of the fill and for a length bounded by the vertical plane passing through the ends of the wing walls.

Notwithstanding the provision of clause 503 of the standard Specification, Compaction of subgrade material (i.e. material immediately below formation) in cut areas shall not be carried out by the contractor in areas where the formation is formed in hard material, unless specific instructions to the contrary are issued by the Engineer.

Where improved sub-grade material shall be required, this shall be compacted and finished to the same standards and tolerances as those required for normal subgrade and clauses in the specifications applying to normal subgrade shall also apply.

#### **511 Borrow Pits**

The first part of the Standard Specification is amended as follows:-

Fill material which is required in addition to that provided by excavation shall be obtained from borrow pits to be located and provided by the Contractor but to the approval of the Engineer contrary to what has been stated.

#### **517 Measurement and Payment**

Notwithstanding the provisions of clause 517 of the Standard Specifications, the rate for compaction of fill in soft material shall allow for the requirements of clause 508 of the special specification and no extra payment shall be made for compaction around pipe culverts (100% MDD AASHTO T.99).

### **SECTION 6 - QUARRIES, BORROW PITS, STOCKPILES AND SPOIL AREAS**

#### **601 General**

Notwithstanding any indications to the contrary in the Standard Specification the Engineer will not make available to the Contractor any land for quarries, borrow pits, stockpiles and spoil areas, except for those areas in road reserves specifically approved by him.

The contractor will be entirely responsible for locating suitable sources of materials complying with the Standard and Special Specifications, and for the procurement, Wining, haulage to site of these materials and all costs involved therein. Similarly the contractor will be responsible for the provision and costs involved in providing suitable areas for stockpiling materials and spoil dumps. Should there be suitable sites for spoil dumps or stockpiles within the road reserve forming the site of the works the Contractor may utilise these subject to the approval of the Engineer.

No additional payment will be made to the Contractor to cover costs arising from the requirements for this Clause and the Contractor must include these costs in the rates inserted into the Bills of Quantities.

### **SECTION 7 - EXCAVATION AND FILLING FOR STRUCTURES**

#### **703 Excavation of Foundations for Structures**

Unless otherwise instructed by the Engineer, all excavated surfaces in material other than hard material, on which foundations for structures shall be placed, shall be compacted to 100% MDD (AASHTO T.99) immediately before structures are constructed.

Paragraph 4, last line: - Replace "95%" with "100%".

#### **704: PROTECTIONS FROM WATER**

##### **704(a) Scope of work**

The contractor shall be responsible for dealing with water whether from existing drainage systems, water courses, underground springs, precipitation or any other source or cause. The contractor shall provide all dams, cofferdams, pumping, piling, shoring, temporary drains, sumps etc required for the purposes of dealing with water.

#### **704(b) Measurement and Payment**

The provision of water exclusion methods shall be considered as temporary works and incidental to other works such as excavation to foundations, fixing of steel and concreting.

No separate measurements and payments shall be made for the provision of those works.

#### **707 Backfilling for Structures**

Unless otherwise instructed by the Engineer, all backfilling material shall be compacted to a minimum of 100% MDD (AASHTO T.99).

#### **709 Excavations for River Training and New Water COURSES**

Payments for river training and establishment of new watercourses shall only be made where such work constitute permanent works. Works done for road deviation or other temporary works shall not qualify for payment.

#### **710 Stone Pitching**

Stone pitching to drains, inlets and outlets of culverts to embankments and around structure shall consist of sound un weathered rock approved by the Engineer.

The stone as dressed shall be roughly cubical in shape with minimum dimensions of 150 x 150mm for normal thickness of stone pitching. Grouting will be done for all stone pitching areas and the top line of the stone pitching should be grouted/sealed with concrete class 15/20.

The surface to receive the pitching shall be compacted and trimmed to slope and the stone laid, interlocked and rammed into the material to give an even finished surface. Soil erosion is rampant along the project location and this can be minimised by ensuring that proper protection works is carried out along the drains using stone pitching. Most of the sections shall be stone pitched especially areas where we have steep slopes to minimise undermining of the road by rain water or as may be instructed by the Engineer.

In areas where stone pitching has been damaged, the Contractor shall identify such areas and notify the Engineer for his agreement of the extent of the Works required and his approval and instructions to proceed with the Works. Stone Pitching Repair and Reconstruction shall be carried out in accordance with Clause 710 of the Standard Specifications.

#### **711 Gabions**

Where instructed by the Engineer the Contractor will install gabions as protection works to washout areas or bridge Piers and or Abutments. Gabions shall be constructed in accordance with Clause 711 of the Standard Specification.

In cases where existing gabions have been damaged, the Contractor shall identify them and notify the Engineer for his agreement of the extent of the Work required and his approval and instructions to proceed with the Works.

The Works shall involve removal of the damaged gabions / rocks, excavation to the correct levels and grades as directed by the Engineer, and in accordance with Clause 711 of the Standard Specifications and reconstruction with new gabions and other necessary materials as necessary.

#### **712 Rip-Rap Protection Work**

Quarry waste or similar approved material shall be used to backfill scoured and eroded side, outfall and cut-off drain. The material shall be compacted to form a flat or curved surface preparatory to stone pitching of drainage channels, existing and new scour checks as directed by the Engineer.

The surface to receive the pitching shall be compacted and trimmed to slope and the stone hand laid, interlocked and rammed into the material to give an even finished surface. The interstices of the Pitching shall be rammed with insitu material. The insitu material immediately behind the pitching shall be compacted to minimum density of 100% MDD compaction (AASHTO T.99)



**714 Backfill below Structures**

Where instructed this shall be carried out in compliance with the requirements of Clause 507 and 804 of the Standard Specification.

The rock fill shall be placed in layers not less than 0.50 m in compacted thickness, each compacted to refusal by vibrating roller, finished with non-plastic fines as specified in the standard specification till all voids in the layer have been filled which will be indicated by appearance of no more swallow holes under vibrating roller at refusal, prior to placing of the next layer all to Engineer's approval.

**SECTION 8 - CULVERTS AND DRAINAGE WORKS**

**801 Scope of Section**

The operations specified in this section apply to the installation of drainage works and reinstatement and improvement of the same.

In addition, this Section covers: -

- Installation of 600mm, 900mm and 1200mm diameter pipe culverts
- Construction of associated inlet and outlet structures to specifications and/or instructions

**804 Excavation for Culverts and Drainage Works**

In the Standard Specifications, make the following amendments: -

- (a) In paragraph 6, line 3, and in paragraph 7, line 5 and in paragraph 11, line 6, delete "95%" and insert "100%".
- (b) Removal of Existing Pipe Culverts

Where instructed by the Engineer, the Contractor shall excavate and remove all existing blocked or collapsed culvert pipes of 450mm, 600mm and 900mm diameter including concrete surround, bedding, inlet and outlet structure.

The void left after removal of culvert pipes shall be widened as necessary to accommodate new concrete bedding, pipe and haunching.

The payment of this work shall be per linear metre of pipes removed. The void left by removal of these pipes shall be carefully preserved in order to accommodate replacement 1200mm or 900mm diameter pipe culverts as shall be directed by the Engineer.

- (c) Removal of other Existing Drainage Structures  
When instructed by the Engineer, the Contractor shall demolish or remove any other structure and payment for this shall be made on day work basis.
- (d) Excavation for Culverts and Drainage Works  
The Contractor shall carry out all excavations for new culverts and drainage works to the lines, levels, inclinations, and dimensions shown on the drawings or as instructed by the Engineer.

**805 Excavation in Hard Material**

In the Standard Specifications, Sub-clauses 805(a) and 805 (b) delete "95%" and insert "100%". In sub-clause 809(a), paragraph 1, line 1, substitute "95%" with "100%".

In sub-clause 809(c), paragraph 2, line 4, between the words "compacted" and "and shaped" insert the words "to 100% MDD (AASHTO T.99)".

Hard material is material that can be excavated only after blasting with explosives or barring and wedging or the use of a mechanical breaker fitted with a rock point in good condition and operated correctly. Boulders of more than 0.2m<sup>3</sup> occurring in soft material shall be classified as hard material.

#### **809 Bedding and Laying Of Pipe Culverts**

Concrete pipes shall be laid on a 150mm thick concrete bed of class 15/40 and the pipes shall be bedded on 1:3 cement: sand mortar at least 50mm thick, 150mm wide and extending the full length of the barrel.

The rates inserted shall allow for compaction of the bottom of excavation to 100% MDD (AASHTO T.99).

#### **810 Jointing Concrete Pipes**

The concrete pipes for the culverts shall have ogee joints and will be joined by 1:2 cement: sand mortar and provided with fillets on the outside as described in clause 810 of the Standard Specification.

#### **812 Backfilling Over Pipe Culverts**

In the Standard Specifications, clause 812

- 1). Delete paragraph 6 “for pipe culverts ..... depth of 150mm”, entirely.
- 2). Wherever the expression "dry density of 95% MDD (AASHTO T. 99)" occurs delete and replace with "dry density of 100% MDD (AASHTO T.99)".

The rates entered for laying of pipe culverts shall allow for backfilling to pipe culverts and compacting to 100% MDD (AASHTO T.99) and these works shall **not** be measured and paid for separately.

#### **814.1 Subsoil Drains**

In the event of excavation for repairs exposing local seepage, springs or unacceptably high water table, the Engineer may instruct the provision of counter fort or French drains.

These drains shall consist of a trench excavated to the alignment, width, depth and gradient instructed by the Engineer, and backfilled with approved compacted clean hard crushed rock material as specified in clause 815 of the standard specification. Where these drains lie within the carriageway the carriageway shall be reinstated with compacted stabilised gravel and surfaced with hot asphalt or a surface dressing as instructed by the Engineer.

#### **814.2 Filter Fabric to Subsoil Drains**

A filter fabric shall be placed under, around and over rock fill of the subsoil drains. The provisions and placing of the fabric shall be in accordance with manufacturer’s instructions and complying with Clause 804 and 814 of the Standard Specification. Payment shall be in metre square of the fabric used.

#### **815 Invert Block Drains and Half Round Channels**

Invert Block Drains and Half Round Channels shall be constructed as shown in the drawings provided in accordance with the Standard Specifications where directed by the Engineer.

#### **817 Repairs to Drains**

##### **817.1 Cleaning and Repair of Existing Drains**

In areas of existing side drains, mitre or outfall drains where such are blocked, the Engineer shall instruct the Contractor to clean and clear the drains to free flowing condition.

