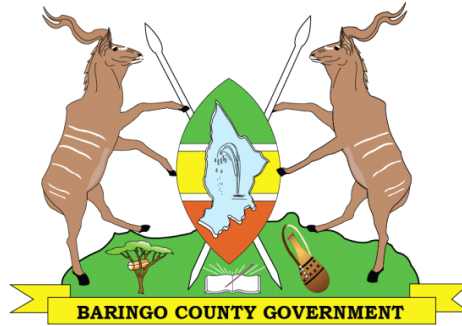


REPUBLIC OF KENYA



BARINGO COUNTY GOVERNMENT

TENDER NAME: HIRE OF ROAD CONSTRUCTION EQUIPMENT

BARINGO COUNTY

TENDER NO. BRCG/TNR/27/2021-2022

ISSUED BY:
BARINGO COUNTY GOVERNMENT,
P.O. BOX 53 – 30400,
KABARNET – KENYA.

SEPTEMBER, 2021.

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1.0 INSTRUCTIONS TO BIDDERS

1.1 Description of Goods to be supplied

The works involve HIRE OF ROAD CONSTRUCTION EQUIPMENT as per specifications to the Baringo County Government.

1.2 Eligible Bidders

1.2.1 This invitation is open to all dealers registered in the republic of Kenya to deal with heavy motor vehicles; plant, machinery and equipment. Successful bidders shall complete the hire of the said roads equipment and plant by the intended completion date specified in the bid documents.

1.2.2 Bidders shall provide the qualification information statement that the Bidder (including all members of a joint venture and subcontractors) is not associated, or have been associated in the past, directly or indirectly, with the Baringo County Government to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods under this Invitation for Bids.

1.2.3 Bidders shall not be under a declaration of ineligibility for corrupt and fraudulent practices.

1.3 Cost of Bidding

The bidder shall bear all costs associated with the preparation and submission of its bids and the Baringo County Government herein after referred to as “the Employer or the County” will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

1.4 Bidder’s Memorandum

All bids submitted shall include copies of the following documents from prospective bidders:

-

- (a) Certified copy of certificate of registration/ incorporation.
- (b) Certified copy of valid CR-12 from Registrar of Companies printed in 2020/2021.
- (c) Certified copy of valid business permit.
- (d) Certified copy of a valid Tax Compliance Certificate.
- (e) PIN Certificate of the firm bidding.
- (f) VAT certificate of the firm bidding.
- (g) Valid National Construction Authority certificate and practising licence for road works.
- (h) Proof of ownership of relevant equipment certified by commissioner of oaths (see 11.0)
- (i) Tender validity of 120 days
- (j) Proof of relevant experience (see 2.6)
- (k) All pages in the bid documents MUST be serialised.
- (l) Certified copies of duly signed audited financial statements for 2018, 2019 and 2020.

1.5 Contents of Bidding Documents

1.5.1 The documents issued for the purpose of bidding include documents listed below and addenda issued in accordance instructions herein to bidders:-

- (a) Instructions to Bidders,
- (b) Conditions of Contracts,
- (c) Technical Specifications,
- (d) Form of Bid and Appendix to Form of Bid,
- (e) Price Schedules,
- (f) Form of Bid Security,
- (g) Bill of Quantities,
- (h) Schedules of Supplementary information,
- (i) Form of Contract Agreement,
- (j) Forms of Performance Security and
- (k) Manufacturer's Authorization Form.

1.5.2 The bidder is expected to examine carefully, all instructions, conditions, forms, terms and specifications in the bidding documents. Failure to comply with the requirements will be at the bidder's own risk. Bids that are not substantially responsive to the bidding documents will be rejected.

1.6 Clarification of Bidding Document

1.6.1 The prospective bidder requiring any clarification of the bidding documents may notify the Employer in writing at the Employer's mailing address indicated in the invitation to bid. The Employer will respond in writing to any request (s) for clarification that it receives earlier than 7 days prior to the deadline for the submission of bids.

1.6.2 Written copies of the Employer's response(s) (including and explanation of the query but without identifying the source of the inquiry) will be sent to all prospective bidders who have received the bidding documents.

1.7 Amendments of Bidding Documents

1.7.1 At any time prior to the deadline for submission of bids, the Employer may, for any reason whether at his own initiative or in response to a clarification requested by a prospective bidder, modify the bidding documents by amendments.

1.7.2 The amendment will be notified in writing to all prospective bidders that have received the bidding documents and will be binding upon them.

1.7.3 In order to afford prospective bidders reasonable time in which to take the amendment into account in preparing their bids, the Employer may, at its discretion, extend the deadline for the submission of bids.

1.8 Language of Bid

The bid prepared by the bidder and all correspondence and documents relating to the bid exchanged by the bidder and the Employer shall be written in the English Language. Supporting documents and printed literature furnished by bidder with the bid may be in another language provided they are accompanied by an appropriate translation of pertinent passages in the above stated language. For the purpose of interpretation of the bid, the English Language shall prevail.

1.9 Law for Contract

The law that is applicable is Kenyan Law for the time being and any amendments thereto.

1.10 Document of Bid

- 1.10.1 The bid to be prepared by the bidder shall comprise the Form of Bid and Appendix thereto; a bid security; the Bill of Quantities and Schedules and any other materials required to be completed and submitted in accordance with the instructions to Bidders embodied in these bidding documents. The forms, bill of quantities and schedules provided in these bidding documents shall be used without exception.
- 1.10.2 All documents issued for the purpose of bidding as described herein shall be deemed incorporated in the bid.