The work shall consist of:

- (a) Stripping and removal of any extraneous material to spoil including vegetation and roots in the drains to the satisfaction of the engineer.
- (b) Spreading of any spoil to the satisfaction of the Engineer.
- (c) Shaping the drains to free flowing condition as directed by the Engineer.

Measurement and Payment for cleaning drains shall be by linear metre of drain cleaned measured as the product of plan area and vertical depth of extraneous material instructed to be removed. No extra payment will be made for removal of vegetation and roots.

#### **817.2 Channels**

The Engineer may instruct that the Contractor provides open channels in place of existing subdrains where the latter may be damaged or in any other place. The rates entered by the Contractor in the bills of quantities must include for removal and disposal of any subdrain material, excavation to line and level, backfilling and compaction as directed by the engineer. The channels shall be constructed of precast class 20/20 concrete of minimum 80mm thickness and lengths or widths not exceeding 1000mm. Joints shall be at least 15mm wide filled with 1:2 cement sand mortar.

#### **817.3 Spoil Material**

The contractor shall be responsible for removal from site of all materials excavated in the course of undertaking works in this section of the specification, unless suitable for re-use, and deposit of the material in a spoil dump to be approved by the Engineer.

#### **818 Scour Checks**

Scour checks are to be constructed in mass concrete in accordance with clause 818 of the standard Specifications and the drawings as shall be provided.

#### **819 Cleaning and Maintenance**

##### **819.1 De-silting of Pipe Culverts**

Where instructed, the Contractor shall de-silt the existing pipe culverts by removing all the material from the pipe to make them clean and free flowing.

Measurement and payment shall be by the linear metres of pipes de-silted, regardless of diameter size.

### **SECTION 9 - PASSAGE OF TRAFFIC**

#### **901 Scope of the Section**

The Contractor shall so arrange his work to ensure the safe passage of the Traffic at all times and if necessary construct and maintain an adequate diversion for traffic complete with all the necessary road traffic signs.

The Contractor shall provide to the satisfaction of the Engineer adequate warning signs, temporary restriction signs, advance warning signs, barriers, temporary bumps and any other device and personnel equipped with two way radios to ensure the safe passage of traffic through the works.

When carrying out the Works the Contractor shall have full regard for the safety of all road users.

The Contractor shall also provide sign posts and maintain to the satisfaction of the Engineer all deviations necessary to complete the works. The contractor should allow for the costs of complying with the requirements of this clause in his rates.

The contractor will be deemed to have inspected the site and satisfied himself as to the adequacy of his bid for these works and no additional payments will be made to the Contractor for any expenditure on traffic control or the provision of deviations. The employer shall not be liable for inadequate prior investigations of this nature by the Contractor.

## **904 CONSTRUCTION OF DEVIATIONS**

### **a) General**

In addition to requirement of this clause, the maximum length of deviation road shall be restricted to 5 kms at any given time unless otherwise instructed. The Contractor shall construct and complete deviations to the satisfaction of the Engineer before commencing any permanent work on the existing road.

Also during these works the Contractor is supposed to provide a detour of adequate pipe culverts for pedestrian and traffic crossing where there is bridge works.

### **b) Geometry**

The carriageway width of the deviations shall not be less than 6m wide and suitable for 2-way lorry traffic unless otherwise specified.

### **c) Construction**

Unless otherwise instructed gravel wearing course for the deviation shall be 150 mm compacted thicknesses complying with section 10 of the Standard Specification. The Contractor shall allow in his rate for removal of any unsuitable material before placing of gravel wearing course, as this will not be paid for separately.

In addition to provision of this clause, Contractor is required to sprinkle water at least 4 times a day in regular interval to minimise the effects of dust. Latest sprinkling time shall be one hour before the sunset.

### **Passage of Traffic through the Works**

The Contractor shall arrange for passage of traffic through the works during construction whenever it is not practicable to make deviations. The cost of doing so shall be deemed to have been included elsewhere in his rates and no separate payment shall be made for this. To this end, the Contractor shall be deemed to have inspected the site for himself and noted any locations where this may apply.

Any damage caused by passing traffic through the works shall be made good at the Contractor's own cost.

## **907 Signs, Barriers and Lights**

Contractor shall provide signs, barriers and lights as shown in the drawing in Book of Drawings at the locations where the traffic is being carried off the existing road to the deviation and back again to existing road. The Contractor shall provide ramps and carry out any other measures as instructed by the Engineer to safely carry traffic from the road to deviation.

Contrary to what has been specified in this clause the road signs provided shall be fully reflectorised and in conformity with clause 9.1 of the "Manual for Traffic Signs in Kenya Part II".

## **909 Assistance to Public**

In addition to provision of clause 909, Contractor shall maintain close liaison with the relevant authorities to clear any broken down or accident vehicles from the deviations and the main road, in order to maintain smooth and safe flow of the traffic.

## **912 Measurement and Payment**

### **(a) Passage of traffic through the works**

Payment shall be made on Lump Sum basis.

**(b) Construct Deviation**

**(i) Road Deviation**

The Contractor shall be paid only 50% of the rate for this when he completes deviation road to the satisfaction of the Engineer. The balance shall be paid in equal monthly instalments over the contract period, as he satisfactorily maintains the deviation (as per clause 904 and 905 above) when it is in operation.

**(ii) Deviation using Pipe Culverts**

The Contractor shall be paid only 50% of the rate for this when he completes deviation to the satisfaction of the Engineer. The balance shall be paid in equal monthly instalments over the contract period, as he satisfactorily maintains the deviation when it is in operation. The Contractor shall be paid full amount when the bridge under construction will be in use.

**(c) Assistance to Public**

The Contractor will be deemed to have included cost of this item in other items and no separate payment shall be made.

**SECTION 10 – MATERIAL REQUIREMENTS FOR GRAVEL WEARING COURSE**

In addition to the requirements of the Standard Specifications, the material for gravel wearing course shall be subject to prior approval of the Engineer and shall meet the following requirements.

**Grading**

Grading of compacted gravel layer shall be within the following grading envelope:-

<b>Sieve Size (mm)</b>	<b>% By Weight Passing</b>
37.5	-
28	100
20	95-100
14	80-100
10	65-100
5	45-85
2	30-68
1	25-56
0.425	18-44
0.0075	12-32

**Plasticity and bearing strength**

1. Plasticity Modulus  
Minimum 200, maximum 1200
2. Plasticity Index  
Minimum 10, maximum 30
3. Bearing strength  
CBR at 95% MDD (Modified AASHTO) and 4 days soak: minimum 20

## **Measurement and payment**

Unit: m<sup>3</sup> of gravel wearing course placed and compacted.

The volume of gravel wearing course shall be calculated as the product of the sectional area of the compacted gravel wearing course multiplied by the length of road gravelled as instructed.

The rate of gravel wearing course shall include for the cost of acquisition and provision of land for borrow pits, excavation and winning of gravel material, haulage, spreading, watering and compaction (including mixing and compaction with any existing or in-situ gravel material) as directed.

## **SECTION 11 – SHOULDERS TO PAVEMENT**

### **1101 GENERAL**

The shoulders shall be constructed to a width of .5m, or as directed by the Engineer.

### **1102 MATERIAL FOR CONSTRUCTION OF SHOULDERS**

The shoulders shall be constructed as directed by the Engineer, in accordance with sections 1105, 12, 13 and 14 of the Standard Specification. The material for shoulders shall be the same as that of sub-base and base layers in the carriageway.

### **1105 SURFACE TREATMENT OF SHOULDERS**

The shoulders shall consist of double surface dressing with 14/20mm and 6/10mm nominal sized precoated chippings on the first and second seal respectively.

## **SECTION 12 – NATURAL MATERIAL SUBBASE AND BASE**

### **1209 MEASUREMENT AND PAYMENT**

Notwithstanding any indications to the contrary in the Standard Specification, the Contractor will be responsible for provision and costs involved in proving and Land acquisition of suitable material sites for provision of Subbase and Base material. The rates for natural material for subbase and Base shall be paid in accordance with method A of the Standard Specification. Furthermore, no separate payment shall be made for acquisition of material site, excavation or the transport haulage of natural subbase and Base material as they shall be deemed to have been included in the Contractor's rates for providing and laying.

## **SECTION 14 - CEMENT TREATED SUBBASE AND BASE MATERIALS**

### **1401 MATERIAL REQUIREMENTS**

#### **b) Cement**

In variation to this clause, cement for improvement shall comply with KS 1275: 2001. It shall be CEM I 42.5N or equivalent, as instructed by the Engineer.

### **TREATED MATERIALS**

The procedure of mixing the stabiliser, processing, compaction, curing and protection shall comply with section 14 of the Standard Specification.

### **PROTECTION AND CURING**

Curing of treated material shall be by method (i) or method (iii).

## **SECTION 15 - BITUMINOUS SURFACE TREATMENTS & SURFACE DRESSING**

### **PART B - PRIME COAT AND TACK COAT**

#### **1502B MATERIALS FOR PRIME COAT AND TACK COAT**

For prime coat, the binder shall be a medium-curing cut-back MC 30 unless otherwise directed by the Engineer.

The rate of spray of bituminous prime coat refers to the gross volume of the cut-back bitumen, that is the volume of the bitumen plus dilutant.

### **SURFACE DRESSING**

#### **1502C MATERIALS FOR SURFACE DRESSING**

The contractor shall take full responsibility for the design and construction of all surface dressings. They shall however, be constructed using the materials specified below. The proposed designs and constructions procedures shall be presented to the Engineer for approval prior to the commencement of any surface dressing work on any section of the road.

a) Binder

The bituminous binder shall be medium curing cut back MC 3000

b) Chippings

Chippings shall be of Class 3 material and shall comply in all respects with clause 1502C of the Standard Specification. The Contractor's attention is drawn to the requirements of Clause 1501C of the Standard Specification with regard to cleanliness and the dust content of chippings for surface dressing. Should it prove necessary in the Engineer' opinion to wash chippings, no extra payment will be made to the Contractor for this operation.

#### **1505C PRECOATED CHIPPINGS**

14/20mm chippings and 6/10 mm chippings used for first and second seal respectively shall be pre-coated. The binder used for pre-coating shall be A3 bitumen emulsion. Pre-coating shall be carried out in a mechanical mixer of suitable size. The emulsion shall be poured into the mixer and an equal quantity of water added. They shall be mixed together and then the chippings added. As soon as the chippings have become uniformly wetted, hydrated building lime shall be scattered over the surface and the chippings mixed again. When this has been evenly distributed the mix shall be dropped from the mixer. To provide 1000 Kg of pre-coated 6/10 chippings, the amount of ingredients to be used (as percentages of dry weight of aggregate) shall be approximately as follows:

-1.0% bitumen emulsion, 1.0% of water and 0.25% of hydrated building lime.

If the resulting chippings, with the above quantities, are tacky and agglomerate or are not adequately covered, then the Engineer may instruct the quantity of emulsion and water to be varied. Prior to laying pre-coated chippings the Contractor shall prepare trial mixes of bitumen and chippings in the presence of the Engineer. After completion of the trials the Engineer shall agree with the Contractor on the mix to be used. The Contractor shall maintain this mix, unless otherwise instructed. If there is a change in the source or character of the chippings, new trials shall be carried out and new mix proportions agreed.

#### **1511C PAYMENT**

a) Item: Seal Coat  
Unit: 1 (litre) of Medium cut bitumen used for each seal coat.

b) Tack Coat  
Tack coat shall be measured by the litre of diluted emulsion.

Item: Pre-coated Chippings

Unit: m<sup>3</sup> of each nominal size for each class.

Pre-coated chippings shall be measured by the cubic metre of each nominal size for each class calculated as the product of the area in square metres instructed to be covered and the reciprocal of the instructed rate of application in square metres/cubic metre or the actual rate of application in square metres/ cubic metre whichever gives the lower volume.

The rate for pre-coated chippings shall include the cost of providing, hauling, pre-coating, spreading and rolling the chippings at any application rate, all haulage as necessary and complying with Parts A and C of section 15 of this Specification.

Chippings stockpiled for future maintenance

Chippings stockpiled for future maintenance shall be measured in accordance with section 15c (b) of the specification except that free haul shall be measured in accordance with section 15c (b) of the specification.

## **1512 CHIPPINGS STOCKPILE**

The Contractor may be required by the Engineer to stockpile chippings for future maintenance works. These chippings will meet all the relevant requirements of the Standard and Special Specifications. The stockpiles will be in a site to be determined by the Engineer.

## **SECTION 17 – CONCRETE WORKS**

### **1703 (B) REINFORCING BARS OF BRIDGES**

#### **i. Description**

This work shall consist of furnishing, fixing and placing in the concrete of the deck slab, pier heads, pier stems, pier bases and beams reinforcing bars of the quality, type and size in accordance with these specifications and in conformity with the requirements shown on the drawings.

#### **ii. Material**

Reinforcing bars shall be deformed and shall meet the requirements of BS 4461, unless otherwise called for in the drawings or approved by the Engineer.

No reinforcing bar shall be delivered without a certificate guaranteeing the yield stress. The reinforcing bar shall be kept off the ground, free from dirt, oil, grease, or avoidable rust and stored within a building or provided with suitable covers. If it is necessary for the Engineer to ascertain the quality of the reinforcing bars, the Contractor shall test the reinforcing bars, at his own expense, by means as directed by the Engineer.

#### **iii. Construction Method**

The Engineer shall provide the Contractor with bending schedule showing the location, types, sizes, bending dimensions and cut lengths of the reinforcing bar required to be fixed in the works.

#### **Cutting and Bending:**

Only qualified men shall be employed for the cutting and bending, and proper application shall be provided for such work. Bars shall be cut and bent cold to the dimensions indicated and with equipment and methods approved by the Engineer.

#### **Placing:**

Reinforcing bars shall be accurately placed in proper position, and so that they be firmly held during placing of concrete. Bars shall be tied at all intersections by using annealed iron wire 0.9mm or larger diameter, or suitable clips. Distances from the forms shall be maintained correct by means of metal hangers, metal blocks, metal supports or other supports approved by the Engineer.

Reinforcing bars shall be inspected by the Engineer after placing. When a long time has elapsed after placing



reinforcing bars, they shall be cleaned and inspected again by the Engineer before placing concrete.

**Splicing and joint:**

When it is necessary to splice reinforcing bars at points, position and methods of splicing shall be determined based on strength calculations and approved by the Engineer. In lapped splices, the bars shall be lapped by the required length, and wired together at several points by using annealed iron wire larger than 0.9mm.

**iv. Measurement and Payment**

Bending and installation of reinforcing bar of the bridge deck shall be measured in terms of tons. The length of steel bar of each size will be shown on the drawings and bar bending schedule. In computing the weight to be measured, the theoretical weights of bars of the cross-section shown on the Drawings or authorised shall be used. These weights are given in the following table:

Bar Type and cross-section in millimetres	Weight of bar in kilogram per 12m length of bar
Y10	7.40
Y12	10.66
Y16	18.95
Y20	29.60
Y25	46.30
Y32	75.76

**1703 (C) FORMWORK FOR CULVERT WALLS AND SLABS AND BRIDGES**

This work shall consist of all temporary moulds for forming the concrete for culvert walls and slabs and bridge works together with all temporary construction required for their support. Unless otherwise directed by the Engineer all formworks shall be removed on completion of the structural elements constructed.

**(a) Materials**

Forms shall be made of wood or metal and shall conform to the shape, lines and dimensions shown on the Drawings.

All timber shall be free from holes, loose material, knots, cracks, splits and warps or other defects affecting the strength or appearance of the finished structure.

Release Agents – Release agents shall be either neat oils containing a surface activating agent, cream emulsions, or chemical agents to be approved by the Engineer.

**(b) Construction Method**

**(i) Formworks**

Formworks shall be designed to carry the maximum loads that may be imposed, and shall be rigidly constructed as to prevent deformation due to load, drying and wetting, vibration and other causes. After forms have been set in correct location, they shall be inspected and approved by the Engineer before the concrete is placed.

If requested, the contractor shall submit to the Engineer working drawings of the forms and also, if requested, calculations to certify the rigidity of the forms.

Unless otherwise described in the Contract, all form joints for exposed surfaces of concrete shall form a regular pattern with horizontal and vertical lines continuous throughout each structure and all construction joints shall coincide with these horizontal and vertical lines. PVC pipes of 100mm diameter for weep holes shall be arranged as shown on the Drawings.

Unless otherwise specified, formwork shall be designed to form chamfers at all external corners whether or not such chamfers are shown on the Drawings to prevent cracks and other damage from arising.

The inside surface of forms shall be cleaned and coated with a releasing agent to prevent adhesion of the concrete. Release agents shall be applied strictly in accordance with the manufacturer’s detailed instructions. The release

agent shall be applied to the formwork prior to erection. Release agent must not come into contact with reinforcement. Immediately before concrete is placed, the forms shall be thoroughly cleaned and freed from sawdust, shavings, dust, mud or other debris by hosing with water. Temporary openings shall be provided in the forms to drain away the water and rubbish.

**(ii) Scaffolding**

All scaffolding required to support the forms shall be designed and constructed to provide necessary rigidity to support the loads without appreciable deflection or deformation.

Details, plans and structural and flexural calculations for scaffolding shall be submitted to the Engineer for approval, but shall not relieve the contractor of his responsibility to construct the formwork by use of these plans, for construction of the structures as specified.

**(iii) Removal of formwork**

The time at which the formwork is truck shall be the Contractor's responsibility and the forms shall not be removed until the concrete strength has reached at least 20N/mm<sup>2</sup>.

**(c) Measurement and Payment**

Payment shall be made according to Section 17 of the Standard Specification for Road and Bridge Construction.

**1703 (D) CONCRETE WORKS (CLASS 25/20) FOR CULVERT WALLS AND SLABS AND CLASS (30/20) FOR BRIDGEWORKS**

This work shall consist of furnishing, mixing, delivering and placing of the concrete for the construction of box culverts and bridgeworks in accordance with these Specifications and in conformity with the requirements shown on the Drawings.

Concrete class 25/20 shall be used for the substructure while, while concrete class (30/20) shall be used for superstructure of the bridge works.

**(a) Concrete Materials**

**(i) Cement:** Cement shall be of Portland type cem 42.5N/mm<sup>2</sup> and shall conform to the requirements of BS 12 or equivalent.

The contractor shall select only one type or brand of cement. Changing of type or brand of cement will not be permitted without a new mix design approved by the Engineer. All cement is subject to the Engineer's approval; however, approval of cement by the Engineer shall not relieve the Contractor of the responsibility to furnish concrete of the specified compressive strength.

Conveyance of cement by jute bags shall not be permitted. Storage in the Contractor's silo or store house shall not exceed more than two (2) months requirements and age of cement after manufacture at mill shall not exceed more than four (4) months. The contractor shall submit to the Engineer for his approval the results of quality certificate testing carried out by the manufacturer.

Whenever it is found out that cement has been stored too long, moist, or caked, the cement shall be rejected and removed from the project.

**(b) Aggregates**

Fine and coarse aggregates must be clean, hard, strong and durable, and free from absorbed chemicals, clay coating, or materials in amounts that could affect hydration, bonding, strength and durability of concrete.

Grading of aggregates shall conform to the following requirements:

**(i) Grading of fine Aggregates**

Sieve Size	Percentage by Weight Passing
10 mm	100
5 mm	89 – 100
2.5 mm	60 – 100
1.2 mm	30 – 100
0.6 mm	15 – 54
0.3 mm	5 – 40
0.15 mm	0 - 15

**(ii) Grading of Coarse Aggregates**

Size of Coarse Aggregate	Amounts finer than each standard sieve percentage by weight							
	40	30	25	20	15	10	5	2.5
	100	-	-	90 – 100	-	30 – 69	0 – 10	-

Other requirements for aggregates are as follows:

**(iii) Fine Aggregates**

Fitness Modulus:	AASHTO M-6 2.3 – 3.1
Sodium Sulphate Soundness:	AASHTO T104 Max. 10% loss
Content of Friable Particles:	AASHTO 112: Max. 1% by weight
Sand Equivalent:	AASHTO T176: Min. 75

**(iv) Coarse Aggregate**

Abrasion:	AASHTO T96: Max. 40% loss
Soft Fragment and shale:	AASHTO M80: Max. 5% by weight
Thin and elongated Pieces:	AASHTO M80: Max. 15%

**(v) Water**

All sources of water to be used in concrete production shall be approved by the Engineer. Water shall be free from injurious quantities of oil, alkali, vegetable matter and salts as determined by the Engineer.

**(vi) Admixture**

Only admixtures, which have been tested and approved in the site laboratory through trial mixing for design proportions shall be used.