1.11 Bid Price

- 1.11.1 The bidder shall ONLY fill in rates for the equipment for which the bidder has provided certified copies of the log books. Equipment against which no rate or price is entered or no certified copy of the log book is provided by the bidder will not be considered by the Employer and shall be deemed unavailable to the Employer.
- 1.11.2 All duties, taxes and other levies payable by the contractor under the contract, for any other cause shall be included in the rates and prices and total amount of Bill submitted by the bidder, and the evaluation and comparison of bids by the Employer shall be made accordingly. Bidders are required to insert the appropriate rate of Value Added Tax (VAT) in force at the time of bidding and the Tax amount for his bid in the Summary Sheet.
- 1.11.3 Price Adjustment: The rates and prices quoted by the bidder are subject to harmonisation during the performance of the contract. The Bidder shall complete Schedule 1 (Bidder Questionnaire) and shall submit it with his bid.

1.12 Currency of Bidding

All rates and prices shall be quoted in Kenya Shillings only. Failure to comply will result to rejection of the bid.

1.13 Bidders Eligibility and Qualifications.

- 1.13.1 Pursuant to paragraph 1 of section III, the Bidder shall furnish, as part of its Bid, documents establishing the Bidders eligibility to Bid and its qualifications to perform the contract if its Bid is accepted.
- 1.13.2 The documentary evidence of the Bidders eligibility to Bid shall establish to the Baringo County Government's satisfaction that the Bidder, at the time of submission of its Bid, is from an eligible source country as defined under paragraph I of section III.
- 1.13.3 The documentary evidence of the Bidders qualifications to perform the contract if its Bid is accepted shall establish to the Baringo County Government's satisfaction:
- (a) That, in the case of a Bidder offering to supply goods under the contract which the Bidder did not manufacture or otherwise produce, the Bidder has been duly authorized by the goods' Manufacturer or producer to supply the goods;
 - (b) That the Bidder has the financial, technical, and production capability necessary to perform the contract;
 - (c) That, in the case of a Bidder not doing business within Kenya, the Bidder is or will be (if awarded the contract) represented by an Agent in Kenya equipped, and able to carry out the Bidder's maintenance, repair, and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications.

1.14 Bid Validity

- 1.14.1 The bid shall remain and open for acceptance for a period of (120 days) from the specified date of bid closing.
- 1.14.2 In exceptional circumstances prior to expiry of the original bid validity period, the Employer may request the bidder for a specified extension in the period of validity. The request and the responses thereto shall be made in writing.
- 1.14.3 A bidder agreeing to the request will not be required nor permitted to modify his bid, but will be required to extend the validity of his bid security correspondingly.

1.15 Bid Security

- 1.15.1 The bidder shall furnish as part of his Bid a bid Security amounting to **Kshs 500,000.00** in form of an acceptable bank guarantee, a Bankers cheque or Insurance bond payable to Baringo County Government and valid for at least 90 days after the bid opening date.
- 1.15.2 The bid security **MUST** be submitted together with the bid when depositing in the Bid Box. This amount is required as a bid security and in the event of the bidder failing to comply with any or all the conditions laid down in the form of bid security, the amount of surety in soliciting these bids (including consequential damage in delay to the commencement of works). Any bid security less than the required bid security shall be cashed by Baringo County Government i.e. will be rejected and the bid security lost.
- 1.15.3 The Employer will reject any bid not accompanied by an acceptable bid security as non-responsive.
- 1.15.4 The Bid securities of unsuccessful bidders will be discharged/returned as promptly as possible as but not later than 30 days after the expiry of the period of bid validity prescribed herein.
- 1.15.5 The Bid security of the successful bidder will be discharged upon the bidder executing the contract and furnishing the required performance security.
- 1.15.6 The bid security may be forfeited:
 - (a) If a bidder withdraws his bid during the period of bid validity; or
 - (b) In the case of a successful bidder, if he fails to:
 - (i) Enter into the contract, or
 - (ii) Furnish the necessary performance security.
- 1.15.7 Any bid security less than the required amount shall be forfeited and the bid rejected as being non-responsive.

1.16 No alternative offers

The bidder shall submit an offer, which complies fully with the requirements of the bidding documents.

1.17 Format and Signing of Bids

- 1.17.1 The bidder shall prepare two copies of the document comprising the bid, bound with the volume containing the Form of Bid clearly marked “**Original**” and “**Copy**” appropriately. In the event of any discrepancy between them, the original shall govern. The copy shall be for the Bills of Quantities only.
- 1.17.2 The original and copies of the bid shall be typed or written in **indelible ink** and shall be **signed** by a person or persons duly authorized to bind the bidder to the contract. Proof of authorization shall be furnished in the form of a written Power of Attorney, which shall accompany the bid. **The person or persons signing in bid shall initial all pages of the bid, except for printed materials not amended.**
- 1.17.3 The completed bid shall be without alterations, interlineations or erasures, except as necessary to correct errors made by the bidder, in which case such corrections shall be initialed by the persons signing the bid.
- 1.17.4 This bid document shall be returned intact without any alteration or removal of any page. Failure to comply with this requirement will result to the bidder forfeiting the bid bond and rejection of the bid.

1.18 Sealing and Marking of Bids

- 1.18.1 The bidder shall seal the original and each copy of the bid in an inner and an outer envelope, duly marking the envelopes as “**ORIGINAL**” and “**COPY**”
- 1.18.2 The inner and outer envelopes shall be:
- (a) Addressed to the Director, Supply Chain Management, Baringo County Government, P.O Box 53-30400, Kabarnet
 - (b) Bear the following identification: -
 - i. **(Tender No. BRCG/TNR/27/2021-2022) HIRE OF ROAD CONSTRUCTION EQUIPMENT**
 - (c) The Words “**Do not open before 12.00 noon, Tuesday 21st September, 2021**”. The inner envelopes shall indicate the name and address of the bidder to enable the bid to be returned unopened in case it declared “late”.
- 1.18.3 If the outer envelope is not sealed and marked as instructed above, the **Employer will not assume any responsibility** for the misplacement or premature opening of the bid. A bid opened prematurely for this cause will be rejected by the Employer and returned to the bidder.