Before selection of admixture, the Contractor shall submit to the Engineer the specific information or guarantees prepared by the admixture manufacturer.

The contractor shall not exclude the admixture from concrete proportions.

### **Concrete class 25/20 and concrete class 30/20**

Concrete class 25/20 shall be used for box culvert walls and slabs and concrete class 30/20 shall be used for bridge works.

The requirements of concrete class 25/20 and concrete class 30/20 are provided as follows unless otherwise specified by the Engineer who will designate any alteration.

Design compressive strength (28 days: 25N/mm<sup>2</sup>)

Maximum Nominal size coarse aggregates: 20mm Maximum water/cement ratio of 45% with slump of 50mm

Concrete class 30/20 shall be used for bridgeworks.

Design compressive strength (28 days: 30N/mm<sup>2</sup>) Maximum Nominal size coarse aggregates: 20mm

Maximum water/cement ratio of 45% with slump of 50mm

### **(c) Proportioning Concrete**

The Contractor shall consult with the Engineer as to mix proportions at least thirty (30) days prior to beginning the concrete work. The actual mix proportions of cement, aggregates, water and admixture shall be determined by the Contractor under supervision of the Engineer in the site laboratory.

The Contractor shall prepare the design mix proportions which have target strength based on the formula: target strength = 1.64xstandard deviation.

A standard deviation of 5 shall be used unless directed otherwise by the engineer.

No class of concrete shall be prepared or placed until its design-mix proportions have been approved by the Engineer.

### **(d) Concrete Work**

#### **(i) Batching**

Batching shall be done by weight with accuracy of:

Cement: ½ percent

Aggregate ½ percent Water Admixture: 1 percent

Equipment shall be capable of measuring quantities within these tolerances for the smallest batch regularly used, as well as for larger batches.

The accuracy of batching equipment shall be checked every month in the presence of the Engineer and adjusted when necessary. The cost of such checking shall be borne by the contractor.

#### **(ii). Mixing and delivery**

Slump of mixed concrete shall be checked and approved at an accuracy of +25mm against designated slump in these specifications.

#### **(iii) Concrete in hot weather**

No concrete shall be placed when the ambient air temperature is expected to exceed thirty three degrees Celsius (33°C) during placement operations).

#### **(iv). Concreting at night**

No concrete shall be mixed, placed or finished when natural light is insufficient, unless an adequate approved artificial lighting system is operated; such night work shall be subject to approval by the Engineer

#### **(v) Placing**

In preparation of the placing of concrete, the interior space of forms shall be cleaned and approved by the Engineer prior to placing concrete. All temporary members except tie bars to support forms shall be removed entirely from the forms and not buried in the concrete. The use of open and vertical chute shall not be permitted unless otherwise directed by the engineer.

The Contractor shall provide a sufficient number of vibrators to properly compact each batch immediately after it is placed in the forms.

### **(e) Measurement and Payment**

Measurements for the Concrete of class 30/20 for bridge works shall be made in cubic metres for the structure actually constructed, measured from the dimensions shown on the Drawings or instructed by the Engineer.  
Payment for class 25/20 concrete for culvert walls and slabs and class 30/20 for bridgeworks shall be the full compensation for furnishing all materials of the concrete mixing, delivering, placing and curing the concrete, equipment and tools, labour and other incidentals necessary for the completion of the work in accordance with the Drawings and these Specifications and as directed by the Engineer.

#### **1704 DESIGN OF CONCRETE MIXES**

Add a new Sub Clause 1704(f) as follows: -

##### **f) Levelling concrete (class 15/20) for bottom slab inclusive of cost of form works**

This work shall consist of placing and levelling lean concrete class 15/20 over a prepared bed of stone boulders in the foundation for bottom slab and wing walls in accordance with these specifications and with conformity with the lines, grades, thickness and typical cross-sections shown on the drawings unless otherwise directed by the Engineer.

##### **(a) Materials for Levelling Concrete**

Requirement for the concrete class 15/20 is specified as follows: - Design compressive strength (28) days : 15N/mm<sup>2</sup>

Maximum size of coarse aggregate : 20mm Maximum cement content : 300 kg/m<sup>3</sup>.  
Maximum water/cement ratio : 0.5 Maximum slump : 80 mm

##### **(b) Construction Method**

The bed of stone boulders upon which the levelling concrete will be placed shall be smooth, compacted and true to the grades and cross-section and shall be set to the required lines and grades.

#### **1732: PRECAST CONCRETE**

##### **1732 (a) Scope of work**

The works shall consist of supply of all materials i.e. cement, fine aggregates, coarse aggregates, water, admixtures and any other material component necessary for the production of the precast beams, placing, compacting ,curing, lifting and installation of the precast beams into position.

##### **1732 (b) Storage and handling**

The precast units shall be transported, handled and stored in such a manner that will prevent damage to the precast units. Precast units that will be damaged due to poor handling shall be replaced or repaired to the engineer's satisfaction.

##### **1732 (c) Fabrication**

The design dimensions shall be verified with those at the field before commencement of fabrication. Any discrepancies in dimensions must be brought to the engineer's attention for directions.

Formwork shall be accurately constructed to produce the precast units to dimension, shape configuration and profile indicated in the drawing or as shall be directed by the engineer.

Anchors, lift devices and accessories: provide concrete inserts, anchors, brackets and fasteners as indicated or as required for fabrication and installation. The contractor shall select the lift devices and shall be responsible for their performance and for any damage resulting from their use. Lift devices shall not be visible on exposed faces of precast members. Provide a minimum of four for each unit.

Concrete reinforcement, lifting reinforcement, and concrete inserts and anchorage devices shall be placed and secured against movement.

The precast units shall be labeled in such a manner that will allow identification of their final location.

#### **1732(d) Measurement and payment**

The payment for the precast beams shall be made by the volume of compacted concrete in the beams, weight of steel fixed in the beams and surface area of the form work.

The payment rate for lifting and installation shall be paid as a separate item. The unit rate for the lifting and installation shall include transport, lifting and installation equipments including any radio communications, operators, skilled and unskilled labour, fuel, maintenance, mobilization and demobilization and any other item incidental to the process of installation. The unit rate shall be per precast beam fixed into position.

### **SECTION 20 - ROAD FURNITURE**

#### **2001 ROAD RESERVE BOUNDARY POSTS**

Road reserve boundary posts shall be provided as directed by the Engineer and in compliance with Standard Specification clause 2001. They shall be placed at 50m intervals along the boundary of the road reserve.

#### **2003 EDGE MARKER POSTS**

Edge marker posts shall be provided as directed by the Engineer and in compliance with the requirements of Standard Specification clause 2003

#### **2004 PERMANENT ROAD SIGNS**

Permanent Road Signs shall be provided as directed by the Engineer and in compliance with the requirements of the "Manual for Traffic Signs in Kenya" Part II and standard Specification clause 2004.

#### **2004B EXISTING ROAD SIGNS**

Where directed by the Engineer, the Contractor shall take down road signs including all posts, nuts, bolts and fittings, and remove and dispose of the concrete foundation and backfill the post holes. The signs shall be stored as directed by the Engineer.

Measurement and payment for taking down road signs shall be made by the number of signs of any type and size taken down, cleaned and stored as directed.

#### **2005 ROAD MARKING**

Paint for road marking shall be internally reflectorised hot applied thermoplastic material in accordance with Clause 219 of the Standard Specification.

The rates inserted in the Bills of Quantities for road marking shall include for prior application of approved tack coat.

#### **2006 GUARDRAILS**

Contrary to the Standard Specification, guardrail posts shall be concrete 200 mm diameter set vertically at least 1.2m into the shoulder as directed by the Engineer. Spacer blocks shall also be made of concrete.

Beams for guardrails shall be "Armco Flexbeam" or similar obtained from a manufacturer approved by the Engineer.

**2007 KERBS**

**(a) Vertical Joints**

Vertical joints between adjacent kerbs shall not be greater than 5 mm in width and shall mortar consisting of 1:3 cement: sand by volume.

**b) Transition between flush and raised kerbs**

The transition between flush and raised kerbs (e.g. at bus bays) shall be termed as ramped kerbs and shall occur within a length of 2.0m.

**2008 KILOMETRE MARKER POSTS**

Kilometre marker posts shall be provided as directed by the Engineer and in compliance with Standard Specification Clause 2008.

**2009 RUMBLE STRIPS**

Where directed by the Engineer, the Contractor shall provide, place, trim, shape and compact to line and level rumble strips on the finished shoulders. This shall be done to the satisfaction of the Engineer.

**2010 BOLLARDS**

Where directed by the Engineer, the Contractor shall provide and install class 20/20 200mm diameter reinforced concrete bollards concreted 300mm into the ground.

**SECTION 21 – MISCELLANEOUS BRIDGE WORKS**

**2102 TESTING OF BRIDGE BEARINGS**

The testing of bearings if instructed by the Engineer shall be carried out as specified in BS 5400 part 9 Section 9.2: 1983 clause 7.2 'Testing of complete bearings.

The Contractor shall supply to the Engineer, the results of Prototype tests, Production tests and Acceptance tests carried out for the specified bearings together with a sample of the bearings for approval prior to purchase and supplying of the bearings to site.

The bearings to have a minimum vertical load capacity of 3000kN.

**2104 STEEL PARAPETS ON BRIDGE DECKS**

Steel parapets on bridge decks shall be as specified on the drawings. The steel parapets complete with base plates to posts shall be hot deep galvanized to Bs 639 in work shop subassemblies designed and sized in total length for ease of hoisting and erection in top assembly on site by bolting and erection in top assembly on site by bolting to Engineers approval. Fixing nuts and bolts shall be sheradized.

The fixing nuts on bolts at site joints in top assembly shall be spot welded to the bolt shafts to minimise disassembling of the parapets through vandalism on completion and hand over of the bridges. Site spot welded nuts shall be cleaned of any slug and receive one priming coat, one undercoat and one finishing coat of approved paint.

The contractor shall prepare and submit shop drawings of the parapets workshop subassemblies plus drawings of the parapets in top assembly for Engineers approval prior to fabrication of the parapet subassemblies. Measurement of the completed parapet in top assembly for payment shall be per linear metre of parapet.

## **2106 SURFACING TO BRIDGES**

The surface finish of bridge decks on which surfacing shall be laid shall be floated class UF1 ridged finish formed using a stiff wire brush laterally across the carriageway.