1.19 Deadline for Submission of Bids

- 1.19.1 Bids must be received by the Employer at the address specified above not later than 12.00 noon, **Tuesday 21st September, 2021**
- 1.19.2 The employer may at his discretion, extend the deadline for the submission of bids through the issue of an Amendment in which all rights and obligations of the employer and the bidders previously subject to the deadline shall thereafter be subject to the new deadline as extended.

1.20 Modification and Withdrawal of Bids

- 1.20.1 The bidder may modify and withdraw his bid submission provided that written notice of the modification or withdrawal is received by the Employer prior to the prescribed deadline for submission of bids.
- 1.20.2 The bidder’s modification or withdrawal notice shall be prepared, sealed, marked and dispatched in accordance with the provisions for the submission of bids. A Withdrawal notice may also be sent by telex or cable but followed by a signed confirmation copy, postmarked not later than the deadline for submission or bids.
- 1.20.3 No bid may be modified subsequent to the deadline for submission of bids.
- 1.20.4 No bid may be withdrawn in the interval between the deadline for submission of bids and the period of bid validity specified by the bidder on the Bid form. Withdrawal of a bid during this interval may result in the forfeiture of its bid security.
- 1.20.5 Subsequent to the expiration of the period of validity of bids prescribed by the Employer, a successful bidder who has not been notified by the employer of the award of the contract may withdraw his bid without penalty.

2.0 BID OPENING AND EVALUATION

The employer will open bids, in the presence of bidders’ representatives who choose to attend at 12.00 noon, **Tuesday 21st September, 2021** at the **AFC Building (along Hospital Road), Kabarnet.** The bidders’ representatives present at the opening of bids shall sign a register evidencing their attendance.

The employer will examine the bids to determine whether they are complete, whether the requisite bid securities have been furnished, whether the documents have been properly signed and whether the bids are generally in order.

The bidders’ names, total amounts of bids, bid price modifications and bid withdrawals, if any, the presence of the requisite bid security and such other details as the employer, at his discretion, may consider appropriate will be announced at the bid opening. The selected items to be announced shall be made known to all present during the opening ceremony.

The employer shall prepare minutes of the bid opening for his own records.

2.1 Process to be Confidential

After the public opening of bids, information relating to the examination, clarification, evaluation and comparisons of bids and recommendations concerning the award of contract shall not be disclosed to bidders or other persons not officially concerned with such process until the award of contract is announced. Any effort by the bidder to influence the employer in the process of examination, classification, evaluation, comparison of bids and decision concerning award of contract shall result in the rejection of the bidder’s bid.

2.2 Clarification of Bids

To assist in the examination, evaluation and comparison of bids the employer may ask bidders individually for clarifications of their bids, including breakdowns of unit prices. The request for

clarification and the response shall be in writing or cable or fax but no change in the price of substance of the bid shall be sought offered or permitted except as required to confirm the correction of arithmetical error discovered by the employer during the evaluation of the bids.

2.3 Determination of Responsiveness

Prior to the detailed evaluation of bids, the employer will determine whether each bid is substantially responsive to the requirements of the bidding documents.

For the purpose of this clause, a substantially responsive bid is one that conforms to all the terms, conditions and specifications of the bidding documents without material deviation or reservation. A material deviation or reservation is one which affects in any substantial way the price, scope, quality, completion, timing or administration of the contract to be undertaken by the bidder under the contract, or which in any substantial way, inconsistent with the bidding documents, the employer's rights or the bidder's obligations under the contract, and the rectification of which would affect unfairly the competitive position of other bidders who have presented substantially responsive bids at reasonable price.

A bid determined to be **substantially non-responsive will be rejected by the employer** and may not subsequently be made responsive by the bidder by correction of the non-conformity. The employer may accept any non-material deviation or reservation provided that the acceptance thereof does not prejudice or affect the relative ranking order of any bidder in the evaluation of bids.

2.4 Correction of Errors

Bids determined to be substantially responsive will be checked by the Employer for any arithmetical errors in computation and summation. The employer will correct errors as follows:-

- (a) Where there is discrepancy between amounts in figures and in words, the amount in words will govern;
- (b) Where the correction leads to a lower figure than in the Form of Bid, the lower figure shall govern;
- (c) Where the correction leads to a higher figure than in the Form of Bid, the Form of Bid figure shall govern and
- (d) Where there is discrepancy between the unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will normally govern unless in the opinion of the employer there is an obviously gross misplacement of the decimal point in the unit price, in which event, the total amount as quoted will govern.

If a bidder does not accept the correction of errors as outlined above, its bid will be rejected.

2.5 Evaluation and Comparison of Bids

The employer will evaluate and compare only those bids determined to be substantially responsive to the requirements of the bidding documents. The evaluation of bids by the employer will take into account, in addition to the bid amounts, the following factors:

- (a) Arithmetic errors corrected by the employer in accordance with instructions to bidders herein;
- (b) Non- material deviations from or reservations to the bidding documents that are quantifiable;
- (c) Audited account for the last 3 years and the current financial turnover.

- (d) Year of machine manufacturer and the company’s staff strength; and
- (e) Such other factors of a Technical, Financial, Contractual or Administrative nature that the employer considers may have a potentially significant impact on contract execution price and payments, including the effect of items or unit rates that are unbalanced or unrealistically priced.

Offers, deviations and other factors that are in excess of the requirements of the bidding documents or otherwise result in the accrual of unsolicited benefits to the Employer shall not be taken into account in bid evaluation. Price adjustment provisions applying to the period of execution of the contract shall not be taken into account in bid evaluation.