The surface dressing to bridge deck shall be concrete applied with concrete hardener to the approval of the engineer.

## **2105 EXPANSION JOINTS**

### **2105.1 Description**

This work shall consist of fabrication and placing of expansion joints as indicated on the drawing and conforming to these specifications or as directed by the Engineer.

### **2105.2 General**

The expansion joints shall be designed and duly approved by the Engineer. They shall cater for the expected movement and rotation of the structure at the joints and provide smooth riding surface. They shall also be easy for inspection, maintenance and replacement.

Expansion joints shall be robust, durable, watertight and replaceable. Site fabricated expansion joints shall be prohibited. Expansion joints shall be obtained by the Engineer either directly or through the Contractor from approved manufacturers and be of proven type.

Vehicular traffic shall not be allowed over expansion joints after its construction for such period as may be determined by the Engineer.

Proprietary type deck joints offered by the Contractor in lieu of the type specified shall comply in all respects with the manufacturer's specifications and meet the required range of movements and rotations and be fit for the purpose of ensuring satisfactory long term performance in the bridge.

Where alternative type proprietary deck joints are proposed by the Contractor, the following information shall be provided:

- Name and location of the proposed manufacturer
- Dimensions and general details of the joint including material specifications, holding down bolt or anchorage details and installation procedures
- Evidence of satisfactory performance under similar environmental conditions of similar joints being produced by the manufacturer.

Any acceptance of alternative types will be at the sole discretion of the Engineer.

Such deck joints shall be installed in accordance with the manufacturer's recommendations and to the general requirements of this Specification.

No expansion joint shall be provided only for the width of the carriageway.

It shall follow the profile including the kerb and the footway and fascia, if provided. The type of expansion joint for the latter may be made different from that used for the carriageway expansion joint.

### **2105.3 Requirements**

#### **(a) Criterion**

The requirement criterion will be separately applicable for the expansion joint proper and the transition zone of attachment to the deck.



**(b) Types of Performance**

There are two types of performance requirements for the expansion joint proper namely from the necessity of the bridge and from the road users such as man, animal and vehicle.

**(c) Performance Requirement with Respect to Bridges**

The expansion joint shall:

- Withstand the imposed load including the impact load from live load and other sources
- Allow expansion and contraction movement due to temperature, creep, shrinkage, pre-stressing and structural deformations
- Permit relative rotation in elevation and plan due to the causes as noted above,
- Be waterproof

Bridge deck expansion joint seals play a critical role in preventing the degradation of the structural components of the bridge system. Without effective joint seals, water passes through the bridge deck and works harmfully to corrode steel components and cause deterioration of the concrete. Rainwater gathers various corroding additives from the atmosphere and also from the carriageway.

- Ensure sealing

In case bridge deck joints are not sealed, apart from loss of waterproofing, grit and other forms of road debris may enter the joint. Debris, when impacted with the joint can seriously restrict the movement instead of facilitating the same. In the case of proprietary joints being accepted for adoption, the sealing shall be as directed by the Engineer.

- Ensure long life by being resistant to corrosion
- Be easy to install
- Be easy to maintain and replace
- Be resistant to the materials likely to collect/spill over the deck in its normal service.

**(d) Performance Requirement with Respect to User**

The expansion joint shall:

- Provide smooth continuity at the top of the deck for riding comfort
- Be of skid resistant surface
- Re- non-damaging to the rubber tyre
- Make minimum noise during vehicular crossing
- Ensure that animal paws and hooves should not get entangled where bridges are used by animal drawn traffic
- Permit passing of bullock cart steel tyre for bridges where bullock carts ply, and
- Look good aesthetically.

**(e) Performance Requirement for Transition Zone**

This is the zone of connection of joint assembly and the adjoining deck. The expansion joint shall:

- Permit transfer of generated forces without distress without getting uprooted. The purpose will not be served if the bonding is with the wearing coat only. Anchorage must be provided with the deck structural element.
- Ensure that surface in the transition zone stays undisturbed during long term service.

## **2105.5 Filler Joints**

The components of this type of joint shall be at least 2 mm thick corrugated plate placed slightly below the wearing coat, 20 mm thick compressible board, to protect the edges. Twenty (20) mm thick pre-moulded joint filler shall fill the gap up to the top level of the wearing coat sealed with a joint sealing compound.

The material used for filling expansion joint shall be bitumen impregnated felt, elastomer or any other suitable material, as specified on the drawings. Impregnated felt shall conform to the requirements of IS: 1838, and shall be approved by the Engineer. The joint filler shall consist of large pieces and assembly of small pieces to make up the required size shall be avoided.

Expansion joint materials shall be handled with care and stored under cover by the Contractor to prevent damage. Any damage occurring after delivery shall be made good to the satisfaction of the Engineer and at the expense of the Contractor.

Joint gaps shall be constructed as shown on the drawings. Surfaces of joint grooves shall be thoroughly cleaned with a wire brush to remove all loose materials, dirt and debris, then washed or jetted out.

Pre-moulded expansion joint filler shall not be placed in position until immediately prior to the placing of the abutting material. If the two adjacent surfaces of the joint can be placed at different times, this type of joint filler shall not be placed until the second face is about to be placed.

Sealants shall be installed in accordance with the manufacturer's recommendations and all appropriate requirements for joint face priming.

Sealants shall be finished approximately 3 mm below the upper surfaces of the joint

Joint materials spilled or splashed onto finished surfaces of the bridge during filling operations shall be removed and the surfaces made good to the Engineer's approval.

No joint shall be sealed until inspected by the Engineer and approval is given to proceed with the work.

## **SECTION 22-DAYWORKS**

### **2202 MEASUREMENTS AND PAYMENT**

#### **(a) Plant**

Where items of major plant listed in the schedule of day works are specified by type (e.g. Concrete mixer etc.) the power rating of such items of plant provided by the Contractor shall not be lower than the power ratings of such plant manufactured within the last two years prior to the date of BID. Any item of major plant employed upon day works that has a power rating lower than specified above shall be paid for at rates lower than those in the schedule of Day works. The reduction in the rate payable shall be in proportion to the reduction in power rating below that specified above.

## **SECTION 25 – HIV/ AIDS, GENDER ISSUES, SOCIAL ISSUES AND LOCAL PARTICIPATION**

### **2501 SCOPE**

This specification sets out the Contractor's obligations with regard to on-site HIV/ AIDS awareness campaign and preventive measures which are to be instituted.

## **2502 INTERPRETATION AND DOCUMENTATION**

The following documents shall inter-alia be read in conjunction with this specification:

- The Instruction to Bidders;
- The Conditions of Contract;
- The drawings;

## **2503 GENERAL REQUIREMENTS**

### **(a) HIV/ AIDS Awareness Campaign**

The Contractor shall institute an HIV/ AIDS awareness campaign amongst his workers for the duration of the Contract. As part of the campaign the Contractor will be required to display AIDS awareness posters in all buildings frequented by workers employed on the contract, where such buildings fall under the control of the Contractor. In addition, at least ten (10) of the Contractor's vehicles, regularly used on site shall display HIV/ AIDS awareness posters. The posters shall be printed on gloss paper and shall be at least A1 size on buildings and A3 size, or other approved size on vehicles. The message on the posters shall be supplied by the Employer through the Engineer before the posters are printed.

Aids awareness shall also be included in the orientation process of all workers employed on the contract.

### **(b) AIDS Prevention Campaign**

The Contractor shall institute an HIV/ AIDS prevention campaign amongst his workers for the duration of the contract. As part of the campaign the Contractor will be required to make condoms available to workers. The condoms shall be from an approved manufacturer and comply with the current ISO Standards or WHO/UNAIDS Specifications and Guidelines for Condoms, 1998, or any more recent publication. The Contractor shall make available at least 4,000 condoms every month, through dispensing machines or other approved method of distribution. The Contractor shall at all times keep the site adequately supplied with condoms.

### **(c) HIV/ AIDS**

### **(d) Training Introduction**

HIV/ AIDS is having a significant and increasing impact in Kenya. Interventions that stimulate the movement of people increase both the exposure to the HIV virus and the spread of the virus. Road construction has been identified as one such intervention.

The Government's policy is to integrate HIV/ AIDS awareness and prevention into all road construction and rehabilitation programmes. This is in accordance with the Third National Strategic Plan (2000-5) for HIV/ AIDS prevention and control as approved by the Government of Kenya, International Bank for Reconstruction and Development (IBRD) and other organizations. The project will involve both local labour and other contractor's labour. It is a contractual requirement for the Contractor to carry out HIV/ AIDS awareness and prevention activities during the construction period as stipulated in this specification.

## **Objective**

The objective of the HIV/ AIDS training programme is to reduce the risk of exposure to and spread of the HIV virus in the area influenced by the construction. The target group will be local labourers and their supervisors employed by the works contractors. The wider community will benefit indirectly through their normal day-to-day interaction with the target group.

## **Scope of activities**

Activities for HIV/ AIDS awareness and prevention will be broad-based, targeting both individuals and groups. They may consist of:

- (i) Information posters in public places, both on and offsite (eating houses, bars, guest houses etc.) and on contractor's vehicles.
- (ii) Availability of socially marketed condoms.
- (iii) Peer educators (reference people) drawn from the local labour and educated in HIV/ AIDS issues for discussions with colleagues (estimate 1 per 50 employees).
- (iv) Small focus group discussions to disseminate information covering key issues.
- (v) Theatre groups and video presentations.
- (vi) Promotional events (such as football matches) to encourage openness and discussion of HIV/AIDS issues.
- (vii) Promotional bill boards to raise awareness of the integration of construction and HIV/ AIDS activities.
- (viii) Inclusion of HIV/ AIDS activities at site meetings with the District Aids Committee and other approved representatives.

- (ix) Availability of promotional materials such as T-shirts, caps, bumper stickers, key rings, etc.

The scope of activities may be tailored as required to meet the perceived needs and priorities of the labourers, and should involve participatory approaches to ensure that they are appropriate and have a public health impact. The scale and frequency of activities may also be adjusted to suit requirements of the target group.

Education will cover:

- (a) Preventive behaviours including partner reduction, condom use, awareness and appreciation of the importance of treatment of sexually transmitted infections (STIs)
- (b) Skills including negotiating safer sex, correct condom use, purchase of condoms without embarrassment; and
- (c) Referral to local health centres and available services.