2.6 Evaluation Matrix

PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS	
<u>SECTION A). MANDATORY REQUIREMENTS</u>	
M1.	MUST Attach Certificate of Incorporation or Business Name Registration
M2.	MUST Attach Valid Tax Compliance Certificate, PIN Certificate and VAT Certificate
M3.	MUST Attach duly filled business questionnaire
M4.	MUST attach current company CR12 certificate.
M5.	MUST Attach duly filled Anti-corruption declaration form
M6.	MUST Attach Valid Business permit
M7.	MUST Attach Duly filled form of tender
M8.	MUST Attach National Construction Authority certificate and practicing license for road works
M9.	MUST Attach Proof of ownership of relevant equipment certified by commissioner of oaths (see 11.0)
M10.	MUST Attach Proof of relevant experience (copies of duly signed completion certificates with their corresponding award letters)
M11.	MUST Attach Certified copies of duly signed audited financial statements for 2018, 2019 and 2020
M12.	Tender Validity period of One Hundred and Twenty (120) Days
M13.	Bid document MUST be Serialized.
M14.	MUST submit tenders in the correct Format (All forms filled, signed and rubber stamped. i.e. Tender form, Business Questionnaire, price schedule, Corruption declaration form.
<p>Note: Failure to meet the above requirements shall render the tenderer none responsive and shall not proceed to technical stage of evaluation.</p>	
OPEN TENDER.	
TENDER CLOSING DATE: TUESDAY 21st SEPTEMBER 2021 AT 12.00 NOON.	

SECTION B: TECHNICAL EVALUATION CRITERIA

No.	Parameter	Max	Requirements	Evaluated as	Score
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		Score			
RELEVANT EXPERIENCE (10)					
3.	Relevant Experience	10	Contract implemented & completed in the past five (5) years related to road works (2015 to 2020) MUST attach copies of duly signed completion certificates with their corresponding award letters	Contracts value above Kshs. 10 million	10
				Contracts value up to Kshs. 10 million	5
				Contracts value up to Kshs. 5 million	3
EQUIPMENT AND PLANT IDENTIFICATION (20)					
4.	Equipment and Plant Identification	20	Equipment and plants must conform to the mechanical specifications and must be owned by the bidder (Attach copies of log books certified by commissioner of oaths)	Relevant log books attached and mechanical specifications met	10
FINANCIAL CAPACITY (15)					
6.	Financial Capacity	15	Duly signed and stamped Audited accounts for 2018, 2019 and 2020	Audited accounts for 2018	5
				Audited accounts for 2019	5
				Audited accounts for 2020	5
	Total	45			

2.7 Award Criteria

The Employer will award the contract to the bidders whose bids have been determined to be substantially responsive to the bidding documents provided further that the bidders have the capability and resources to deliver the goods as detailed in the Bid Documents efficiently and effectively. The award could also be on split basis depending on the responsiveness for each item in the bid document.

2.8 Baringo County Government's Right to Vary period and Hours of Hire

The Baringo County Government reserves the right during the time of implementation of works to increase or decrease the period or hours of hire originally specified in the bill of quantities without any change in unit price or other terms and conditions.

2.9 Employer's Right to Accept any Bid and to Reject any or all Bids

The Employer reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids, at any time prior to award of contract, without thereby incurring any liability to the affected bidders or any obligation to inform the affected bidders of the grounds for the Employer's action. Further, the employer reserves the right to accept part or the entire bid without incurring any liability to the affected bidders or any obligation to confirm the affected bidders of the grounds for the employer's action.

2.10 Notification of Award

Prior to the expiration of the period of bid validity prescribed by the Employer, the Employer will notify the successful bidder in writing that its bid has been accepted. The notification of award will constitute the formation of the contract. Upon the furnishing by the successful bidder of a performance security, the Employer will promptly notify the unsuccessful bidders that their bids have been unsuccessful.

2.11 Signing of Contract Agreement

- 2.11.1 At the time that it notifies the successful bidder that its bid has been accepted, the employer will send the bidder an invitation to a joint negotiation so as to harmonise and establish standard rates which will be incorporated into the Forms of Contract Agreement between the parties.
- 2.11.2 Within 30 days of receipt of the notification of award, the successful bidder shall sign the Form of Contract Agreement in the presence of the Employer and the authorized witnesses.

2.12 Performance Security

- 2.12.1 Within 7 days of receipt of the notification of Award of works under the term contract of agreement from the Employer, the successful bidder shall furnish to the employer security in the form of a bankers cheque to County Government of Baringo or bank guarantee in accordance with the Condition of Contract. The form of performance security provided in the bidding documents may be used or some other form acceptable to the Employer.
- 2.12.2 Failure of the successful bidder to lodge the required performance security will lead to the annulment of award and forfeiture of the bid security.

2.13 Sub-Contracting

If the bidder wishes to sublet any portion of the work under any heading he must give details of the sub-contractor he intends to comply for each portion. Failure to comply with this requirement may invalidate the bid. If no portion of the work is to be sublet the bidder shall state accordingly. This information shall be contained in the bidder questionnaire attached.

2.14 Payments

- 2.14.1 Payments will be made in Kenya Shillings for the hours worked after the works assigned have been completed and approved by the Employer. The source of the Fund will be the Baringo County Government General Fund.
- 1.20.2 The County will only pay for the actual hours worked as per odometer. Travel and idle time **WILL NOT** be paid.
- 2.14.3 A schedule will be kept, updated daily and endorsed every day by the County's officer and Contractor's representative.

2.15 Prevention of Corrupt/Fraudulent Practices

- 2.15.1 The Baringo County Government requires that Bidders observe the highest standard of ethics during the procurement process and execution of contracts.
- 2.15.2 In pursuance of this policy, the Baringo County Government defines, for the purposes of this provision, the terms set forth below as follows:
- (i) “**Corrupt practice**” means the offering, giving, receiving or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution; and
 - (ii) “**Fraudulent practice**” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Baringo County Government, and includes collusive practice among Bidder (prior to or after tender submission) designed to establish tender prices at artificial non-competitive levels and to deprive the Baringo County Government of the benefits of free and open competition;
- 2.15.3 The Baringo County Government will reject a proposal for award if it determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;
- 2.15.4 The Baringo County Government will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded any contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a contract.
- 2.15.5 The Baringo County Government reserves the right to cancel this contract and to recover from the bidder the amount of any loss resulting from such cancellation if:
- (a) The Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or for bearing to do so or having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the County, or for showing or for bearing to show favour or disfavour to any person in relation to the contract or any other contract with the County, or
 - (b) The like acts have been done by any person employed by such contractor or acting on his behalf (with or without the knowledge of the Contractor), or
 - (c) In relation to any contract with the County, the Contractor or any person employed by him or acting on his behalf shall have committed an offence under the Prevention of Corruption Act, or
 - (d) The Contractor shows any intentions or indications (directly or implied) of doing any of the above or alike acts.