**Tasks to be undertaken to support the above activities include:**

- (a) Establishing the status and focus of all current and planned HIV/ AIDS activities in the area to ensure complementary and determining potential involvement in project activities.
- (b) Carrying out a brief review of regional activities combining road construction with HIV/ AIDS campaigns to determine options, best practice key issues, constraints, etc.
- (c) Reviewing of Information, Education and Communication (IEC) materials available and their relevance to road construction, making recommendations for future development of IEC materials.
- (d) Providing supervision for peer educators to ensure sustained quality of education. Incentives for their continual work may be small promotional items such as T-shirts, caps etc.
- (e) Providing mechanisms for the social marketing of condoms and distribution of materials.
- (f) Monitoring activities regularly to assess effectiveness and impact. This should include an initial, interim and final assessment of basic knowledge, attitude and practices (KAP) taking account of existing data sources and recognizing the limitations due to the supported by qualitative information from focus group discussions.

**Collaboration**

HIV/ AIDS activities are co-ordinated nationally by the National Aids Control Council (NACC). KeRRA, in consultation with NACC and the Ministry of Health (MOH), will co-ordinate with the provincial, district and local representatives. Representatives of local health authorities will be invited to attend training and communication activities.

Activities on the construction site will be linked as far as possible with ongoing HIV/ AIDS awareness and prevention in the area. This will ensure complementary of approaches, reinforcing education and minimizing duplication. In addition, these links will ensure that the target group will have access to continued information after the end of the construction period.

**Contractor Responsibilities**

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he Contractor will employ and designate a qualified HIV/ AIDS expert fulltime, to be approved by the Engineer, who will work closely with the Client, MOH and other implementing agencies to support the HIV/ AIDS awareness and prevention activities. This will ensure maximum effectiveness and integration with construction activities. Specific, but not exclusive, issues to be addressed by the Contractor are:

- (i) Scheduling appropriate timing and durations of the implementation of HIV/ AIDS activities as part of work plan for labourers and supervisors. Designated rest times such as lunch breaks and pay days should be excluded.
- (ii) Identification of suitable individuals from recruitment records for education with the implementing organization.
- (iii) Provision of suitable sites for communication activities and for condom distribution.
- (iv) Monitoring of the implementation of peer educator activities
- (v) Provision of support as necessary to the implementing organization.

**Inputs**

An organization experienced in the provision of HIV/ AIDS awareness and prevention activities will be selected as a subcontractor to provide the above scope of activities on behalf of the main Contractor.

## Reporting

The implementing organization will produce the following reports to be submitted to the Contractor, the County Government of Siaya and EACC:

- Monthly progress briefs for inclusion in site meetings.
- Quarterly reports detailing activities carried out, issues, follow up, etc.
- A review report of activities in the road construction sector,
- A review report of existing IEC materials with recommendations for development of materials specifically for the road sector.
- A final report detailing the methodology and activities carried out under this project including lessons learnt, impact, liaison with the Contractor and other parties, etc.

In addition, a report with the recommended approach for integration of HIV/AIDS awareness and prevention activities in the road construction sector will be produced. This will be a synthesis of project activities including contractual approaches, communication activities, availability of materials, liaison with existing organizations, etc. it will be developed with all parts involved in the construction activities to ensure the wide range of views and experiences is gained. The final report and recommended approach will be presented to KeRRA, NACC and other interested organizations including private sector, funding agencies and NGO's/

## Timing

Activities shall commence at the start of the construction period and continue through-out the 24 months to ensure a sustained impact. Reporting and dissemination activities shall continue for three months after the project is completed to ensure integration into current practice.

## 2504 MEASUREMENT AND PAYMENT

The payment items in this clause shall include full compensation for all work associated with the provision of HIV/ AIDS related services as specified.

### **Item: Instituting an HIV/AIDS awareness and prevention campaign Unit: Months**

The unit of measurement shall be the calendar month or part thereof, measured over the duration of the campaign. The tendered rate shall include full compensation for equipment, labour, materials including the procurement and distribution of condoms and full compensation for transport, meals, accommodation and any other reasonable allowances for the participation of local health authorities, provincial director of health and NACC and other resources required for the provision of the service in compliance with clause 2503 (a) and (b) above.

### **Item: Instituting an HIV/AIDS Training – Engagement of specialist HIV/ AIDS sub contractor Unit: Provision Sum**

Compensation for HIV/AIDS Specialists and resources for the implementation of Clause 2503 (c). any amount required under this item will be paid as per the programme approved by the engineer and the Client prior to expenditure

**SECTION VII- BILLS OF QUANTITIES**

**Detailed BoQs are attached at the end of this tender document**

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**PART III - CONDITIONS OF CONTRACT  
AND CONTRACT FORMS**

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## 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 face type is used to identify defined terms.

- a) **The Accepted Contract Amount** means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying 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 in the first instance, as provided for in GCC 23.
- d) **Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Bid.
- e) **Compensation Events** are those defined in GCC Clause 42 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 the Works. It consists of the documents listed in GCC Sub-Clause 2.3 below.
- h) **The Contractor** is the party whose Bid to carry out the Works 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** are calendar days; months are calendar months.
- l) **Day works** 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) **A Defect** is any part of the Works not completed in accordance with the Contract.
- n) **The Defects Liability Certificate** is the certificate issued by Project Manager upon correction of defects by the Contractor.
- o) **The Defects Liability Period** is the period **named in the SCC** pursuant to Sub-Clause 34.1 and calculated from the 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 the party who employs the Contractor to carry out the Works, **as specified in the SCC**, who is also the Procuring Entity.
- r) **Equipment** 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** is 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

- 2.1 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.
- 2.2 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).
- 2.3 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<sup>6</sup>, and
  - i) any other document **listed in the SCC** as forming part of the Contract.

## 3. Language and Law

- 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) 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 from that country or any payments to any country, person, or entity in that country.

<sup>6</sup>In lump sum contracts, delete "Bill of Quantities" and replace with "Activity Schedule."

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

- 4.1 Except where otherwise specifically stated, the Project Manager shall decide contractual matters between the Procuring Entity and the Contractor in the role representing the Procuring Entity.

#### **5. Delegation**

- 5.1 Otherwise **specified in the 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 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 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 and Equipment**

- 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 be removed in accordance 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 the risks 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) 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 Procuring Entity 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 Procuring Entity or in the Procuring Entity's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.

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

- aa) a Defect which existed on the Completion Date,
- bb) an event occurring before the Completion Date, which was not itself a Procuring Entity's risk, or
- cc) the activities of the Contractor on the Site after 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 are not 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 Date to the end of the Defects Liability Period, in the amounts and deductibles **stated in the SCC** for the following events which are due to the Contractor's risks:

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

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 and proportions of currencies required to rectify 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.

13.5 Both 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 available to the Contractor.

## **15. Contractor to Construct the Works**

15.1 The Contractor shall construct and install the Works 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 of the 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

### 24.1 Contractor'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 have become aware, 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 claim shall be considered 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 the above defined time period.
- 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 which the 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.

## **24.2 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 amicable settlement has been made.

## **24.3 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) The appointment of a replacement Project Manager upon the said 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 dispute arising in respect 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 agree otherwise in writing.

## **24.4 Arbitration**

- 24.4.1 Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 24.3 shall be finally settled by arbitration.
- 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 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, on the request of the applying party, 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
- 24.5.2 The institution written to first by the aggrieved party shall take precedence 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 prejudice to any other rights it may have, refer the matter to a competent court of law.

## **24.8 Contract operations to continue**

24.8.1 Notwithstanding any reference to arbitration herein,

- a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
- b) the Procuring Entity shall pay the Contractor any monies due the 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, and the purpose of the commission, 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 than 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. Extension of the 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 Price and treated 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 meeting and stated in writing to all who attended 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 carrying out 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 have a 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, the test shall be a Compensation Event.

### **34. Correction of 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<sup>7</sup>

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 accomplished at the rate in the Bill of Quantities for each item.

### 37. Changes in the Contract Price

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 breakdown of any rate in the Bill of Quantities.

### 38. Variations

38.1 All Variations shall be included in updated Programs<sup>9</sup> 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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<sup>7</sup>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.

<sup>8</sup>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 Schedule shall not be altered when the Contractor makes such changes to the Activity Schedule.

<sup>9</sup>In lump sum contracts, add "and Activity Schedules" after "Programs." <sup>10</sup>In lump sum 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) the proposed change(s), and a description of the difference to 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 the change on performance/functionality.

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

- a) accelerate the contract completion period; or
- b) reduce the Contract Price or the life cycle costs to the Procuring Entity; or
- c) improve the quality, efficiency, safety or sustainability of the Facilities; or
- d) yield any other benefits to the Procuring Entity, without compromising the functionality 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 in the SCC** of the reduction in the 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, the amount to be paid to the Contractor shall be the full increase in the Contract Price.

### 39. Cash Flow Forecasts

39.1 When the Program<sup>11</sup>, 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 using the Contract exchange rates.

### 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 completed<sup>12</sup>.

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:  $(\text{corrected tender price} - \text{tender price}) / \text{tender price} \times 100$ .

## 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 give access to a part of the Site by the Site Possession Date pursuant 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 the Works on time.
- g) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
- h) The Project Manager unreasonably does not approve a subcontract to be let.
- 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), from information available publicly and from a 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, and they cause delay or extra cost to the Contractor.
- l) The advance payment is delayed.
- m) The effects 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.

<sup>11</sup>In lump sum contracts, add "or Activity Schedule" after "Program."

<sup>12</sup>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 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:

$$P = A + B \frac{I_m}{I_o}$$

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

A and B are coefficients<sup>13</sup> **specified in the SCC**, representing the non-adjustable and adjustable portions, respectively, of the Contract Price payable and  $I_m$  is the index prevailing at the end of the month being invoiced and  $I_o$  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.

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<sup>13</sup> 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 the amount **stated in the SCC** from payments due to the Contractor.

## 57. Termination

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

57.2 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 authorized 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 Procuring Entity or the Contractor is made 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 Procuring Entity to the Contractor within 84 days of the date 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) the Contractor 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 can be paid, as **defined in the 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 him from the 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 upon Termination

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, and less advance payments received up to the date of the certificate.

**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 was made.

## SECTION IX - SPECIAL CONDITIONS OF CONTRACT

Except where otherwise specified, all Special Conditions of Contract should be filled in by the Procuring Entity prior to issuance of the bidding document. Schedules and reports to be provided by the Procuring Entity should be annexed.