2.16 Contract Period

- 2.16.1 The contract period shall be two years with effect from the date of signing of the contract agreement.

2.17 Works Supervision

The works are placed under the oversight of the Chief Officer Ministry of Transport, Infrastructure and Public Works or his representative to ensure that the conditions of hire are adhered to.

3.0 CONDITIONS OF CONTRACT

3.1 Definitions and Interpretation

In these conditions and specifications to which they refer the following terms shall have the meanings set forth and assigned to them namely: -

- (a) The “**Employer**” shall be “Baringo County Government” represented by the “County Secretary, Baringo County Government”;
- (b) The ‘**County Secretary**’ shall mean the County Secretary for the time being to the County or his/her successor or his/her representatives as may be appointed by him/her;
- (c) The ‘**Chief Officer Transport, Infrastructure and Public Works**’ shall mean the Chief Officer Transport and Infrastructure for the time being to the County, or his successor or his representatives as may be appointed by him;
- (d) The term ‘**contractor**’ whenever used herein and all contract documents shall mean the person or persons, partnership, firm or company whose bid has been accepted, and who has entered into a contract with Baringo County Government for the execution and completion of the main contract;

3.2 Application

These Conditions of Contract shall apply in all Contracts made by the Baringo County Government for the procurement of goods.

3.3 Standards

The Goods supplied under this Contract shall conform to the standards mentioned in the Technical Specifications.

3.4 Use of Contract Documents and Information

- 3.4.1 The Bidder shall not, without the Baringo County Government’s prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Baringo County Government in connection therewith, to any person other than a person employed by the Bidder in the performance of the Contract.
- 3.4.2 The Bidder shall not, without the Baringo County Government’s prior written consent, make use of any document or information enumerated in paragraph 3.4.1 above.
- 3.4.3 Any document, other than the Contract itself, enumerated in paragraph 3.4.1 shall remain the property of the Baringo County Government and shall be returned (all copies) to the Baringo County Government on completion of the Bidder’s performance under the Contract if so required by the Baringo County Government.

3.5 Patent Rights

The Bidder shall indemnify the Baringo County Government against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof.

3.6 Performance Security

- 3.6.1 Within seven (7) days of receipt of the notification of award of works under the term contract of agreement, the successful Bidder shall furnish to the Baringo County

Government the performance security amounting to 5% of the cost of the works to be carried out as per the Local Service Order payable to the Baringo County Government.

- 3.6.2 The proceeds of the performance security shall be payable to the Baringo County Government as compensation for any loss resulting from the Bidder's failure to complete its obligations under the Contract.
- 3.6.3 The performance security shall be denominated in Kenya Shillings and shall be in the form of a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in Kenya or abroad, acceptable to the Baringo County Government, in the form provided in the Bid documents.
- 3.6.4 The performance security will be discharged by the Baringo County Government and returned to the Bidder not later than sixty (60) days following the date of completion of the Bidder's performance obligations under the Contract, including any warranty obligations, under the Contract.

3.7 Inspection and Tests

- 3.7.1 The Successful bidder will be required to submit a mechanical inspection report from the Chief Mechanical Engineer, Ministry of Transport, Infrastructure and Public Works, for HIRE OF ROAD CONSTRUCTION EQUIPMENT bid for.
- 3.7.2 The Mechanical Inspection Report should be duly signed by an authorised officer as detailed in 2.7.1 and to include details such as:-
- (a) Engine Number
 - (b) Chassis Number
 - (c) Registration number
 - (d) Engine capacity
 - (e) Current mileage
 - (f) Model and make of the equipment
 - (g) Year of manufacture
 - (h) Copy of log book
- 3.7.3 The Baringo County Government's right to inspect, test and, where necessary, reject the Goods after the Goods' arrival shall in no way be limited or waived by reason of the Goods having previously been inspected, tested, and passed by the Baringo County Government or its representative prior to the Goods' delivery.

3.8 Delivery and Documents

Delivery of the Goods shall be made by the Bidder in accordance with the terms specified by Baringo County Government in the Contract

3.9 Insurance

The Goods supplied under the Contract shall be fully insured against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery in the manner specified in the Special conditions of contract

3.10 Prices

Prices charged by the Bidder for Goods delivered and Services performed under the Contract shall not vary from the harmonised rates agreed upon by the Employer and Bidder upon acceptance of the Bidder's Bid.

3.11 Assignment

- i. The Bidder shall not assign, in whole or in part, its obligations to perform under this Contract, except with the Baringo County Government's prior written consent.
- ii. Upon award of the contract for HIRE OF ROAD CONSTRUCTION EQUIPMENT, it will be the prerogative of the Chief Officer Transport, Infrastructure and Public Works to assign works to such a contractor.

3.12 Subcontracts

The Bidder shall notify the Baringo County Government in writing of all subcontracts awarded under this Contract if not already specified in the Bid. Such notification, in the original Bid or later, shall not relieve the Bidder from any liability or obligation under the Contract.

3.13 Termination for Default

- 3.13.1 The Baringo County Government may, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Bidder, terminate this Contract in whole or in part: -
- (a) If the Bidder fails to deliver any or all of the Goods within the period(s) specified in the Contract, or within any extension thereof granted by the Baringo County Government.
 - (b) If the Bidder fails to perform any other obligation(s) under the Contract.
 - (c) If the Bidder, in the judgment of the Baringo County Government has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.
- 3.13.2 In the event the Baringo County Government terminates the Contract in whole or in part, it may procure, upon such terms and in such manner, as it deems appropriate, Goods similar to those undelivered, and the Bidder shall be liable to the Baringo County Government for any excess costs for such similar Goods.

3.14 Liquidated Damages

If the Bidder fails to deliver any or all of the goods within the period(s) specified in the contract, the Baringo County Government shall, without prejudice to its other remedies under the contract, deduct from the contract prices liquidated damages indicated herein up to a maximum deduction of 10% of the delayed goods. After this the Bidder may consider termination of the contract.

3.15 Language and Law

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

3.16 Force Majeure

The Bidder shall not be liable for forfeiture of its performance security, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

3.17 Resolution of Disputes

- 3.17.1 The Baringo County Government and the Bidder shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the contract.
- 3.17.2 If, after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably a contract dispute, either party

may require adjudication in an agreed national forum, and/or national arbitration.

3.18 Disputes and Arbitration

- (a) If at any time any question, dispute or difference shall arise between the employer and contractor in connection with or arising out of the contract or the carrying out of the works either party shall be entitled to refer the matter to be finally settled by arbitration in accordance with rules of conciliation and Arbitration of the International Chamber of commerce by one or more arbitrators appointed in accordance with those rules. The Arbitrator's shall have full power to open up, review and revise: -
 - (i) Any decision or instruction of the Engineer referred to arbitration and
 - (ii) Any certificate of the Engineer related to dispute.
- (b) Performance of the contract shall continue during arbitration proceedings unless the Employer shall order suspension. If any such suspension is ordered the reasonable costs incurred by the contractor and occasioned thereby shall be added to the contract price. No payments due or payable by the Employer shall be withheld on account of pending reference to arbitration.
- (c) Final notice of arbitration must be given to the other party, and where required to the appropriate arbitration body, not later than 84 days after the issue of the final certificate of payment.

3.19 Submissions to the Chief Officer

Wherever the Contractor is required to submit to the Chief Officer proposals, details, calculations, information, literature, materials, test reports and certificates, the Chief Officer will consider each submission and, if appropriate, will reply to the Contractor in accordance with the relevant provision of the Conditions of Contract.

Unless a defined period of time is stated in the Specification, each submission shall be by dates to be agreed with the Chief Officer having regard to the approved programme and the need to give the Chief Officer adequate time to consider each submission. Documents submitted, other than drawings and manufacturer's literature shall be A4 in size. All documents shall be in English and any abbreviations shall be explained. All calculations and technical information shall be in units conforming to the Systems International Units (SI).

4.0 SCHEDULE I – PARTICULARS OF BIDDER

- 1.1 Name of Bidder
- 1.2 Postal address of Registered office
.....
.....
- 1.3 Telephone Number
- 1.4 Physical location of Registered office

- 1.5 Physical location of Go down, Yards, etc
.....
- 1.6 Status of Bidder (Partnership, Limited Liabilities Co. etc)
.....
- 1.7 Date of Registration with Registrar of Companies in Kenya (*Attach copies of certificates*)
.....
- 1.8

<u>Name of Directors/Partners, etc</u>	<u>Nationalities</u>
.....
.....
.....
.....
.....
- 1.9 Name of person authorised to sign tender documents if not a
Director listed above
.....

5.0 SCHEDULE II - FORM OF BID

Date.....

Bid No.....

To.....
.....
.....

(Name and Address of Procuring Entity)

Gentlemen and /or Ladies

1. Having examined and understood the Bid documents in totality for the execution of the works as described therein, we, the undersigned, offer to execute, complete and maintain the whole of the said Works in conformity with the Conditions of Contract, Specifications, and Terms of Reference and in conformity with all Quality standards.
2. We acknowledge that the Appendix forms part of our Bid
3. We undertake, if our Bid is accepted, to deliver the said services in accordance with the special conditions of the Contract.
4. We agree to abide by this Bid for a period of.....days from the date fixed for Bid opening in the instruction to Bidders and it shall remain binding upon us and may be accepted any time before the expiry of the period.
5. Until a formal Contract is prepared and executed, this Bid together with your written acceptance thereof and your notification of award, shall constitute a binding Contract between us.
6. We are fully equipped with equipment, vehicles and/or plant. Further, we are competent and have adequate Financial Resources and qualified personnel to execute the type of Works included in this bid. We are in a position to fulfill the said Contract in totality.
7. We understand that you are not bound to accept the lowest or any Bid you may receive.

Dated this..... dayof 2021

Name and Signature in the capacity
ofduly authorized to sign Bid, for and on behalf of
.....

P.O. **Box**

6.0 SCHEDULE III - FORM OF BID BANK GUARANTEE

(Note: The bidder may complete either this form of Bid Bank Guarantee or other acceptable security).

WHEREAS (Name of bidder) hereinafter called “the Bidder” has submitted its bid dated for Tender Number BRCG/TNR/27/2021-2022 –HIRE OF ROAD CONSTRUCTION EQUIPMENT” hereinafter called “the Bid”.

KNOW ALL MEN by this presents that we (Name of Bank) of P. O. Boxof(Name of Country) having our registered offices athereinafter called the Bank is bound unto the Baringo County Government (hereinafter called “the employer”) in the Sum of Kenya Shillings
.....
..... (KShs) for which payment will be well and truly made to the said employer in the Bank binds itself its successors and assigns to these presents.

Sealed with the common seal of the said Bank thisday of

THE CONDITIONS of this obligation are:

1. If the bidder withdraws its Bid during the period of bid validity specified by the bidder on the Bid Form; or
2. If the Bidder withdraws having been notified of the acceptance of its Bid by the Purchaser during the period of bid validity: or
 - (i) Fails or refuses to execute the Contract Form, if required: or
 - (ii) Fails or refuses to furnish the Performance Security, in accordance with the instructions to bidders.

For “Tender Number BRCG/TNR/27/2021-2022” hereinafter called “**the Bid**”.