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
<b>A. General</b>	
<b>GCC 1.1 (q)</b>	The Procuring Entity is <i>[insert name, address, and name of authorized representative]</i> .
<b>GCC 1.1 (u)</b>	The Intended Completion Date for the whole of the Works shall be <i>[insert date]</i> <i>[If different dates are specified for completion of the Works by section (“sectional completion” or milestones), these dates should be listed here]</i>
<b>GCC 1.1 (x)</b>	The Project Manager is <i>[insert name, address, and name of authorized representative]</i> .
<b>GCC 1.1 (z)</b>	The Site is located at <i>[insert address of Site ]</i> and is defined in drawings No. <i>[insert numbers]</i>
<b>GCC 1.1 (cc)</b>	The Start Date shall be <i>[insert date]</i> .
<b>GCC 1.1 (gg)</b>	The Works consist of <i>[insert brief summary, including relationship to other contracts under the Project]</i> .
<b>GCC 2.2</b>	Sectional Completions are: <i>[insert nature and dates, if appropriate]</i>
<b>GCC 5.1</b>	The Project manager <i>[may or may not]</i> delegate any of his duties and responsibilities.
<b>GCC 8.1</b>	Schedule of other contractors: <i>[insert Schedule of Other Contractors, if appropriate]</i>
<b>GCC 9.1</b>	<p><b>Key Personnel</b> GCC 9.1 is replaced with the following:</p> <p>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. <i>[insert the name/s of each Key Personnel agreed by the Procuring Entity prior to Contract signature.]</i></p>
<b>GCC 13.1</b>	<p>The minimum insurance amounts and deductibles shall be:</p> <ul style="list-style-type: none"> <li>(a) for loss or damage to the Works, Plant and Materials: <i>[insert amounts]</i>.</li> <li>(b) For loss or damage to Equipment: <i>[insert amounts]</i>.</li> <li>(c) for loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract <i>[insert amounts]</i>.</li> <li>(d) for personal injury or death: <ul style="list-style-type: none"> <li>(i) of the Contractor’s employees: <i>[amount]</i>.</li> <li>(ii) of other people: <i>[amount]</i>.</li> </ul> </li> </ul>



<b>Number of GC Clause</b>	<b>Amendments of, and Supplements to, Clauses in the General Conditions of Contract</b>
<b>GCC 14.1</b>	Site Data are: <i>[list Site Data]</i>
<b>GCC 20.1</b>	The Site Possession Date(s) shall be: <i>[insert location(s) and date(s)]</i>
<b>GCC 23.1 &amp; GCC 23.2</b>	Appointing Authority for the Adjudicator: <i>[insert name of Authority]</i> .
	Hourly rate and types of reimbursable expenses to be paid to the Adjudicator: <i>[insert hourly fees and reimbursable expenses]</i> .
<b>B. Time Control</b>	
<b>GCC 26.1</b>	The Contractor shall submit for approval a Program for the Works within <i>[number]</i> days from the date of the Letter of Acceptance.
<b>GCC 26.3</b>	The period between Program updates is <i>[insert number]</i> days.
	The amount to be withheld for late submission of an updated Program is <i>[insert amount]</i> .
<b>C. Quality Control</b>	
<b>GCC 34.1</b>	The Defects Liability Period is: <i>[insert number]</i> days.  <i>[The Defects Liability Period is usually limited to 12 months, but could be less in very simple cases]</i>
<b>D. Cost Control</b>	
<b>GCC 38.9</b>	If the value engineering proposal is approved by the Procuring Entity the amount to be paid to the Contractor shall be ___% <i>(insert appropriate percentage. The percentage is normally up to 50%)</i> of the reduction in the Contract Price.
<b>GCC 44.1</b>	The currency of the Procuring Entity's Country is: <i>[insert name of currency of the Procuring Entity's Country]</i> .
<b>GCC 45.1</b>	The Contract <i>[insert "is" or "is not"]</i> subject to price adjustment in accordance with GCC Clause 45, and the following information regarding coefficients <i>[specify "does" or "does not"]</i> apply.  <i>[Price adjustment is mandatory for contracts which provide for time of completion exceeding 18 months]</i>  The coefficients for adjustment of prices are:  (a) <i>[insert percentage]</i> percent nonadjustable element (coefficient A).  (ib) <i>[insert percentage]</i> percent adjustable element (coefficient B).  (c) The Index I for shall be <i>[insert index]</i> .
<b>GCC 46.1</b>	The proportion of payments retained is: <i>[insert percentage]</i>  <i>[The retention amount is usually close to 5 percent and in no case exceeds 10 percent.]</i>
<b>GCC 47.1</b>	The liquidated damages for the whole of the Works are <i>[insert percentage of the final Contract Price]</i> per day. The maximum amount of liquidated damages for the whole of the Works is <i>[insert percentage]</i> of the final Contract Price.  <i>[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</i>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<i>Sectional Completion and Damages per Section have been agreed, the latter should be specified here]</i>
<b>GCC 48.1</b>	<p>The Bonus for the whole of the Works is <i>[insert percentage of final Contract Price]</i> per day. The maximum amount of Bonus for the whole of the Works is <i>[insert percentage]</i> of the final Contract Price.</p> <p><i>[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.]</i></p>
<b>GCC 49.1</b>	The Advance Payments shall be: <i>[insert amount(s)]</i> and shall be paid to the Contractor no later than <i>[insert date(s)]</i> .
<b>GCC 50.1</b>	<p>The Performance Security amount is <i>[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]</i></p> <p>(a) Performance Security – Bank Guarantee: in the amount(s) of <i>[insert related figure(s)]</i> percent of the Accepted Contract Amount and in the same currency(ies) of the Accepted Contract Amount.</p> <p>(b) Performance Security – Performance Bond: in the amount(s) of <i>[insert related figure(s)]</i> percent of the Accepted Contract Amount and in the same currency(ies) of the Accepted Contract Amount.</p>
<b>E. Finishing the Contract</b>	
<b>GCC 56.1</b>	<p>The date by which operating and maintenance manuals are required is <i>[insert date]</i>.</p> <p>The date by which “as built” drawings are required is <i>[insert date]</i>.</p>
<b>GCC 56.2</b>	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 <i>[insert amount in local currency]</i> .
<b>GCC 57.2 (g)</b>	The maximum number of days is: <i>[insert number; consistent with Clause 47.1 on liquidated damages]</i> .
<b>GCC 58.1</b>	The percentage to apply to the value of the work not completed, representing the Procuring Entity’s additional cost for completing the Works, is <i>[insert percentage]</i> .

**SECTION X - CONTRACT FORMS**

**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 the Tenderer's Authorized Representative named in the Tender Information Form on the format 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. How to request a debriefing

- a) DEADLINE: The deadline to request 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 (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 (3) Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that 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 how the debriefing will take place and confirm the date and time.
- f) If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Days from the date of publication of the Contract Award Notice.

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-related Complaint 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 available from the Website [info@ppra.go.ke](mailto:info@ppra.go.ke) or [complaints@ppra.go.ke](mailto:complaints@ppra.go.ke).  
You should read these documents before preparing and submitting your complaint.
- e) There are four 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 the recipient of a Notification of Intention to Award.
  - ii) The complaint can only challenge the decision to award the contract.
  - iii) You must submit the complaint within the period 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 due to end at 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 be extended as stated in paragraph Section 5 (d) above.

If you have any questions regarding this Notification please do not hesitate to contact 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**

**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: LETTER OF AWARD**

*[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 “the Contractor”), 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 and the remedying 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 the Contract 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) the Letter of Acceptance
  - b) the Letter of Tender
  - c) the addenda Nos \_\_\_\_\_ (if any)
  - d) the Special Conditions of Contract
  - e) the General Conditions of Contract;
  - f) the Specifications
  - g) the Drawings; and
  - h) the completed 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 in conformity in all respects with the provisions of the Contract.
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 the provisions of the Contract at the times and in the manner prescribed by the Contract.

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 name and 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),<sup>1</sup> 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 to show grounds for your demand or the sum specified therein.
4. This guarantee shall expire, no later than the .... Day of ....., 2.....<sup>2</sup>, and any demand for payment under it must be received by us at the office indicated above on or before that 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 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.*

<sup>1</sup>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.

<sup>2</sup>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 be in writing and must be made prior to the expiration date established in the guarantee.



**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 name and Address of Procuring Entity]* **Date:** \_\_\_\_\_ *[Insert date of issue]*.

**PERFORMANCE BOND No.:** \_\_\_\_\_

**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, jointly and severally, firmly by these presents.
2. WHEREAS the Contractor has entered into a written Agreement with the Procuring Entity dated the \_\_\_\_\_ day of \_\_\_\_\_, 20, for \_\_\_\_\_ in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.
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 the default, or shall promptly:
  - 1) complete the Contract in accordance with its terms and conditions; or
  - 2) obtain a tender or tenders from qualified tenderers for submission to the 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 and conditions up to a total not exceeding the amount of this Bond.
4. The Surety shall not be liable for a greater sum than 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 \_\_\_\_\_ 20 \_\_\_\_\_.

SIGNED ON \_\_\_\_\_ on behalf of By \_\_\_\_\_ in the capacity of

In the presence of

SIGNED ON \_\_\_\_\_ on behalf of By \_\_\_\_\_ in the capacity of

In the presence 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 \_\_\_\_\_ (hereinafter called "the Contract").
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 \_\_\_\_\_)<sup>1</sup> 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<sup>2</sup>, whichever is earlier. Consequently, 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.***

<sup>1</sup>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.

<sup>2</sup>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:** \_\_\_\_\_ *[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 \_\_\_\_\_ *[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 "the Contract").
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 the second half of the Retention Money]* is to be made against 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 \_\_\_\_\_])*<sup>1</sup> 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 needing to prove or show grounds for your demand or the sum specified 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 account number \_\_\_\_\_ at \_\_\_\_\_ *[insert name and address of Applicant's bank]*.
5. This guarantee shall expire no later than the ..... Day of ....., 2.....<sup>2</sup>, and any demand for payment under it must be received by us at the office indicated above 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.***

<sup>1</sup>The Guarantor shall insert an amount representing the amount of the second half of the Retention Money.

<sup>2</sup>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 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 be in writing and must be made prior to the expiration date established in the guarantee.