NOW THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE:-

- (a) If the principal withdraws its Bid during the period of bid validity specified by the Bidder on the Bid Form : or
- (b) If the Principal having been notified of the acceptance of its bid by the Employer during the period of bid validity:-
 - (i) Fails or refuses to execute the Contract Form in accordance with the instruction to Bidders, it required; or

- (ii) Fails or refuses to furnish the performance security in accordance with the instruction to Bidders then this obligation shall remain in full force and effect otherwise to be null and void.

We undertake to pay to the Employer up to the above amount upon receipt of his first written demand without having to substantiate its demand provided that in its demand the Employer will note that the amount claimed by it is due to it owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

The guarantee will remain in force up to and including thirty (30) days after the period of bid validity, and any demand in respect thereof should reach the Bank not later than the above.

SIGNATURE OF THE BANK

SIGNATURE OF THE WITNESS

NAME OF THE WITNESS

ADDRESS OF THE WITNESS

7.0 SCHEDULE IV – BIDDER QUESTIONNAIRE

A. Particulars of the Bidder

1. Name of the Bidder.....
2. Postal Address
3. Telephone Numbers, Land Line:.....
Cell Phone:.....
4. Full name of partners/directors and their Nationalities
-
-
-
5. Registered Office
6. Has the contractor ever been convicted of any offence under the Labour Acts of Kenya? (Yes or No).
7. If yes give particulars
.....
.....
.....

A. Particulars of the Sub – Contractor (s)

1. Name of Sub – Contractor
2. Postal Address
3. Telephone Number
4. Full Names of Partners/Directors and their Nationalities
.....
.....
5. Registered Office
6. Portion of work to be sublet
-

.....

7. Sub-Contractor's experience of similar work carried out in the last 5 years with contract value.

.....
.....
.....
.....
.....
.....

8. Has the sub-contractor ever been convicted of any offence under the Labour Acts in Kenya? (Yes or No)

9. If yes give particulars

.....
.....
.....
.....

I/We certify that the above information is correct.

Contractor Date
(Signature)

Sub-contractor Date
(Signature)

8.0 SCHEDULE V FORM OF AGREEMENT

HIRE OF ROAD CONSTRUCTION EQUIPMENT (To be completed only by successful bidder/Bidder)

This agreement made on the day of 20 BETWEEN the Baringo County Government (hereinafter called “the Employer” of the one part and.....of (hereinafter called “the Client”) of the other part.

WHEREAS the Employer is desirous that certain works / services should be provided, viz: -

HIRE OF ROAD CONSTRUCTION EQUIPMENT

And has accepted by a letter of acceptance dated (Date of letter of acceptance)..... Accepted a Bid by the Client for the supply and delivery of such goods / services, NOW THIS AGREEMENT WITNESSETH as follows: -

1. In this Agreement, words and expressions shall have the same meaning as are respectively assigned to them in the Conditions of Bid hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of the agreement, viz.: -
 - (a) The Form of Bid with Appendix dated
 - (b) Certificate of bidder’s or representative’s sufficiency of tender documents, and particulars
 - (c) The Form of Agreement
 - (d) The Form of Performance Security
 - (e) The Conditions of Contract
 - (f) Specifications and Bill of Quantities
3. In consideration of the payments to be made by the Employer to the Client as hereinafter mentioned the Client HEREBY COVENANTS with the Employer to provide the goods and services in conformity in all respects with the provisions of the Bid.
4. The Employer HEREBY COVENANTS to pay to the Client in consideration of the provisions of the goods and services and remedying of defects therein the Contract price or such other as may be described by the Contract.

IN WITNESS WHEREOF the parties hereto have set their respective Common Seals to be hereunto affixed (or have hereunto set their respective hands and seals) the day and year first above written.

The Common Seals
..... Was hereunto affixed
in the presence of: -

Signed, sealed and delivered by the said

.....
.....

In the presence of Signed for and
on behalf of the Employer

.....

Governor, Baringo County Government

9.0 SCHEDULE VI - FORM OF PERFORMANCE SECURITY

(Note: Bidder should not complete the form of performance only the successful bidder will be required to provide performance security in accordance with these forms or in a similar form acceptable to the employer.)

KNOW all men by these present that (Name and Address of contractor) as Principal (hereinafter called "the contractor") and (Named Legal Title and Address of Surety, Bonding Company)

.....as surety (hereinafter called "the Surety") are held and firmly bound unto the Baringo County Government of P. O. Box 54, KABARNET Kenya as obliged (hereinafter called "the Employer"), in the amount of Kenya Shillings

..... (KShs.....) payment of which sum accountable in the types and proportions of currencies in which the Contractor and the Surety bind themselves, their heirs, executors, administrators successors and assignees, jointly and severally firmly by these presents.

WHEREAS the contractor has entered into a written contract agreement with the employer dated the Day of 2021 in accordance with the plans and specifications and amendments thereto, to the extent herein provided for, are by reference made part, hereof and are hereinafter referred to as the Contract.

NOW THEREFORE, the condition of this obligation is such that if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto) then this obligation shall be null and void, otherwise it shall remain in full force and effect.

WHENEVER the contractor shall be, and declared by the Employer to be, in default under the contract, the Employer having performed the Employer's obligations there under the surety may promptly remedy on default, or shall promptly.

- 1. Complete the Contract in accordance with its terms and conditions; or
2. Obtain a bid or bids for submission to the employer for completing the Contract, in accordance with its terms and conditions, and upon determination by employer and surety of the lowest responsible bidder, arrange for a contract between such binder and employer and make available as work progress (even though there should be a default or a succession of defaults 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 employer to Contractor under the contract, less the amount properly paid by employer to Contractor; or
3. Pay the Employer the amount required by Employer to complete the Contract in accordance with its terms and conditions any amount up to a total not exceeding the amount of this Bond. The surety shall not be liable for a greater sum than the specified penalty of this Security.

Any suit under this Security must be instituted before the expiration of one year from the date of this using of the Maintenance Certificate.

No right of action shall arise out of this Security to or for the use of any person or Corporation other than the Employer named herein or the heirs, executors, Administration or successors of the Employer.

IN **TESTIMONY WHEREOF**, the Contractor has hereunto set its hand and affixed as seal, and the surety has caused these presents to be sealed with its corporate seal duly attested by the signature of its

Legal representative, this day 2021

Signed, Sealed and
Delivered by Contractor
(Signature of Contractor)

In presence of
(Signature of witness)
.....

Signed, Sealed and Delivered
By the Surety
(Signature of Surety)

In the presence of
(Signature of Witness)
.....
(Signature of Witness)
.....
(Address of Witness)

10.0 SCHEDULE VII - 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 receive correspondence in connection with the bid.

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

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

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

11.0 SCHEDULE VIII – SPECIFICATIONS AND BILLS OF QUANTITIES

MACHINE	SPECIFICATIONS	RATE (WET)
Bull dozer	Crawler tractor Capacity 140-160 HP	
Bull dozer	Crawler tractor Capacity 200 – 220 HP	
Excavator (Bucket)	Bucket 130 – 150 Hp	
Excavator (Bucket)	Bucket 230-255 Hp	
Excavator (Breaker)	Breaker 230-255 Hp	
Backhoe	Loader 130-150Hp	
Motor grader	100-130 Hp	
Motor grader	131 – 155 Hp	
Motor grader	156 – 200 HP	
Roller	3-4 Ton 130 Hp	
Single Drum Vibratory Roller	9 – 10 Ton 130 Hp	
Single Drum Vibratory Roller Sheep foot	9 – 10 Ton 130 Hp	
Water tanker	5000 – 6000 lt	
Water tanker	6000 – 8000 lt	
Truck, tipper	15 Ton 0-5 km trip	
Truck, tipper	15 Ton 6-10 km trip	
Truck, tipper	15 Ton 11-15 km trip	
Truck, tipper	20 Ton 0-5km trip	
Truck, tipper	20 Ton 6-10km trip	
Truck, tipper	20 Ton 11-15km trip	
Prime mover	25 – 35 Ton	
Prime mover	35 – 50 Ton	
Pick up 4x4	1-1.5 Ton	
4x4 utility SW (average loaded)	2000 – 3000cc	

NB. The rates indicated above should be inclusive of VAT and any other Government levies.

12.0 SCHEDULE IX- CERTIFICATE OF BIDDER'S OR REPRESENTATIVE'S SUFFICIENCY OF TENDER DOCUMENTS, AND PARTICULARS.

1. This is to certify that I,
.....
(Name of Bidder or his representative)

of this firm of
.....
(Name of Bidder)

Studied and examined the Contract documents of

TENDER FOR HIRE OF ROAD CONSTRUCTION EQUIPMENT

1. Having previously studied the Tender Document, I have made myself familiar with all the local conditions likely to influence the works and the cost thereof.

Signed
(Bidder or his representative)

Date

2 I further certify that I have examined and inspected the samples required / specifications /data necessary to properly formulate our tender, made ourselves familiar with the local conditions and availability likely to influence the tender and costs thereof; Examined and checked some documents as described various documents as described in the paragraph numbered 2 of the Form of Agreement and hereby confirm:

- (i) That any discrepancies or ambiguities have been explained to our complete satisfactions as witness the exchange of correspondence between ourselves.
- (ii) In the event that no correspondence is appended that all parts of the documents are in agreement with each other.
- (iii) That the information contained in the documents is accurate, adequate for its specified duty or duties, and sufficiently detailed for use to prepare a sensible programme of activities as appended to this Tender and to adequately and correctly price our Tender.
- (iv) That all the goods specified herein are available or can be available in adequate time during the currency of the Tender in the grades and quantities shown in the document, and that goods inadequacies will only be accepted for granting of time extension in the event of circumstances arising under expected risks or due to any action or directive of Government affecting all known suppliers of the affected material within Kenya, due to the circumstances beyond the reasonable control of all being concurrently affected thereby.

3 It is hereby certified that the information given in Schedules of Particulars and/or appended to this Tender is given in good faith and in the belief that it accurately represents the affairs of the Bidder at the date for submission of this Tender. It is understood that false information given herein these Schedules may render this Tender liable for disqualification.

4 It is further confirmed that no law suit, criminal or civil, lies has ever lain against the Bidder corporately or against any director individually and that the Bidder corporately has never been associated with any company, taken into receivership or liquidation or has individually himself or herself never had a suit for bankruptcy filed against them.

DATED THIS DAY OF 20.....

SIGNATURE

NAME (BLOCK LETTERS)

IN THE CAPACITY OF

DULY AUTHORIZED TO SIGN FOR AND ON BEHALF OF

.....

OF (POSTAL ADDRESS)

13.0 SCHEDULE X - PERFORMANCE SECURITY FORM

(Note: Tenderer should not complete the form of performance. Only the successful Tenderer(s) will be required to provide performance security in accordance with the forms or in similar form acceptable to the Procuring Entity)

To.....

(Name of Procuring Entity)

WHEREAS *(Name of Tenderer)*

hereinafter called the Tenderer) has undertaken, in pursuance of Contract No.

..... *(Reference Number of the Contract)* dated

..... 20.....

(description of goods / services) (hereinafter called the 'Contract')

AND WHEREAS it has been stipulated by you in the said Contract that the Tenderer shall furnish you with a bank guarantee by a reputable Bank for the sum specified therein as security for compliance with the Tenderer's performance obligation in accordance with the Contract

AND WHEREAS we have agreed to give the Tender a guarantee.

THEREFORE WE hereby affirm that we are guarantors and responsible to you / on behalf of the Tenderer, upon a total of

..... *(amount of guarantee)* as aforesaid, without you needing to prove or show ground or reasons for your demand or the sum specified therein.

This guarantee is valid until the*(day)* of 20.....

Signature and seal of the Guarantors

.....

(name of Bank or financial / institution)

.....

(Address)

.....

(Date)