**FORM NO. 9 BENEFICIAL OWNERSHIP DISCLOSURE FORM**

**INSTRUCTIONS TO TENDERERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE FORM**

*This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful tenderer. In case of joint venture, the tenderer must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.*

*For the purposes of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the Tenderer by meeting one or more of the following conditions:*

- *Directly or indirectly holding 25% or more of the shares.*
- *Directly or in directly holding 25% or more of the voting rights.*
- *Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer.*

Tender Reference No.: \_\_\_\_\_ [insert identification no] Name of the Assignment: \_\_\_\_\_ [insert name of the assignment] to: \_\_\_\_\_ [insert complete name of Procuring Entity]

In response to your notification of award dated \_\_\_\_\_ [insert date of notification of award] to furnish additional information on beneficial ownership: \_\_\_\_\_ [select one option as applicable and delete the options that are not applicable]

I) We here by provide the following beneficial ownership information.

**Details of beneficial ownership**

<b>Identity of Beneficial Owner</b>	<b>Directly or indirectly holding 25% or more of the shares (Yes / No)</b>	<b>Directly or indirectly holding 25 % or more of the Voting Rights (Yes / No)</b>	<b>Directly or indirectly having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer (Yes / No)</b>
<i>[include full name (last, middle, first), nationality, country of residence]</i>			

OR

ii) *We declare that there is no Beneficial Owner meeting one or more of the following conditions: directly or indirectly holding 25% or more of the shares. Directly or indirectly holding 25% or more of the voting rights. Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer.*

OR

*We declare that we are unable to identify any Beneficial Owner meeting one or more of the following conditions. [If this option is selected, the Tenderer shall provide explanation on why it is unable to identify any Beneficial Owner]*

*Directly or indirectly holding 25% or more of the shares. Directly or indirectly holding 25% or more of the voting rights.*

*Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer]"*

Name of the Tenderer: .....\*[insert complete name of the Tenderer]\_\_\_\_\_

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

Title of the person signing the Tender: ..... [insert complete title of the person signing the Tender]

Signature of the person named above: ..... [insert signature of person whose name and capacity are shown above]

Date signed ..... [insert date of signing] day of..... [Insert month], [insert year]

## **BILLS OF QUANTITIES**

1. The Bills of Quantities forms part of the Contract Documents and are to be read in conjunction with the Instructions to Bidders, Conditions of Contract Parts I and II, Specifications and Drawings.
2. The brief description of the items in the Bills of Quantities is purely for the purpose of identification, and in no way modifies or supersedes the detailed descriptions given in the conditions of Contract and Specifications for the full direction and description of work and materials.
3. The Quantities set forth in the Bills of Quantities are estimated , representing substantially the work to be carried out, and are given to provide a common basis for bidding and comparing of Bids. There is no guarantee to the Contractor that he will be required to carry out all the quantities of work indicated under any one particular item or group of items in the Bill of Quantities. The basis of payment shall be the Contractor's rates and the quantities of work actually done in fulfilment of his obligation under the Contract.
4. The prices and rates inserted in the Bills of Quantities will be used for valuing the work executed, and the Engineer will only measure the whole of the works executed in accordance with this Contract.
5. A price or rate shall be entered in ink against every item in the Bills of Quantities with the exception of items that already have Provisional sums affixed thereto. The bidders are reminded that no “nil” or “included” rates or “lump-sum” discounts will be accepted. The rates for various items should include discounts if any. Bidders who fail to comply will be disqualified.
6. Provisional sums (including Day works) in the Bills of Quantities shall be expended in whole or in part at the discretion of the Engineer and as per the provisions of the Public Procurement and Disposal Act, 2015
7. The price and rates entered in the Bills of Quantities shall, except insofar as it is otherwise provided under the Contract, include all Constructional plant to be used, labour, insurance, supervision, compliance testing, materials, erection, maintenance of works, overheads and profits, taxes and duties together with all general risks, liabilities and obligations set out or implied in the Contract, transport, electricity and telephones, water, use and replenishment of all consumables, including those required under the contract by the Engineer and his staff.

MAINTENANCE OF GOT AGULU OUNDO ROAD					
BILL 01: Preliminaries And General Costs Items					Page 1
BILL CODE	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
01-60-005	Provide and erect publicity signboard at the beginning and end of the contract site	2	NO		
01-60-001	Project supervision		PC SUM		114,000.00
	Allow a % for contractors profit & overheads	10	%		
01-60-004	Allow a Prime Cost sum of 25,000 for material testing		ITEM		25,000.00
	Allow a % for contractors profit & overheads	10	%		
01-60-004	Allow a Prime Cost sum for survey works.		ITEM		-
	Allow a % for contractors profit & overheads		%		-
	<b>TOTAL CARRIED TO GRAND SUMMARY</b>			<b>Ksh</b>	

<b>MAINTENANCE OF GOT AGULU OUNDO ROAD</b>					
<b>BILL 04:SITE CLEARENCE</b>					
<b>Page 2</b>					
<b>BILL CODE</b>	<b>DESCRIPTION</b>	<b>QTY</b>	<b>UNIT</b>	<b>RATE</b>	<b>AMOUNT</b>
04-50-003	Heavy bush clearing	12000	M <sup>2</sup>		
	<b>TOTAL CARRIED TO GRAND SUMMARY</b>			<b>Ksh</b>	

<b>MAINTENANCE OF GOT AGULU OUNDO ROAD</b>					
<b>Bill 08:Culvert and drainage works</b>					
<b>Page 3</b>					
<b>BILL</b>	<b>DESCRIPTION</b>	<b>QTY</b>	<b>UNIT</b>	<b>RATE</b>	<b>AMOUNT</b>

CODE					
08-60-001/005	Clean existing culvert to free flowing conditions	70	M		
08-60-033	Provide, lay and join 600mm inner diameter concrete pipes, concrete bedding, surround, head wall, wing walls and backfill	7	M		
	<b>TOTAL CARRIED TO GRAND SUMMARY</b>				<b>Ksh</b>
	<b>MAINTENANCE OF GOT AGULU OUNDO ROAD</b>				



**BILL 10:Grading and gravelling**  
**Page 4**

<b>BILL CODE</b>	<b>DESCRIPTION</b>	<b>QTY</b>	<b>UNIT</b>	<b>RATE</b>	<b>AMOUNT</b>
10-50-001	Grade the existing carriageway to camber including slopes and ditches as instructed	16,200	M <sup>2</sup>		
10-60-001	Provide, spread and compact lateritic (natural) gravel to specified thickness at 95% MDD	1249	M <sup>3</sup>		
	<b>TOTAL CARRIED TO GRAND</b>			<b>Ksh</b>	

	<b>SUMMARY</b>				
	<b>GRAND SUMMARY</b>				
<b>PAGE NO.</b>	<b>DESCRIPTION</b>				<b>AMOUNT</b>
1	Preliminaries And General Costs Items				
2	Site Clearance				
3	Culvert and drainage works				
4	Grading and Gravelling				
	Sub-total				
	Add VAT 16%				
	<b>GRAND TOTAL CARRIED TO FORM OF TENDER</b>				



UPPERHILL ULOWA PRIMARY- ULOWA SECONDARY ROAD IN YIMBO WEST WARD					
BILL 01: Preliminaries And General Costs Items				Page 1	
BILL CODE	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
01-60-005	Provide and erect publicity signboard at the beginning and end of the contract site	2	NO		
01-60-001	Project supervision		PC SUM		36,000.00
	Allow a % for contractors profit & overheads	10	%		
01-60-004	Allow a Prime Cost sum of 30,000 for material testing		ITEM		30,000.00
	Allow a % for contractors profit & overheads	10	%		
01-60-004	Allow a Prime Cost sum for survey works.	0	ITEM		
	Allow a % for contractors profit & overheads		%		
<b>TOTAL CARRIED TO GRAND SUMMARY</b>				<b>Ksh</b>	
UPPERHILL ULOWA PRIMARY- ULOWA SECONDARY ROAD IN YIMBO WEST WARD					
BILL 04:SITE CLEARENCE				Page 2	
BILL CODE	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
04-50-003	Heavy bush clearing	5000	M <sup>2</sup>		

	<b>TOTAL CARRIED TO GRAND SUMMARY</b>			<b>Ksh</b>	
	<b>UPPERHILL ULOWA PRIMARY- ULOWA SECONDARY ROAD IN YIMBO WEST WARD</b>				
	<b>Bill 08:Culvert and drainage works</b>			<b>Page 3</b>	
<b>BILL CODE</b>	<b>DESCRIPTION</b>	<b>QTY</b>	<b>UNIT</b>	<b>RATE</b>	<b>AMOUNT</b>
08-60-033	Provide, lay and join 600mm inner diameter concrete pipes, concrete bedding, surround, head wall, wing walls and backfill	14	M		

	<b>TOTAL CARRIED TO GRAND SUMMARY</b>			<b>Ksh</b>	
	<b>UPPERHILL ULOWA PRIMARY- ULOWA SECONDARY ROAD IN YIMBO WEST WARD</b>				
	<b>BILL 10:Grading and gravelling</b>				<b>Page 4</b>
<b>BILL CODE</b>	<b>DESCRIPTION</b>	<b>QTY</b>	<b>UNIT</b>	<b>RATE</b>	<b>AMOUNT</b>
10-50-001	Grade the existing carriageway to camber including slopes and ditches as instructed	8,000	M <sup>2</sup>		
10-60-001	Provide, spread and compact lateritic (natural) gravel to specified thickness at 95% MDD	225	M <sup>3</sup>		

	<b>TOTAL CARRIED TO GRAND SUMMARY</b>			<b>Ksh</b>	
<b>GRAND SUMMARY</b>					
<b>PAGE NO.</b>	<b>DESCRIPTION</b>				<b>AMOUNT</b>
1	Preliminaries And General Costs Items				
2	Site clearance				
3	Culvert and drainage works				
4	Grading and Gravelling				
	Sub-total				
	Add VAT 16%				

<b>GRAND TOTAL CARRIED TO FORM OF TENDER</b>					

**CONTRACTOR**

**WITNESS** \_\_\_\_\_

NAME.....

NAME.....

SIGNATURE.....

SIGNATURE.....

ADDRESS.....

ADDRESS.....

DATE & STAMP.....

DATE.....

***SUMMARY PAGE***

<b>S/NO</b>	<b>Ward</b>	<b>Project Description</b>	<b>AMOUNT</b>
1	WEST YIMBO	MAINTENANCE OF GOT AGULU OUNDO ROAD	
2	WEST YIMBO	UPPERHILL ULOWA PRIMARY- ULOWA SECONDARY ROAD IN YIMBO WEST WARD	
	TOTAL	TOTAL CARRIED TO FORM OF TENDER	